The Municipal Regime, the Autonomous City of Buenos Aires and the Metropolitan Areas in the Argentine Federation

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Abstract: The Argentine Constitution, especially after the 1994 Constitutional Reform, established a federal structure of four orders of government: Federal, Provinces, the Autonomous City of Buenos Aires and Municipal. Also, Provinces have the possibility to create regions for economic and social development. In this first point, some characteristics are highlighted, such as the tendency towards centralization. The autonomous municipal regime is analyzed in the second point. The municipal regime was inserted in the original Constitution of 1853, but throughout the history there has been a debate about its nature, ranging from autarchy to autonomy. In the 1994 Constitutional Reform, municipal autonomy was recognized, with five aspects: institutional, political, administrative, financial, and economic. In the third point, the Autonomous City of Buenos Aires is studied. It is a City-State, with a nature similar to that of the Provinces and is represented in the Chamber of Deputies and in the Senate of the Nation. Its own Constitution was drafted in 1996. The phenomenon of metropolitan areas of Buenos Aires and Cordoba are briefly considered, in the fourth point. And, finally, in the fifth point, the transcendent relationship between the autonomous municipal regime and the federal republic and the role of cities in the globalized world are reflected.

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A. Introduction

Comparative law studies have long shown the notorious importance of local governments within federations, considering them as the third order of government. In that sense, Nico Steytler has argued that: “The existence of three orders of government - federal, state and local - is common to all federal systems, but the position and role played by local govern-

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ment in those systems are remarkably diverse. […] In some cases, the local government is an order of government recognized in the Constitution and in others, it is the responsibility of the state government. However, local government in general and metropolitan areas in particular, play an increasingly significant role in the exercise of government in federal countries."[1] For his part, Ronald Watts also shared that opinion by specifying: "The essential characteristic of federations is that they are composed of two (or more) orders of government operating within a constitutional framework, with one order providing shared rule through common institutions for certain specified purposes and with the other order (or orders) providing regional or local self-rule through the governments of the constituent units for certain specified purposes"[2].

In accordance with this conceptual framework, in this work I propose to analyze the autonomous municipal regime and the Autonomous City of Buenos Aires, which by the Constitutional Reform of 1994, consists of two new government orders, which have been added to the other two previous ones of the Federal Government and of the Provinces[3]. Within comparative federalism, the Argentine federation is the one that presents the largest number of government orders: federal, provincial, the Autonomous City of Buenos Aires, municipal, and in addition, the possibility of creation of regions for economic and social development. The reformed constitution holds the promise of modernization, which, however, has not been fulfilled adequately in reality, due to the weak constitutional culture characterizing Argentina. Municipal autonomies, it is further argued in this article, cannot be understood without their close links to republican and federal democracy.

In relation to the methodology used in this article, from my perspective on constitutional law,[4] provincial constitutionalism, and municipal law – and specifically for the study of federalism – an interdisciplinary method is best, that covers historical, juridical, political,

1 *Nico Steytler*, Reflexiones comparativas sobre gobierno local y regiones metropolitanas en sistemas federales", en "Un diálogo global sobre el federalismo, Colección de Cuadernos 6; Compiladores Raoul Blindenbacher y Chandra Pasma, Forum of Federations and IACFS 2008, p. 3.

2 *Ronald L. Watt*s, Comparative conclusions, in: Akhtar Majeed, Ronald L. Watts and Douglas M. Brown (eds.),A Global Dialogue on Federalism 2, Distribution of powers and responsibilities in federal countries, Forum of Federations and iacfs, McGill-Queens University Press, Montreal & Kingston-London-Ithaca, 2006, p. 322.

3 Derived from the historical Constitution of 1853.

4 See *Antonio María Hernández*, Derecho Constitucional, Buenos Aires 2012, Vol 1, Ch. I, II.4. *Método*, pp. 28-32; Antonio María Hernández*,* Federalismo y Constitucionalismo Provincial, Buenos Aires 2009, Ch. XII, pp. 28 – 32; Antonio Maria Hernández, Ch. 1 Derecho Público Provincial, in "Derecho Público Provincial", Antonio María Hernández y Guillermo Barrera Buteler, Coordinadores, Abeledo Perrot, Buenos A9ires, 2009; pp. 325-7 and *Antonio María Hernández*, Derecho Municipal, Parte General, Universidad Nacional Autónoma de Méjico, Mexico, 2003, Ch. I; *Método*, pp. 11-14. Within these works we consider this important issue, starting from the distinction between the deductive-speculative method used by Plato and the inductive-experimental method of Aristotle, and the specifically juridical methods, covering one-dimensional normative positions; two-dimensional, including political science and sociological contributions; three-dimensional, adding axiological and philosophical methods; and multi-dimensional, incorporating anthro-

sociological, fiscal, philosophical, and comparative aspects. The method must also be particularly realistic, because in Argentina, and in general in Latin America, it is common to observe a great distance between constitutional norms and their current reality. It is therefore essential to compare the juridical and constitutional culture of the respective societies to find suitable answers to the similarities and differences in the historical evolution of constitutional models that have had a similar design.[5]

The article proceeds as follows: First, the federal structure of the Constitution is presentend, beginning with the original enactment in 1853 and the Constitutional Reforms of 1860 and 1994 that established the four orders of government. Likewise, some characteristics will be highlighted, such as non-compliance with regulations and the tendency towards centralization.

Second, the autonomous municipal regime will be analyzed. The municipal regime was inserted in the original Constitution of 1853, but throughout history there has been a debate about its nature, ranging from autarchy to autonomy. In the 1994 Constitutional Reform, municipal autonomy was recognized. The Argentine municipal regime is considered with full or semi-full municipal autonomy. Full autonomy comprises the following five aspects of autonomy: institutional, political, administrative, financial and economic autonomy. Likwise, the enactment of the 178 Municipal Organic Charters in force in the country will be highlighted.

Third, the Autonomous City of Buenos Aires will be considered. It is currently a City-State, with a nature similar to that of the Provinces and is represented in the Chamber of Deputies and in the Senate of the Nation. It has drafted its own Constitution in 1996 and enjoys institutional, political, administrative, financial and economic autonomy.

Fourth, the phenomenon of metropolitan areas will be briefly consiedered. Finally, the transcendent relationship between the autonomous municipal regime and the federal republic in Argentina and the role of cities in the globalized world, more generally, will be reflected.

pological, social, cultural, and ethical contributions. We also examine the realist currents, so necessary to explain our situations, with the distance between formal and real constitutions, resulting from insufficient application of the norms.

5 See *Antonio María Hernández*, *Daniel Zovatto and Manuel Mora y Araujo*, Encuesta de cultura constitucional. Argentina: una sociedad anómica, Asociación Argentina de Derecho Constitucional, UNAM e IDEA Internacional, Mexico, 2005, and *Antonio María Hernández, Daniel Zovatto and Eduardo Fidanza*, Segunda Encuesta de cultura constitucional. Argentina: una sociedad anómica, Eudeba, Buenos Aires 2016. Here we discuss the concepts of constitutional culture and of anomie, in an interdisciplinary analysis of surveys carried out in Argentina in 2004 and 2014, in the context of a regional study that also involved similar polls in Mexico, Bolivia and Costa Rica. This issue is of great importance within constitutional theory, and especially relevant for our countries, marked by a weak culture of legality, as in the case of Argentina.

