

Federalism and Decentralisation in Latin America

Anna Kiermeier & José Martínez

Abstract

1

Federalism and decentralization are two related but distinct concepts that have been significant in shaping governance structures in various Latin American countries like Brazil, Mexico, and Argentina. Federalism in Latin America is often but not necessarily a response to the diversity of the region, both in terms of geography and cultural identities. The federal structure is in particular tension with the body of the President of the Republic as well as the national parliaments with a strong claim to budgetary sovereignty. Thus, mixed forms have emerged as a result of political pragmatism. They dynamically develop the distribution of power between the state and the regional authorities. Other Latin American states are currently strengthening the position of the regions through a process of decentralisation, especially to strengthen the administrative level, but without daring to take the step towards federalism.

I. Federalism – a difficult concept of comparative law

Federalism is a structural and organisational principle of political systems in which independent members join together to form a superordinate whole. In a confederation of states, the member states retain their sovereignty and carry out common tasks with common organs. In a federal State, the members (Länder, states, cantons) retain partial independence. Governmental tasks are shared between the central power and the members in an arrangement where both must work together.¹ The opposite concept to federalism is unitarianism, in which State power is uniform and centrally organised without being vertically divided, resulting in a unitary State. Intermediate stages between the above two arrangements are autonomy, decentralisation, regionalisation and devolution, all of which

1 Kent Eaton, 'Federalism and Decentralization in Latin America'. 50 Shades of Federalism (2018).

leave subordinate organs and self-governing bodies with varying degrees of discretion to shape policy or seek to orient policy toward the peculiarities of a given territory and population, both of which have unique social and cultural characteristics.²

- 3 Despite *foedus* (federation) and *confoederatio* (confederation) being well-known concepts in ancient statecraft, the federal State is a political manifestation that did not emerge until the modern age. Its first exemplary realisation came with the transformation of the initially confederal system of the United States of America in 1787. The birth of the USA also inspired fundamental debate on the merits of unitary and federal structures in Latin America. Consequently, four Latin American States adopted federal State structures as seen by the fact that the current constitutions of Venezuela, Mexico, Brazil and Argentina have organised their respective polities as such.
- 4 When federalism in Latin America is examined in the following, the investigation is primarily based on the relevant constitutional texts. The question of whether these constitutional texts have also been fully implemented would require a comprehensive examination of the reality of constitutional law, which can only be undertaken in part given the brevity of this article.

II. General Overview

- 5 State Organisation laws of the States of Latin America has been changed again and again since the wars of independence (1808–1825) and has produced interesting structures. However, these changes have only affected the horizontal separation of powers, the vertical separation of powers between local authorities has not changed for over a hundred years.³ Since the wars of independence ended, four Latin American countries have identified themselves specifically as federations in their constitutions: Argentina, Brazil, Mexico and Venezuela. The stability of this group of States is partic-

2 Jorge Chaires Zaragoza, *El fracaso del federalismo en Latinoamérica, Un estudio comparado con la cultura federal de los Estados Unidos de Norteamérica*, Revista Vía Iuris, Fundación Universitaria Los Libertadores, Edición 23, Bogotá, Colombia (2017).

3 Francisco Fernández Segado, *Cuadernos Constitucionales México-Centroamérica*, Edición 41, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma De México. México (2003).

ularly remarkable through a period and in a region that has witnessed such frequent and significant shifts in the balance of power between national and sub-national governments. Nevertheless, it would be wrong to conclude that federalism in these four States is uniform as their development has been so dynamic and unique that one cannot even conclude that they have achieved an increasing consolidation of federalism. By way of example, in Mexico, the central government has a strong role in managing state affairs, while in Brazil, more autonomy is granted to the states.⁴

While federalism can offer several benefits, including the promotion of local decision-making and diversity, it can also pose challenges in terms of coordination and conflicts between different levels of government. In addition, some scholars argue that the division of powers and responsibilities between different levels of government in federal systems can exacerbate social, economic and political inequalities as power and resources are distributed unevenly across the country.⁵

Despite these challenges, federalism remains an important form of government in Latin America, with ongoing debates and discussions on how to strengthen its institutions and ensure that it can effectively address the complex challenges facing the region.