B. Four levels of government in the argentine federation[6]

Argentina has three normative versions of federalism, corresponding to the Constitution of 1853, the Constitutional reform of 1860, and the Constitutional reform of 1994. The Argentinian Constitution was greatly influenced by the American Constitution of 1787 regarding the basic principles of distribution of powers between the federal government and the provinces, bicameralism, presidentialism, the Supreme Court of Justice and the role of the Senate.

However, the Constitution moved away from that model to describe a more centralized federation. The 1860 Constitutional reform had special importance in terms of federalism because it modified some articles that had established a markedly centralized federalism, such as those imposing the review of provincial constitutions by Congress, the impeachment of governors by Congress and the power of the Supreme Court to resolve conflicts of provincial authorities. This reform affirmed the rights of the provinces, with a focus of greater decentralization.

Finally, the 1994 Constitutional Reform had as one of its main objectives the deepening of the decentralization of power, which covered three aspects: strengthening federalism in its institutional, political, financial, economic and social dimension; recognizing the great principle of municipal autonomy; and granting a new *status* to the Autonomous City of Buenos Aires[7]. The Federal Constitutional Reform of 1994 established four levels of gov-

6 For an analysis of Argentine federalism, see *Antonio María Hernández*, Constitutional Law in Argentina, Alphen aan den Rijn 2018; *Antonio María Hernández,* Sub-National Constitutional Law in Argentina, Alphen aan den Rijn 2019; *Antonio María Hernández,* Federalismo y Constitucionalismo Provincial, Buenos Aires 2009; *Antonio María Hernández,* La Ciudad Autónoma de Buenos Aires y el fortalecimiento del federalismo argentino, Buenos Aires 2017; Antonio María Hernández, Estudios de federalismo comparado. Argentina, Estados Unidos y Mexico, Buenos Aires 2018; Antonio María Hernández*,* Studies in comparative federalism. Argentina, The United States and Mexico, Chapel Hill, NC 2019 and Antonio María Hernández*,* Republic of Argentina, in: Katy Le Roy and Cheryl Sau (eds.), A Global Dialogue on Federalism3. Legislative, Executive and Judicial Governance in federal countries, Montreal and Kingston-London-Ithaca 2006.

7 This was the most legitimate and democratic reform of our constitutional history because it was the result of a National Constituent Convention composed of 305 delegates of 19 political blocs, where the entire spectrum of Argentine politics was represented, after free elections. The major constitutional reform included 61 norms: 20 new, 24 reformed and 17 transitory provisions, which covered both the dogmatic part (with a chapter of new rights and guarantees) and the organic part, with modifications in the federal government, in the legislative, executive and judicial branches as well as in provincial and municipal government, together with the creation of the Autonomous City of Buenos Aires. The reform achieved a notable modernization of Argentine public law, deepening the federal republic and laying the foundations for a social democracy within the framework of the third stage of constitutionalism: that of the internationalization of human rights. Unfortunately, given the weak constitutional and legal culture that characterizes Argentina, the reform is incomplete, and Congress still has to enact more than 25 statutory laws. For a more profound analysis of these issues, see our book *Antonio María Hernández,* A 25 años de la reforma constitucional de 1994. Legitimidad, ideas fuerza, diseño constitucional, modernización e incumplimientos, Chapel Hill, NC 2019.

ernment in the Argentine federation: The Federal Government (Article 44–120), the Provincial Governments (Articles 121–128), the Autonomous City of Buenos Aires (Article 129), and Municipal Governments (Article 123).

Hence, the federal system of Argentina consists of the Federal Government, twenty-three Provinces and the Autonomous City of Buenos Aires, now the seat of the Federal Capital. The Constitutional Reform also included so called regions within the Constitution (Article 124), which are established as a union of Provinces but only for economic and social development and not as new political entities.[8]

C. The constitutional status of the local government in the federal constitution: the municipal autonomy[9]

The Municipal regime was included in the historical Constitution of 1853 in Article 5 as one of the requirements that Provinces have to assure when enacting their Provincial Constitutions[10]. This short phrase originated a strong debate on the nature of local governments

8 Regarding the regional agenda, although 4 Regions were established: Gran Norte Argentino, Centro, Nuevo Cuyo and Patagonia, we have indicated that this process is practically stopped, when it is one of the most important tools within the great federal political project of the Constitution. In addition, the Province of Buenos Aires and the Autonomous City of Buenos Aires do not integrate any Region. See the Seminar on 'Federalismo y Regiones en la Constitución Nacional', which I co-organized with the Parliamentary Secretariat of the Senate of the Nation and the Metropolitan Foundation and that took place in 3 days in 2017, with the participation of Senators of the Nation and Members of the Federalism Institute, who spoke about the different regions of the country. See the Seminar in YouTube, under the title ‚Federalismo y Regiones en la Constitución Nacional', incorporated by the Senate of the Nation.

9 See *Hernández*, Derecho Municipal, footnote 4; Antonio María Hernández, Derecho Municipal, Buenos Aires 1997; Antonio María Hernández, Federalismo y Constitucionalismo Provincial, footnote 4 and *Antonio María Hernández*, Estudios de Federalismo Comparado. Argentina, Estados Unidos y México, in 2 editions in spanish: Rubinzal Culzoni, Buenos Aires,2018 and UNAM, Mexico, 2019; *Horacio Rosatti*, Tratado de Derecho Municipal, Buenos Aires 1997; *Ricardo M. Zuccherino*, Tratado de Derecho Federal, Estadual y Municipal (Argentino y Comparado), Buenos Aires 1992: *María Gabriela Abalos*, El régimen municipal argentino, después de la reforma nacional de 1994, Cuestiones Constitucionales 8, (2003); *Néstor Losa*, Derecho Municipal en la Constitución vigente, Buenos Aires 1995 and *Enrique J. Marchiaro*, Derecho Municipal." Nuevas Relaciones Intermunicipales, Buenos Aires 2000, etc.