Some unitary States in Latin America have introduced constitutional changes that allow for greater decentralisation. An example of this is Chile, where Article 3 of the current constitution states that Chile is a unitary State. It also explicitly notes that the administration of the State shall be both *descentralizada* (decentralisation) and *desconcentrada* (deconcentration), as explained below. Furthermore, this constitutional article notes that State agencies must improve the regionalisation of the country and promote the equitable development of regions, provinces and municipalities.⁶

While a unitary State is by definition politically centralised, the efficient administration of an entire nation cannot be centralised. For this reason, the mechanisms of deconcentration and decentralisation are integrated into the administrative sphere. Deconcentration consists of the transfer of responsibilities to an administrative authority that is hierarchically dependent on the central government. In contrast, decentralisation goes beyond this

4 Marcello Carmagnani, *Federalismos latinoamericanos: México, Brasil, Argentina*, Fondo de Cultura Económica (2016).

5 Enrique Barón Crespo, *La Era Del Federalismo*, RBA, Barcelona, España (2014).

6 Arturo Centeno Valencia, *El Federalismo Como Control Del Poder*, Porrúa, México (2015).

as it transfers powers to legal entities with their own assets and whose authorities are hierarchically independent of the central government.

- 10 Although according to Chile's 1980 Constitution, decentralisation should be the general rule, however, in practice there was no deconcentration at the regional or provincial levels in the first decades of its validity. Only at the municipal level did progress in decentralisation become manifest.
- 11 Two legislative acts were key to sparking greater decentralisation and autonomy of local governments: the Constitutional Law of Municipalities (*Ley Orgánica Constitucional de Municipalidades*) and the Constitutional Law of Regional Governments (*LOC de Gobiernos Regionales*). In recent years, the decentralisation process has intensified and with the 2009 reform (effective since 2013), regional councils (CORES) were being elected by popular vote.⁷
- 12 In 2017 and 2018, a constitutional reform and two complementary laws were passed, resulting in another important advance: the replacement of the *Intendentes* (Appointed regional governors) appointed by the president with regional governors elected by popular vote. This reform was also accompanied by a transfer of powers to the regional governments, which heightened the significance of the fact that the governor as the most important regional authority was democratically elected for the first time in Chile's history on 15 and 16 May 2021.
- 13 In parallel, however, presidential delegates will still be appointed by the President of the Republic at the regional level and they retain the power to decide on public policy and internal government as well as the coordination of ministerial representatives in the region. The competences of these delegates raise the question of whether the democratically elected regional governors have sufficient political powers or whether the real power remains in the hands of the presidential delegates.⁸
- 14 Turning to Colombia, a State that experienced turbulent periods of federalism in the 19th century before adopting an extremely centralist and unitary constitution in 1886, the decentralisation movements of the 1980s and 1990s did not even refer to federalism. On the contrary, the 1991 Constitution identifies the State as a "decentralised unitary republic".⁹ Territorial

7 Santiago Corcuera Cabezut, *Derecho Constitucional Y Derecho Internacional De Los Derechos Humanos*, México, Oxford (2013).

8 Miguel Carbonell, *Diccionario De Derecho Constitucional*, Editorial Porrúa, Universidad Autónoma De México, México (2009).

9 Enrique Barón Crespo, *La Era Del Federalismo*, RBA, Barcelona, España (2014).

autonomy – not federalism – is also an articulated demand of indigenous communities in Bolivia, Ecuador and Peru. This contrasts sharply with other regions of the world, where "peace-preserving federalism" has been an important institutional response to accommodate ethnic diversity and avert conflict.¹⁰

Given the vagaries briefly described above, the cumulative effects of decentralisation in Latin America States may not be able to turn the region's unitary systems into federations in the short term. However, recognition of the need to decentralise has forced many unitary States to take a federal path that has challenged the distinction between federal and unitary systems.

III. Mexico

Mexico is a federal republic with a centralised government system that was established in 1824 when the first constitution was enacted, although it has undergone several changes over the years.¹¹

In the Mexican federal system, sovereignty is shared between the federal government and the 31 states that make up the country. The federal government has exclusive jurisdiction over issues such as foreign policy, national defence and immigration while the states have jurisdiction over matters such as public safety, education and health care.

The Mexican federal system is characterised by a strong central government with significant powers and resources. The President of Mexico is both the head of state and the head of government and, as such, is responsible for overseeing the administration of the federal government. The Congress of Mexico is bicameral, with a Senate and a Chamber of Deputies, and is responsible for enacting federal legislation.

In recent years, there have been calls for greater decentralisation in Mexico, with some arguing that the federal government has too much power. These voices insist that greater autonomy should be granted to the states,

10 Salvador Giner, *Historia Del Pensamiento Social*, Ediciones Ariel, España (1967).

11 Jorge Carpizo / Miguel Carbonell, *Derecho Constitucional*, 7ª Ed. Porrúa, México (2010).

however, significant political and institutional obstacles remain to achieving this goal.¹²

- 20 Mexican federalism is not based on the US model but stems from an independent foundation laid in the last years of its colonial era and the first years of independence. The social, economic and political development of the colony at that time was characterised by a limited but by no means insignificant autonomy enjoyed by the provinces. The extent of this autonomy can be gauged by the fact that shortly after independence, the attempt of Agustín de Iturbide – the Emperor during the first Mexican Empire – to centralise power based on the monarchy failed due to the militant resistance of the provinces. The *Plan de Casa Mata* prevailed which, in effect, recognised the regional powers of the provinces as exercised by the deputies of the Constituent Congress of 1824. The federal order of 1824 was a compromise between the factions of Unitarians on the one side and the Federalists on the other: The Unitarians succeeded in establishing a strong central Congress while the Federalists secured the recognition of extensive freedom for the states and limited executive power. Nevertheless, the two groups continued to pursue different goals. While the Federalists saw central power as a threat to individual liberties, the Unitarians emphasised the need for an effective central government to ensure national security, which they saw as threatened in light of the expanding United States of America. The confrontation was decided in favour of the liberal federalists, first in 1857 and finally in 1867 with the defeat of Maximilian of Habsburg and the restoration of the republic.¹³

- 21 After the restoration of the republic, the presidencies of Benito Juárez, Sebastián Lerdo de Tejada and Porfirio Díaz were marked by an intention to make the relationship between the federal and state levels concrete. This was achieved through agreements between the federal and state governments and led to a strengthening of the central sovereign. A contributing factor here was Congress, which ensured the re-election of the head of the federal executive while simultaneously carving out federal responsibilities in the areas of the economy and health.

12 Miguel Carbonell, *El Federalismo en México: Principios Generales y Distribución de Competencias*, *Anuario de Derecho Constitucional Latinoamericano*, pp. 379 – 396, Edición 2003, Montevideo, Uruguay (2003).

13 Jorge Carpizo, *La Constitución Mexicana De 1917*, 15ª Ed. Editorial Porrúa, México (2009).

The centralising tendencies continued and even intensified in the Constituent Assembly of 1917. The particular focus here was on taxation to make the federal government financially viable. The states' taxation powers are not delegated from the federation level, on the contrary, they have an original legal nature and pre-date the federation; moreover, taxation powers were centralised after a long period of disputes between the local executives and the federation. The centralisation of taxation power and the building of a stronger federal executive was greatly aided by the change in the electoral system from indirect to direct voting as this eliminated regional elites' source of power. Also contributing to the strengthening of the central executive were national social programmes, such as the division of agricultural land (1937) and the protection of workers' rights (1929 and 1933). Other reforms included areas such as education (1921), the judiciary and agriculture (1983 and 1992) as well as energy supply (1934, 1940 and 1960).¹⁴ 22