10 The model of our Constitution was the Philadelphia Constitution of 1787 but there is a noticeable **difference on the municipal regime in the respectives Federal Constitutions,** because the latter did not mention the local governments. I emphasize that **Madison,** however, referred to the Municipal legislatures, in Federalist Nº 39 considering the national or federal character of the Constitution and in the application of its concept of division of the popular sovereignty in the various governmental orders. He argued, "... local or municipal authorities form different and independent portions of supremacy and are no longer subject, within their respective spheres, to the general authority, that the general authority is subject to them within their own sphere. With regard to this point, therefore, the proposed government cannot be qualified as a national, since its jurisdiction extends only to certain enumerated objects and leaves states with a residual and inviolable sovereignty over all others". That quotation demonstrates Madison·s clear vision in favor of local

between those who emphasized the "autarchy" and the administrative nature of the Municipalities and those who supported the "autonomy" and the political nature of Local Governments.[11] The 1994 Constitutional Reform included the acknowledgment of Municipal autonomy in these terms in Article 123:

> *'Each Province enacts its own Constitution as stated in Article 5, ensuring municipal autonomy and ruling its scope and content regarding the institutional, political, administrative, economic and financial aspects '.*

This standard complements Article 5, and, consequently, it has been prescribed that for the exercise of constituent power by the Provinces one of the established requirements is to ensure an "autonomous municipal regime." I have already said, in recalling the speech in the debate in the Federal Constituent Convention, that the term "securing" refers to the recognition of the municipality as a natural and necessary institution, based on neighborhood relations. That was, on the other hand, the interpretation I had also made of the word "secure" in Article 5.[12] If the Provinces do not secure the autonomous municipal regime, the possibility of federal intervention under Arts. 5, 6, and 123 of the Constitution remains. This interpretation is affirmed by Horacio Rosatti.[13] However, as I expressed it in the Constituent Convention, with respect to provincial autonomy and because variety and asymmetry constitute the basis of a good municipal regime, it was indicated in article 123 that the Provincial Constitutions should regulate the "scope and content" of local autonomy. It was always

governments, with exclusive competencies and with the exercise of popular sovereignty, which must be respected by the other governmental orders. He reiterated his opinion when referring to the Federal district in its organization and the rights of its citizens, in Federalist Nº 43: "... as for local purposes they will obviously be allowed to have a municipal legislature, which shall be the product of their own vows ...". Likewise, **Hamilton** in Federalist Nº 32, affirmed that: "(the) necessity of local administrations for local purposes, would be a complete barrier against the oppressive use such a power".In the case of Argentina, as a result of the Constitutional Reform of 1994, the principle of municipal autonomy was incorporated into the constitutional text in Article 123, as we have seen. See *Antonio María Hernández*, Estudios de Federalismo Comparado. Argentina, Estados Unidos y Mexico, Buenos Aires 2018, Cap. 2 and Antonio María Hernándewz, Studies in comparative federalism. Argentina, The United States and Mexico, E Book, Universidad Nacional de Córdoba, Córdoba, 2019. Ch. 2.

11 I have pointed out three historical stages of this debate in Argentina in our doctrine, legislation and jurisprudence: from 1853 to 1986, from 1986 to 1994 and finally, from 1994 until today. The dates correspond to the following facts: In 1853 the National Constitution was enacted, 1986 was the moment when most of the Provincial Constitutions were reformed after the regained democracy in 1983; and finally, in 1994, the year of the Federal Constitutional Reform, the municipal autonomy was expressly recognized. For reasons of extension of this work we can not stop at this important point that shows the historical evolution of this debate, so we refer to our cited books, and specifically *Hernández,* Derecho Municipal, note 4., in their editions.

12 See our interpretation of Art. 5 of the National Constitution, enacted in 1853, in *Hernández,* Derecho Municipal, note 4, Ch. 3 and 6, in their editions.

13 Member of the Constitutional Convention by Province of Santa Fe and current Justice of our Supreme Court of Justice of the Nation.

interpreted – and still is, despite the character recognized in article 123 – that the municipal regime should fall under the legislation of the Provinces in the exercise of their autonomy, and that, consequently, there could not be a uniform local regime in our country.

Regarding the meaning of institutional, political, administrative, economic, and financial orders, I have expressed the following[14]: Institutional order implies the possibility of the Municipal Constituent Convention to enact its own Municipal Charter (Home Rule). Political order entails the popular, electoral, and democratic bases of the organization of local governments. Administrative order describes the possibility of the provision of public services and other acts of local administration without the interference of any authority of another order of government. Economic order means that local governments should be promoters of economic and social development alongside the other orders of government and that they must participate in the regionalization processes, both nationally and internationally. Finally, financial order comprises the free creation and collection of taxes and other revenues to satisfy the expenses of the Government in force and its limits. After this reform, local governments have originated or inherited the power to levy taxes.

In short, the municipal autonomy appears in two types: Municipal Autonomy can be comprehensive, when it comprises the five orders that integrate autonomy and which we will examine in this article (institutional, political, administrative, economic and financial aspects), or it can be semi comprehensive or relative (when it reaches the political, administrative, economic and financial aspects and only lack the institutional order).

The "Scope and Content" of autonomy in every one of these orders can be described as follows: In relation to the institutional aspect of the municipal autonomy, the Provinces may ascribe either comprehensive autonomy or semi comprehensive autonomy to their local governments. We have argued that a good municipal regime must bear in mind the various sociological infrastructures on which the municipalities are based, and it is therefore difficult for the smallest entity to be able to enact their own Municipal Charters.[15] Regarding the political aspect of municipal autonomy, after securing the republican principles, the Provinces can establish a very broad scope and content in this matter, ranging from electoral systems and citizen participation to various other forms. With regard to the administrative aspect of municipal autonomy, the scope and content is also extensive because the subject comprises issues such as public services, public works, police power, administrative organization, etc. At this point, it is worth recalling the case “Rivademar" (1989), in which the Supreme Court of Justice ruled that the Provinces cannot deprive the Municipalities of the minimum attributions necessary for the performance of their task. With reference to the economic and financial order, there is also a noticeable scope regarding the extent and content for the related matters: public expenditures, promotion of economic development, regionalization, etc. The municipal tax power comprises the classic tripartition on "taxes" "fees" and "contributions", which is widely adopted by the Provincial constitutions when

14 *Hernández,* Derecho Municipal, note 4.

15 See *Hernández*, Derecho Municipal note 4, Chapter 6 in their editions.

legislating on municipal regimes. The tax problems, of obvious complexity, require adequate interjurisdictional coordination, in order to avoid doubles or triple taxation and the high tax pressure.

I. The municipal regimes in the Provincial Constitutions[16]

All Argentine Municipalities are autonomous, but there is a difference between those having 'comprehensive' autonomy, with the possibility of enacting their own Municipal Charters and those with 'relative' autonomy, lacking the institutional aspect, as we have seen before. At present in our country, there are 178 Municipal Charters enacted. The local authorities are democratically elected by the people. Regularly, there is an Executive body, in charge of the Mayor (Intendente) and a Deliberative organ, the Municipal Council (Concejo Deliberante). In some Provinces, there is also a so-called Tribunal of accounts, which is an organ of control, also elected by the people, like in the Municipalities of the Province of Córdoba.

Municipalities are only subject to legal controls by judicial courts. Only in exceptional situations, provided by the Provincial Constitutions, the Provincial Governments are allowed to intervene (regularly on the basis of a law of the Legislature, with a supermajority quorum). Municipalities are fully empowered to challenge laws or acts both at federal and state level, which they may deem harmful for their autonomy. In the case of acts of the Province, they must challenge the laws before the Provincial courts, but even in this case, they may reach the Argentine Supreme Court of Justice through an extraordinary appeal and exceptionally, even through an Amparo Action against the Province which originates the exclusive jurisdiction of the Argentine Supreme Court.