Since the 1980s, a countermovement towards decentralisation, through which the states and municipalities are to be strengthened, has been discernible. The initial attempts were made during the terms of office of presidents Miguel de la Madrid (1982–1988), Carlos Salinas de Gortari (1988–1994) and Ernesto Zedillo (1994–2000) and were accompanied by attempts to modernise the administration and the economy. 23

During this period, relations between the federal government, the states and the municipalities were changed by three constitutional reforms, two of which related to the municipalities. The reform of Article 115 of the Constitution in 1983 gave municipalities powers in the areas of taxation, public services and urban planning that have enabled them to respond, at least in theory if not always in practice, to the needs of their local communities. Another reform of the same article in 1999 upgraded municipalities to full-fledged governments imbued with exclusive powers. The third constitutional reform related to the resolution of disputes between different levels of government: in 1994, the reform of Article 105 of the Constitution and the enactment of the corresponding Regulatory Act made 24

14 Gustavo Madero Muñoz, *Diagnóstico sobre el federalismo en México, Pluralidad y Consenso*, Vol. 9, no 40, pp. 136–142, México (2019).

the Supreme Court the court of last resort in disputes between levels of government in the context of a constitutional dispute.¹⁵

- 25 Returning the focus to a historical context, Mexican federalism arose from the agreement of territories with their own political entity to cede limited powers to a central government. For this reason, the constitutional texts of 1824, 1857 and 1917 contain the same provision: all powers not expressly granted to the central government are considered reserved to the federal states. The exclusive powers granted to the federal and local levels are noteworthy. For example, the federal government is responsible for defence, foreign and monetary policy, among other things, whereas municipal governments are responsible for basic urban services, such as roads, parks, markets, cemeteries and slaughterhouses. In contrast, state governments have few *de facto* exclusive powers.
- 26 While Mexican federalism exerts considerable influence on political and social discourse, its political and legal implementation is very much dominated by the federal government. This is primarily due to the distributions of public funds between the federation and the states that do not meet the states' needs for better administration and the provision of new services. As such, from a fiscal point of view, the Mexican federal system remains highly centralised.
- 27 Moreover, the distribution of responsibilities between national and subnational governments is not free of overlap in practice. In key areas such as the environment, urban planning, social policy and public safety, all three levels of government are involved in both legislation and enforcement.¹⁶ Having said that, in addition to vertical coordination between the federation and the subnational governments, there is also informal cooperation between the states, which includes the National Governors' Conference (Conago).¹⁷
- 28 Mexico has only partially taken advantage of the decentralisation wave that gained traction in Latin American States in the 1980s and 1990s. This has produced mixed results as some of the limited approaches employed

15 Andrea Castillo Torre De Mer, *La Transformación Del Federalismo Mexicano*, En Ma. Estela Ayllón Gonzalez, Dora García Fernández (Coords), Porrúa, México (2006).

16 Miguel Lanz Duret, *Derecho Constitucional Mexicano*, 9ª Ed. Norgis, México (1984).

17 Juan Carlos Galeana Caballero, *El federalismo en México tras la transición a la democracia*, Tesis Doctoral, Universidad Complutense de Madrid, Madrid, España (2018).

have failed. One example of failed decentralisation reform in Mexico is the health sector.

The federal government-initiated decentralisation reforms in the health sector in 1983, however, this initial phase was limited to 14 states with the federal ministry continuing to exercise strict regulatory and budgetary control. In 1995, a second phase of health-services decentralisation was initiated to make the functionality of the sector, which serves a population without social security, more efficient. These decentralisation efforts saw the federal authorities retain normative and regulatory functions while handing over direct service delivery to the states. At the end of the process, the federal government retained responsibility for financing the development of state health systems through financial transfers to state governments but with the complementary objective that the financial contributions of the states were maintained or even increased.¹⁸

IV. Brazil

Brazil is a federal republic with a presidential system of government that was established in 1891 and has undergone several changes over the years.

In the Brazilian federal system, sovereignty is shared between the federal government, 26 states and one federal district. The federal government has exclusive jurisdiction over matters such as foreign policy, national defence and interstate commerce, while the states have jurisdiction over matters such as public safety, education and health care. The federal district of Brasília is the seat of the federal government and serves as the national capital.¹⁹

The Brazilian federal system is characterised by an asymmetric form of federalism with a relatively strong central government enjoying significant powers and resources. The Union/Federation is a public corporation, autonomous vis-à-vis the member states, municipalities and the Federal District, with constitutionally defined administrative and legislative powers. The President of Brazil is both the head of state and the head of govern-

18 Andrea Castillo Torre De Mer, *La Transformación Del Federalismo Mexicano*. En Ma. Estela Ayllón Gonzalez, Dora García Fernández (Coords), Porrúa, México (2006).

19 João Camilo de Oliveira Torres, *A formação do federalismo no Brasil*, Edições Câmara, Brasília, Brasil (2018).

ment and is responsible for overseeing the administration of the federal government. The National Congress of Brazil is bicameral, with a Senate and a Chamber of Deputies, and is responsible for enacting federal legislation.²⁰

33 In recent years, there have been debates about the balance of power between the federal government and the states, with some arguing that the former has too much and that greater autonomy should be granted to the states. However, significant political and institutional obstacles remain to achieving this goal.²¹

34 The existence and indissolubility of the federative republic is provided for in Article 1 of the Constitution of the Federative Republic of Brazil: "The Federative Republic of Brazil, formed by the indissoluble Union of States and Municipalities and the Federal District, constitutes a democratic State governed by the rule of law [...]".

35 At present, the constituent states have the competence to organise themselves, although this is not originally derived from a partial statehood like in Germany or the USA but from the federal constitution. Thus, they are only allowed to decide internally on such areas of competence expressly mentioned in the Constitution.

36 The legal nature of the federal district is disputed and the majority calls it a 'mixed entity' (municipality/federal state). Therefore, according to the popular view, it has been referred to as a 'quasi-state' and 'semi-state' for decades. After numerous changes to its classification, through which it retained legislative powers vested comparable to the constituent states and municipalities,²² the federal district is currently considered to be one of Brazil's 27 federative units. As such, it is akin to the other constituent states, albeit distinguished by the fact that it is the seat of the national capital.

37 The Federative Republic of Brazil also recognises the existence and indissolubility of the municipalities as provided for in the Constitution. According to Art. 18 thereof, the political-administrative organisation of the Federative Republic of Brazil comprises the Union, the States, the Federal District and the municipalities, all of which are autonomous and elect their own executive and legislative representatives.

20 Matheus Carneiro Assunção, *Federalismo fiscal em perspectiva comparada*, Revista da AGU, vol. 12, no 38. Brasília-DF, Brasil (2013).

21 João Camilo de Oliveira Torres, *A formação do federalismo no Brasil*, Edições Câmara, Brasília, Brasil (2018).

22 José Murilo de Carvalho, *República, democracia e federalismo Brasil, 1870–1891*, *Varia Historia*. vol. 27, p. 141–157, Brasil (2011).

Municipalities are thus constitutionally guaranteed political units enjoying an equal footing in many regards with the federal government and the constituent states, with their limited own tax and budgetary powers linked to the right to self-determination. 38

This federalist model of State dates back to the proclamation of the Brazilian Republic in 1889. However, the introduction of federalism to Brazil continued to be a source of conflict for decades after the end of the kingdom in 1889, especially between Republicans and Federalists. 39

The decree proclaiming the republic in 1889 established its federal character and this, in turn, then led to the 1891 Constitution: 40

"The Provisional Government of the Republic of the United States of Brazil resolves:

Art. 1: "The Federal Republic is provisionally proclaimed and adopted as the form of government of the Brazilian nation."