The determination of the basis for the local regime is an obligation of the 23 provinces, by virtue of the provisions of articles 5 and 123 of the Federal Constitution. But the Provinces may only establish an “autonomous” municipal regime, assuring the above-mentioned aspects. Otherwise, the Federal Government can intervene (Article 6) if they do not respect the bases set forth in the Argentine Supreme Law (Articles 5 and 123). Consequently, the relationship between the Federal government and the Municipalities is not direct, but indirect by the Provinces.

In our country, there are no intermediate local entities between the Municipalities and the Provincial governments. But the idea of intermunicipal relationships (that means the creation of several associative figures, with different goals of common welfare, such as associations of municipalities, or intermunicipal entities, or production brokers or metropolitan entities)[17] is becoming more popular. Yet, they do not exist all over the Argentine territory, but only in some Provinces.

16 For more profound analysis, see *Hernández*, Sub-national Constitutional law in Argentina, note 6 and *Hernandez,* Derecho Municipal, note 4.

17 In the cities of Rosario and Santa Fe, and antecedents in the Metropolitan Area of Buenos Aires, Córdoba and Mendoza.

The municipal competences are fixed in each Provincial Constitution and in the Municipal Organic Law of each Province, and in the respective Municipal Charters in the Municipalities that have enacted them. Municipal Competence is quite broad because it entails all matters related to the satisfaction of common welfare needs of the local society. Such competences contemplate the institutional, political, administrative, economic, and financial aspects. Municipalities have exclusive powers, concurrent to those of the Provincial and Federal governments. Besides operating their own exclusive power, the municipalities also exercise delegated powers, which are assigned generally to the federal and provincial governments. The Provincial constitutional provisions, in general, authorize the exercise not only of intermunicipal but also of interjurisdictional relationships. Besides, each Municipality may enact municipal 'ordinances', which in general are deemed full 'material laws' which may be questioned before the Judicial Branch by virtue of the constitutionality control since they mean the exercise of a political and not only administrative power.

II. The Municipal Charters

Municipal autonomy is acknowledged in all its aspects, beginning with the institutional one, which means the possibility of enacting their own Municipal Charter. Most of the Provincial Constitutions grant this attribution, with the exception of the Provinces of Buenos Aires, Mendoza, and Santa Fe, because their Constitutions were not reformed. I have stated that the Municipal Charter is like a Local Constitution that regulates the different aspects of the municipal regime: a form of government, local finance, police power, utilities, officers' liability, forms of citizen participation, intermunicipal relationships, etc. In addition, I believe that the Constitutional formulation techniques, pointed out by Segundo Linares Quintana[18], are applicable to the enactment of Charters: (1) Adjustment to institutional reality; (2) Stability; (3) Flexibility; (4) Fundamentality; (5) Prudence and (6) Style.

Since they are the result of the exercise of a third-degree constitutional power, Municipal Charters must respect the Constitutional bases set forth by each Provincial Supreme Law and by the Federal Constitution**.** This means that Charters should not be subordinated to the Provincial Laws, but there should be an adequate compatibility with it and the rest of the Provincial laws. In relation to the Federal Constitution, which occupies the maximum hierarchy as a law, Charters must scrupulously respect its letter and spirit.

Now, I shall review the Provincial Constitutional provisions on Municipal Charters. First of all, I state a distinction between Constitutions that require the approval of the Charter by the Legislature, and those in which such requirement is not fixed; only the Constitutions of Chubut, article 231, Neuquén, article 276, and Salta, Article 168, set forth such approval.

18 See *Segundo V. Linares Quintana*, Tratado de la Ciencia del Derecho Constitucional, Tomo 2, Buenos Aires 1953, p. 381/424.

All Constitutions fix requirements for Charters, which may be summarized as follows: (a) a representative, republican and democratic system with direct election of authorities by means of a universal, mandatory, equal, secret vote even by foreigners; (b) Imposition, in most of the cases, of the traditional form of government of a Mayor and Municipal Council; (c) A control system for expenses legality; (d) The rights of popular initiative, referendum and revocation; and (e) Other requirements stated by the municipal regime of each province as to material and territorial jurisdiction, local finance, intermunicipal relationships, etc. Regarding the procedure, a large majority of constitutions state that the calling of Municipal Conventions must be made by the Executive departments by virtue of the ordinances issued by the Municipal Councils. Most of the municipal Constitutions stipulate the proportional representation system for the election of the members of the Constitutional Convention.

III. Types of Local Governments

With regard to the types of local governments there are a number of different forms set forth in the Provincial Constitutions:

- Mayor and Municipal Council [19]
- Community Committees: These are elective bodies that in general summarize the deliberative and executive powers for smaller municipalities or for local entities which do not constitute a municipality, and which are called communities or community committees or rural municipalities.[20]
- Municipal Commissioners. These are elected by a simple plurality of votes for urban centers up to 800 inhabitants, in the Constitution of San Luis (article 251) and up to 1,000 inhabitants, in that of Santiago del Estero (article 220, item 5).
- Municipal delegations. These are organized in rural centers depending upon the nearest municipality, as determined by the Constitutions. The Constitution of Chaco establishes them for center with less than 800 inhabitants (article 186), the Constitution of Salta for centers with less than 900 inhabitants (article 164), and in the case of San Luis, in rural

19 For their municipalities, the Constitutions of Buenos Aires (Article 190), Catamarca (articles 247, item 1, and 248), Corrientes (article 220), Chaco (article 184), Chubut (article 229), Entre Rios (article 233), Formosa (article 176, item 1), Jujuy (article 184), La Pampa (article 118), La Rioja (article 169), Mendoza (article 198), Misiones (article 162, for categories 1 and 2), Neuquén (article 277, for Category 2), Rio Negro (Article 233), Salta (article 165), San Juan (articles 242, 244 and 245), San Luis (articles 254 and 257), Santa Cruz (article 144), Santa Fe (article 107), Santiago del Estero (article 220, item 2), Tierra del Fuego (Article 180) and Tucumán (article 133). Therefore, in Argentine Municipalities this form of government is traditional.

20 See the Constitutions of Catamarca (Article 255), Córdoba (article 194), Corrientes (article 217), Chubut (article 227), Entre Rios (article 232), Formosa (Article 175), Jujuy (article 185), Misiones (article 162), Neuquén (article 278), Río Negro (article 241), San Juan (article 252), San Luis (article 250), Santa Cruz (article 148), Santa Fe (article 107), Santiago del Estero (article 220, item 4), Tierra del Fuego (Article 181) and Tucumán (article 132). The forms of Government and the denomination of these local institutions also vary according to the Provincial Constitutions.

centers with more than 80 Electors and with a delegate elected directly and by simple plurality of votes (Article 252).

- Optional System: When the election of the form of government is made by the respective Municipality, and in our opinion is the best solution, since it respects the autonomy to a larger extent, and it allows sufficient flexibility, subject to local particularities and the passing of time. This is the case of the Constitution of the Province of Córdoba (articles 183, item 2, and 184), which makes possible different types of government, as established by the Charters or the Municipal Organic Law, between the traditional system, the Commission System, and the City Manager System.[21]

Likewise, the Constitutions of Neuquén (Article 276) and Río Negro (Article 228, item 2), for municipalities that may enact charters, only impose requirements for the election of deliberative organs, which implies the possibility of adopting another form of government, such as a committee, in addition to the traditional form. In addition, the Constitution of Tierra del Fuego (Article 175, item 2) admits that Municipalities empowered to enact their charters that may establish the respective form of government.

IV. Constitutional violations of municipal autonomy

I have pointed out the serious violations of the municipal autonomy on an institutional level by the impossibility of enacting Municipal Charters in the Provinces of Buenos Aires, Mendoza, and Santa Fé, because the Provincial Constitutions are not adapted to the National Constitution. Likewise, in another six Provinces, the Charters are not enacted, although they have the possibility to do so. And on the fiscal and administrative level, there are serious interventions of the provincial powers into the municipal financial resources and their police powers.

It is evident that although Argentina has consecrated municipal autonomy with maximum extent at a global comparative level, this is not reflected in reality, since the fiscal power of local governments is very diminished, with strong dependence of other governmental orders. Professor Miguel Angel Asensio estimated that in the collection of total public resources made in 2015, the Federal Government accounted for 80,9 per cent, while the Provinces as a whole 15,8 per cent, and the Municipalities only 3,3 per cent.[22] These dates demonstrate the fiscal centralism that we suffer, against the federalism prescribed by our

21 See *Antonio María Hernández*, El régimen municipal cordobés, Buenos Aires 2005. On the other hand, the subject is regulated in the Municipal Organic Law Nº 8102 of the Province of Córdoba, enacted in 1991 on the basis of a Bill of my authorship, in the Provincial Legislature. I also integrated the Drafting Committee in the Provincial Constituent Convention of the Province of Córdoba, which in 1987 consecrated the principle of municipal autonomy in the arts. 180, 183 and concordants of the Provincial Constititution.

22 See *Miguel Angel Asensio*, Finanzas Multinivel, estructura global, gobiernos locales y urbanidad, Jornadas de Finanzas Públicas 51 (2008), Power point, Cuadro 5.

National Constitution.[23] The weakness of the tax power of local governments in Argentina becomes even more palpable when compared with other countries. According to OECD[24] data on local tax revenues in 2017, in Canada the local governments reached 10,29 per cent of the total tax revenues of the country; in United States, 14,16 per cent; in France, 13,29 per cent; in Spain, 9,69 per cent, in Switzerland, 15,32 per cent in Denmark 26, 41 per cent; in Finland, 23,49 per cent; in Iceland, 26,46 per cent; in Japan 22,65 per cent; in Norway, 15,88 per cent; and in Sweden, 35,28 per cent.

D. The autonomous city of Buenos Aires[25]

The Autonomous City of Buenos Aires, which is also the Federal Capital of the country, has a special status deriving from Article 129 of the Federal Constitution, which reads as follows:

> *"The City of Buenos Aires shall have an autonomous regime of government with power of legislation and jurisdiction, and the Head of its government shall be directly elected by the people of the City. While the City of Buenos Aires is the Capital City of the Nation, a law shall guarantee the interests of the National State. According to the aforementioned provisions of this Article, the National Congress shall convoke the inhabitants of the City of Buenos Aires so that the representatives that are to be elected for that purpose issue the Organizing Statute of their institutions."*

Within the Convention and in my capacity as Vice Chair of the Drafting Commission, when referring to this transcendent issue, I said that the principle of comprehensive autonomy of the government of the City of Buenos Aires was clearly established, and in explaining the norm, I focused on its constituent, legislative, executive and judicial powers. In particular, concerning the latter I said: "The powers of jurisdiction do not mean anything other than Judicial Power." And this also relates to the Transitory Clause established in this regard, establishing that the Judges that today belong to the National Justice of Buenos Aires, dependent on the national State, become Judges of the City of Buenos Aires.

I must unravel the meaning of the phrase "autonomous regime of government", which is the first affirmation of the Supreme Law. I recall the meaning of these words: "regime" is a word of Latin origin, with two meanings: "way of governing or governing a thing" and "constitutions, regulations or practices of a government in general or one of its dependencies". For its part, "government" is "top management, the drive that starts from the center to activate business in the sense of a good policy and general interest". If government is "direction," administration is "complementary action," according to the concept of Otto Mayer,

23 *Temas,* Federales y unitarios en el siglo XXI, Buenos Aires, 2013, p. 51/136.

24 See www.oecd.org.

25 This point is based in our book ""La Ciudad Autonóma de Buenos Aires y el fortalecimiento del federalismo argentino",note 6.

followed by Marienhoff.[26] And "autonomous" unquestionably derives from "autonomy", which "is a specific quality of the corporation, which distinguishes it from other corporations: its capacity for self-government, and, more precisely, its power to organize itself, under the conditions of fundamental law, to give their institutions and to govern themselves without any other power ", according to the definition of Dana Montaño.[27]

The autonomous government regime recognized for this corporation, which arises from the National Constitution, includes: a) Constituent power; b) Head of government; c) Legislation; d) Jurisdiction and e) Administration. Just as I have distinguished the "provincial" autonomy from "municipal" autonomy before the 1994 Reform, I now add that this new State of the City of Buenos Aires has a "City-State" nature with special autonomy. In any case, just as its nature is closer to the Province than to the Municipality, the same is true for its autonomy, taking into account its specific regime, which arises from the National Constitution itself.

The differences to the municipalities are: a) the Autonomous City of Buenos Aires has a specific regime (Article 129), located in the Title on "Provincial Governments", as a result of a clear decision regarding the systematics of the Constitution; b) the Autonomous City of Buenos Aires and the Federal Capital have been distinguished with great precision, with special rules for both (Article 45 and Seventh Transitory Disposition); c) the Autonomous City of Buenos Aires has representation in the Senate of the Nation (Article 54); d) the people of the Autonomous City of Buenos Aires have representation in the Chamber of Deputies of the Nation (Article 45); e) the Autonomous City of Buenos Aires intervenes in the distribution of tax co-participation with the Nation and the Provinces (Article 75, section 2); f) the Autonomous City of Buenos Aires must approve any transfer of competences, services or functions with the respective reallocation of resources effected by Law of the Congress (Article 75, paragraph 2); g) the Autonomous City of Buenos Aires has representation in the Federal Fiscal Agency (Article 75, section 2); h) the Federal Government of the Nation can intervene in the Autonomous City of Buenos Aires (Articles 75, section 31, and 99, section 20); i) the Autonomous City of Buenos Aires can integrate regions for economic and social development and enter into international agreements (Article 124); j) the Autonomous City of Buenos Aires can keep social security agencies for public employees and professionals (Article 125); k) the Autonomous City of Buenos Aires has Judicial Power (article 129 and Transitory Disposition Fifteen); and l) the Autonomous City of Buenos Aires enacts its Organizational Statute according to its special nature, which is not identical to the Municipal Charter, although both instruments show exercise of constituent power.

26 *Miguel S. Marienhoff*, Tratado de Derecho Administrativo, Abeledo Perrot, Buenos Aires, 1987, p 43.

27 *Salvador Dana Montaño*, Teoría General del Estado, Universidad de Carabobo (Valencia), Venezuela, 1963, p. 201.

I. The Organizational Statute or Constitution of the Autonomous City of Buenos Aires.

The Constituents chose the designation of “Organizational Statute” for the City of Buenos Aires in order to differentiate the new state entity from the Provinces and Municipalities, according to its special nature. But there can be no doubt that just as the Provinces exercise their constituent power of the second degree by enacting provincial constitutions, and the Municipalities do so with their constituent power of the third degree and the respective organic charters, the City of Buenos Aires holds its own constituent power according to the provision of the third paragraph of Article 129. This constituent power is a consequence of the broad autonomy of the City-State, emerging from the mentioned norm and the phrase "autonomous government regime" in particular, as I have emphasized above.

The denomination "Organizational Statute" is, in substance, similar to "Constitution", and has antecedents in our public law, as e.g. the "Provisional Statute of the Superior Government of the United Provinces of the Rio de la Plata" of 1811 and the "Provisional Statute" of 1815. The Art. 129 and the Seventh and Fifteenth Transitory Provisions of the National Constitution have caused serious problems of interpretation, both in the Congress, as well as in the Constituent Convention of the City of Buenos Aires and in academia. The issue is linked to the nature and scope of the autonomy that is recognized in the City of Buenos Aires and this explains why, for me and others including the Constitutional Convention of the City of Buenos Aires, the Statute must be directly adapted to the Constitution that established full autonomy, while others estimate that Congress will indicate with its regulatory laws the contents of autonomy, which is thus restricted. Somehow this problem was addressed in the extensive debates of Law 24,588 of guarantees in Congress, as we will see later, where the ruling majority imposed the second criterion. But the Constituent Convention of the City of Buenos Aires adopted the first criterion and explicitly resolved, on August 2nd, 1996:

> *"Art. 1: Declare that this Constituent Assembly does not know other limits for its work other than those that arise from the National Constitution, Art. 129 and concordant.*
> - *Art. 2: Rejects as unconstitutional the limitations imposed on the full autonomy of the city of Buenos Aires by the laws 24,588 and 24,620 insofar as they impose restrictions to the regime of autonomous government with own powers of legislation and jurisdiction established in the National Constitution.*
> - *Art. 3: Claims the faculty of this Constituent Assembly to fix the modes and terms of the convocation to legislative elections of the Autonomous City of Buenos Aires.*
> - *Art. 4: Address the Congress of the Nation requesting the urgent modification of law 24.588 - of guarantee of the interests of the national State - in order to guarantee the city of Buenos Aires the full autonomy established in article 129 of the national Constitution".*

I consider these laws of the Congress, 24.588 and 24.620, unconstitutional, which is why I hope that appropriate legislative changes will take place in due time, so that the letter and spirit of Article 129 of the National Constitution are fully respected. In spite of the clarity and scope of the qualities referred to the Autonomous City by Art. 129, the laws 24.588 (of guarantees of the National State) and 24.620 (of convocation to elections) of the Congress of the Nation deeply restrict the full autonomy.

Regarding the first of the aforementioned laws, I indicate that it was established in Art. 2 that the "conserved" or "residual" faculties attributed to the Federal Government and not to the Autonomous City; in Art. 7 that "The Argentine Federal Police will continue to exercise functions of security police and justice auxiliary in the area of the City of Buenos Aires, depending organically and functionally on the National Executive Power"; in Article 8 that "National Ordinary Justice of the City of Buenos Aires will maintain its current jurisdiction and competence, continuing to be entrusted to the Judicial Power of the Nation. The City of Buenos Aires will have its own jurisdictional powers in matters of neighborhood, contraventional and of local offenses, administrative litigation and taxation"; and in Article 10 that "The Registry of Real Property and the General Inspection of Justice shall continue under the jurisdiction of the National State."

Notwithstanding the flagrant contradiction of this legislation with the Supreme Law, it remains valid until now, with the sole modification of Art. 7º that I will mention later, in relation to the security police. Do not forget that one of the great ideas of the Constitutional Reform of 1994 was the deepening of the decentralization of power, through three major chapters: the strengthening of federalism, the recognition of municipal autonomy and the granting of a new status to the Autonomous City of Buenos Aires. Subsequently, in 2007, the Congress enacted the Law Nº 26.288 that modified the Art. 7 of Law Nº 24,588 and recognized the security police of the Autonomous City. It was established that "The Government of the City of Buenos Aires shall exercise the functions and faculties of security in all non-federal matters. The National Government will continue exercising them until such exercise is effectively assumed by the Government of the City of Buenos Aires. The City of Buenos Aires will be able to integrate the Internal Security Council. " After that, the Metropolitan Police was created. In my opinion this legal modification was very convenient, since it removed one of the obstacles to the exercise of comprehensive autonomy, such as the exercise of powers and faculties in matters of security.

However, as a consequence of the election of new Federal and Provincial governments in 2015, the exercise of a *Cooperative Federalism* has begun that has already achieved important agreements between the Federal Government, the Provinces and the Autonomous City of Buenos Aires. In relationship with the latter, the Federal Government transferred 19.000 members of the Federal Police to the Autonomous City of Buenos Aires[28]. But the Federal Government continued to be in charge of about 500 ordinary Judges or the National

28 . See *Hernández*, La Ciudad Autónoma de Buenos Aires y el fortalecimiento del federalismo argentino, note 6.

Ordinary Justice of the Capital, which had to be transferred to the Autonomous City. This has meant a huge disproportion far from the wording and spirit of the Constitution and that has affected the inequalities that have been observed in public spending per capita that goes to the Autonomous City and the Provinces. As a result of the change of authorities operated in the 2015 federal elections, a new impulse occurred in this important issue and on January 19, 2017, the President of the Republic and the Head of Government of the Autonomous City of Buenos Aires signed four Agreements for the transfer of the so-called National Justice in the criminal jurisdiction and in the consumer relations, as well as the Registry of the Real Property and the Inspection of Legal Societies, to the Autonomous City of Buenos Aires.

The foundations of these interjurisdictional agreements are of a high quality and accuracy in constitutional matters, since they are based on Art. 129 of the Supreme Law of the Nation and in the correlative norms of the Constitution of the Autonomous City of Buenos Aires, in addition to the objective of strengthening federalism. It has been a decisive step in the fulfilment of the federal project of the Constitution, modernized and reaffirmed in the last reform of 1994. These four Agreements were approved by the Legislature of the Autonomous City of Buenos Aires on April 5, 2017, through Resolutions No. 24/2017 for the transfer of National Justice in Consumer Relations, No. 25/2017 on the General Inspection of Justice, No. 26/2017 on the progressive transfer of the National Criminal Justice and No. 27/2017 for the transfer of the Registry of Real Property.

These agreements must be approved by the National Congress for compliance. The President of the Nation has sent the Projects of Law Nº 1/2017 to the Chamber of Deputies of the Nation for approval regarding the Interjurisdictional Agreement of transfer of the National Justice in the Consumer Relations. The 2/2017 was sent to the Chamber of Deputies for the approval of the Interjurisdictional agreement for the transfer of the General Inspection of Justice. The President of the Nation also submitted to the Senate of the Nation the Draft of Law Nº 14/2017 for the approval of the interjurisdictional agreement of transfer of the Ordinary Criminal Justice of the Capital. Lastly, Law N° 15/2017 needed approval of the interjurisdictional agreement by the transfer of the Real Property Registry.

In this momentous question, the Supreme Court of Justice of the Nation has just deepened the federalist line of its jurisprudence by issuing two rulings of special relevance, dated April 4, 2019, regarding the nature of the Autonomous City as a member of the Federation and therefore with the possibility of acceding to the original instance of the Court as a Province and, by recognizing the jurisdiction of the Superior Tribunal of Justice of the City to resolve conflicts of jurisdiction between the National Judges.[29] I consider it very important to point out that the Majority Vote remarks the unjustified "immobilization" produced in this matter, 25 years after the Constitutional Reform of 1994. That is what I have been

29 These rulings, of clear constitutional foundation in the light of the 1994 Constitutional Reform, modified previous precedents of the High Court, and corresponded respectively to the causes *Gobierno de la Ciudad Autónoma de Buenos Aires c. Córdoba, Province of s / ejecución fiscal* CSJN, 2084/2017 and *Bazán Fernando* CSJN, 4652/2015.

exposing for years, in books, articles and conferences as an expression of the anomie that characterizes the Argentine state. All this is harming the Argentine federalism and our decentralization of power. I celebrate these rulings that should affect the acceleration of the treatment of these agreements of transfer of National Ordinary Justice of the Capital to the Autonomous City by the Congress. I reiterate that it is necessary to deepen the dialogue in all instances, in order to find fundamental solutions for the structural problems that Argentina suffers. In this line, I also insist on the modification of Law 24.588 in its Arts. 2, 8 and 10 as I have analyzed above, to ensure the full autonomy of the Autonomous City, in compliance with Art. 129 of the Supreme Law.

E. The metropolitan areas of Buenos Aires and Cordoba in Argentina

The Metropolitan Area of Buenos Aires currently comprises the City of Buenos Aires and 40 municipalities of Greater Buenos Aires, with 12,806,866 inhabitants occupying an area of 3,833 km^2, according to the last census of 2010. For its part, the City of Buenos Aires, reached 2,890,151 inhabitants in that census. In 1984 the Metropolitan Area of Buenos Aires was created, as a coordinating body between the Municipality of Buenos Aires and the Government of the Province of Buenos Aires, which in 1986 received the accession of the Federal Government. In 1987, on the occasion of the projected transfer of the Federal Capital to Viedma, an Agency was created directly dependent on the National Executive Power, the National Commission of the Metropolitan Area of Buenos Aires (Conamba). In 2016, the Consultative Commission of the Metropolitan Area of Buenos Aires was created, (Cocamba), under the Ministry of Interior, by Decree 1126 of the President of the Republic Mauricio Macri, as a continuation of the process we discussed.

The Cocamba Commission is chaired by the Minister of the Interior and with the Coordination of an Executive Secretary and also composed of nine officials with a rank not less than Undersecretaries, at the rate of three by the Presidency of the Republic, three by the Province of Buenos Aires, being able to designate representatives of the municipalities of the region and three by the Autonomous City of Buenos Aires. The Commission will also have an Advisory Council composed of representatives of civil society and universities, national, provincial, and municipal, public and private, appointed by the Minister of the Interior, at the proposal of the different jurisdictions included. Its functions include: propose measures to favor the coordination of jurisdictions, formulate proposals for public policies of institutional innovation for the Metropolitan Area that are based on human, economic, technological, environmental and urban development and promote dialogue and construction of consensus between the different jurisdictions.

Unfortunately, despite the time that has elapsed, there is no real progress of mature and modern interjurisdictional relations around the metropolitan area of Buenos Aires. Consequently, the very serious problems that this huge population concentration poses for an adequate territorial planning of the country remain unresolved. Keep in mind that less than 1 per cent of the territory inhabits more than 35 per cent of the total population. We have

pointed out that this is one of the main causes of the great centralization that characterizes our federalism, far from the federal project of the National Constitution.

In the case of the Metropolitan Area of Córdoba, the second in the country in population, it reached 1,884,320 inhabitants, according to the 2010 census, with an area of 650 km^2. And as for the City of Córdoba, in that census, it had 1,329,604 inhabitants, with an area of 576 km^2. According to the Strategic Plan for the City of Córdoba from 1994, the following agglomerations were defined, arranged in the territory in a concentric manner:

a) A first level is made up of the core city, Córdoba, and the adjacent urbanized areas that in the Department of Colon have some degree of physical-spatial continuity with it. This first level can be called the Greater Cordoba Area.
b) A second level is made up of the Greater Córdoba and a ring of cities and small towns arranged around it at an approximate distance of 35 km, which maintain a functional relationship of absolute dependence with the Capital. This second level, which covers an area of approximately 2,500 km^2, can be referred to as the Metropolitan Area.
c) A third level can be conceived as a larger geographical unit covering cities and towns located up to approximately 60 km. of the core city, and that are closely and daily linked to the dynamics that it prints. This last level, which covers an area of approximately 4,000 km^2, can be referred to as the Metropolitan Zone.[30]

The Greater Córdoba Area includes the city of Córdoba and seven surrounding towns and villages; the Metropolitan Area adds fifteen more towns and villages, and the Metropolitan Area 31 municipalities and more communes.

Currently, a Metropolitan Planning Institute operates under the Government of the Province of Córdoba, which is a technical institute for regional planning and whose functions are:

a) to develop an interjurisdictional approach between the provincial State and the municipal states based on a sustainable development for the region,
b) integrate and make compatible the urban plans of the local governments with the regional planning and
c) promote specific agreements between said local governments and the Province.

In this case, it is possible to point out greater progress with regard to the planning and management of the metropolitan area, compared to that of Buenos Aires.

The "Management of metropolitan areas" was the subject of a technical colloquium held in Buenos Aires in 1990[31] that arrived at the conclusions that we then synthesized and that we consider valid until today:

30 See Document of the Executive Committee of the Strategic Plan for the City, of the Municipality of Cordoba.

31 With the sponsorship of the Latin American Center for Development Administration (CLAD) and the Institute of Public Administration of Spain (INAP) and under the auspices of the Institute of Public Administration of Argentina and the City of Buenos Aires, see Revista Ciudad y Territorio, Nº 86/7, Madrid 1991, p. 48 et sqq.

1. The problem of the lack of institutionalization of the metropolitan area as a political space: Because the metropolitan area does not have an adequate administrative organization for the management of supra-municipal affairs, with the consequences of a lack of coordination and coherence in its treatment. That is why the need to formally recognize the area as a political space, defining the services that may be susceptible to it through unique authorities, associations of municipalities, joint ventures, or associations, among other modalities. As this issue especially focuses on local governments, there is an emphasis on participation with equal rights of the municipalities, although recognizing the heterogeneity in terms of population, resources, and interests of each of them. It is also convenient to gradually transform metropolitan management and planning structures.
2. Nature and scope of state intervention: This conclusion indicates that state interventionism, understood as a national state, has prevented the adequate development of local autonomies in Latin America. On the contrary, in addition to strengthening local management capacity, the emphasis should be placed on interjurisdictional relations, due to the metropolitan link between different levels: the municipal, the provincial, and sometimes the national or federal.
3. Fiscal weakness of the municipalities that are part of the metropolitan area, and of this as a supralocal agglomeration. The modernization of the tax administration and the adoption of programs for financial strengthening of the municipalities and through them, of the metropolitan areas, is requested.
4. Absence of a metropolitan community: This conclusion is linked to the lack of feeling of belonging of the inhabitants to the metropolis. Consequently, it is necessary to reconcile the nature of the metropolitan area and the objectives of local governments, in a complex participatory, democratic, and educational task, until reaching an integral vision of metropolitan problems with the respective governmental solution. I add in this regard that I was particularly impressed with the effective operation of the Toronto metropolitan government in Canada.
5. Lack of Territorial definition: It is indicated that when there is no precise jurisdictional determination of the metropolitan territorial scope, the member municipalities act with complete autonomy in their fields, with rivalries between authorities, lack of coordination and fractionation in the provision of public services. Therefore, the respective jurisdictional determination is pointed out, and the inclusion in the relevant legal texts is also recommended.
6. Low use of economies of scale: It is postulated to include as a specific component of metropolitan management, the use of economies of scale and lower costs in the provision of certain services such as transportation, education, provision of drinking water, housing and tourism.
7. A clear vision of planning as a management model: This conclusion indicates that the previous vision of planning with an excessively finalist role, without strategic determinations, was unfit to interpret the essential concurrence between different political-ad-

ministrative entities, and even less to facilitate the coordination of actions between them and civil society.

A metropolitan planning is then postulated as an essential component of a management process, with flexibility to adapt to the changes of the metropolitan phenomenon and with the participation of each of the municipalities in the formulation of the proposals and especially in their fulfilment.

8. The problem of the necessary constitutional and legal adjustments: Changes in the legislation are proposed in order to facilitate the integrated administration of the metropolis, the conceptualization of the metropolitan phenomenon, the gradation of state intervention and the insertion of the metropolitan interest in the process of national development
9. The relevance of the regional space in support of metropolitan functions: It is indicated that there has been no formal regional policy, and therefore, no relationship between what is proposed for metropolitan areas and the planning of the territory as a process of Global structuring of the national space. Consequently, this possibility of addressing the metropolitan problem from a regional perspective is affirmed. I add that it should not be forgotten that after the constitutional reform of 1994, in Art. 124 the constitutional hierarchy of the regions has been recognized.
10. The Interrelation between the growth of the metropolis and the national development model: I conclude that there is a need to privilege a global consideration, with the socio-political and economic determining character of the metropolitan phenomenon, over the purely spatial. Consequently, the interrelation between metropolitan development and the national development model must be analyzed.

I hope that these conclusions and proposals will modify the pressing reality of the more than 70 metropolises in Latin America.[32] This requires a deep awareness, renewal and change in leadership - especially political -, which allows it to live up to its serious responsibilities to these challenges that compromise the lives of millions of people.[33]

F. Municipal autonomy and the republican and federal democracy

I do think that our federalism is based on municipal autonomies, and that it constitutes the basis of our political decentralization and of our democracy and republican system. The local governments are the first theater in which men exercise their rights, as taught by Joaquín V. González[34] and the "cursus honorum" of the political career must start there and

32 See United Nations, World Urbanization Prospects, 2017.

33 *Peter Drucker*, Las nuevas realidades, Editorial Sudamericana, Buenos Aires 1995, sustained that both the new pluralism of society and the new pluralism of politics pose important changes in the political process and leadership.

34 One of our most important state men and legal thinker who wrote the ‘Manual de la Constitución,’Buenos Aires 1897.

then move on to the other government orders.[35] Municipal autonomy is closely linked to the fate of democracies as it is stated in the Ibero-American Charter of Municipal Autonomy as well as in the European Charter of Municipal Autonomy[36].

On the other hand, the globalization in which we are inserted is interrelated with the processes of decentralization and integration, both nationally and supranationally.[37] I believe that although it seems paradoxical, the process of globalization at the world level will produce at the same time the strengthening of federal, regional and local instances. The new word "glocal" means that we have to think globally but act locally.[38] Human life is largely urban life and as a result, municipal governments have increasingly greater roles in the information era and among their obligations, that of promoting human development, peace and full validity of human rights.[39]

The city is the collective work of art par excellence and its government requires the maximum autonomy and economic capacity to reach the objectives of the common good of the local society. I conclude by reaffirming the outstanding importance that cities and local governments have within the theory of federalism, and also that they should be considered as another order of government alongside federal and state governments.

35 See *Hernández*, Derecho Municipal, note 4.

36 The Preamble reads: "Local collectivities constitute one of the main foundations of a democratic State. The right of citizens to participate in the management of public affairs is part of the democratic principles common to all the member states of the Council of Europe. It is at the local level where this right can best be exercised. The existence of local collectivities invested with effective responsibilities enables an administration in which effectiveness and approximation to the citizen are combined. The defense and strengthening of local autonomy in the various European countries are conditioning factors for the construction of a Europe based on the principles of democracy and the decentralization of power. This implies the existence of local collectivities endowed with democratically constituted decision-making bodies endowed with a broad autonomy in terms of their competences, the forms of their exercise and the means necessary for the fulfillment of their obligations."

37 See *Antonio María Hernández* (ed.), Integración y Globalización: rol de las regiones, provincias y municipios, Prólogo de Eduardo García de Enterría, Buenos Aires 1997, p. 21. And *Antonio María Hernández,* Federalismo y Constitucionalismo Provincial, Buenos Aires 2009. I analyze the concepts of globalization, decentralization and integration and their interrelations. I recall a quote from Pedro J. Frías that said: "decentralization is the current way of assigning powers. Analysts of the future have explained it through Toffler and Kennedy: the contemporary state is too small for certain tasks and too large for others. When it is too small, integration is imposed. When it is too big decentralization is imposed". Then he referred to decentralization as "a true social life technique"; ibid., p. 33.

38 See *Hernández* (ed.), Integración y Globalización: rol de las regiones, provincias y municipios, note 37, p. 32/35 and *Hernández,* Federalismo y Constitucionalismo Provincial, note 37.

39 See *Jordi Borja and Manuel Castells*, Local y Global – La gestión de las ciudades en la era de la información, Taurus 1997.