Art. 2: "The provinces of Brazil, united by the bond of federation, constitute the United States of Brazil."

Art. 3: "Each of these States, in the exercise of its rightful sovereignty, shall in due course enact its definitive constitution and elect its deliberative bodies and its local governments."

The birth of Brazilian federalism was based on three ideological pillars: English liberalism, French democracy and American federalism rather than on secessionist or unificationist aspirations of individual parts of the country. From the beginning, however, Brazilian federalism was beset by difficult socio-economic conditions, considerable political discontent stemming from the former imperial government, the abolition of slavery and a decline in sugar cane production, the backbone of the economy. 41

Brazilian federalism, therefore, did not develop out of a cultural or historical tradition but has its foundations solely in the three basic ideological premises mentioned above. As a result, a form of dual federalism developed in Brazil where its main feature is a very clearly defined and rigid separation between the central government and the other political entities, as seen in the United States of America. 42

The 1891 Constitution began the process of concretising the federal model of government and the concomitant transformation of the existing provinces into states: 43

"Art. 1: "The Brazilian Nation adopts as its form of government, under the representative regime, the Federal Republic proclaimed on November 15, 1889, and is constituted by the perpetual and indissoluble union of its former provinces in the United States of Brazil. "

44 However, this constitutional epoch, the so called "República Velha" (1889–1930) was marked by considerable turbulence and a constant turnover of civilian and military governments fuelled by waves of interventionist measures and the dissolution of Congress.

45 Among its contemporary texts, the 1934 Constitution is considered the great guarantor of labour and human rights in Brazil. Although it comparably confirmed the idea of federalism in its Art.1 as other constitutions had, it adopted a notably more centralised framework and strengthened the power of the head of state.

Art. 1: "The Brazilian Nation, consisting of the perpetual and indissoluble Union of States, Federal District and Territories in the United States of Brazil, retains as its form of government under a representative regime the Federal Republic proclaimed on November 15, 1889."

46 Due to its short validity, the 1937 Constitution, which supported the Estado Novo of Getúlio Vargas, an authoritarian system of government, has had no medium-term impact on the development of federalism in Brazil.

47 The 1946 Constitution was far more significant from the perspective of its development of the rule of law in Brazil, however, in practice, it did not change Brazil's federalism. In Brazilian constitutional law scholarship, this Constitution is assessed as the motor for the transition from classical dualistic federalism to cooperative federalism. In Brazil, cooperative federalism is understood as a division of competences that, unlike the previous model, does not have a rigid separation between defined competences and can be described as an 'equilibrium federation'. This is because it is based on a balance between the competences assigned to the federal government and the autonomy granted to the federal entities by the Federal Constitution.²³

48 The political instability of the country in the 1960s, especially following the military coup of 1964, prevented the implementation of cooperative federalism. Although still strongly authoritarian, the 1967 Constitution

23 João Camilo de Oliveira Torres, *A formação do federalismo no Brasil*. Edições Câmara. Brasília, Brasil (2018).

changed the nation's name from The United States of Brazil to The Federative Republic of Brazil. The political measures taken during this period led to greater political centralisation and significantly limited the autonomy of the constituent states and municipalities.²⁴

The restoration of more balanced federal ideals was brought about by the 1988 Constitution, which put an end to the authoritarianism that Brazil had undergone during the military dictatorship. In terms of the form of State and territorial organisation, the constitution sought to introduce a cooperative approach to federalism, however, this was not implemented at the time due to the marginalisation of poorer areas and various population groups. Due to increasing popular discontent, the list of joint and concurrent powers was reassigned so that the entities began to govern systemically and communicatively. This led to the introduction of the trinary system, which includes the Union, the states, the municipalities and the Federal District of Brasilia as administrative units, albeit a system that strongly differentiates in the distribution of power between them.²⁵

Since the introduction of the 1988 Constitution, an ongoing process of political openness as well as the re-establishment of a more democratic constitutional State can be observed in Brazil. Scholars highlight that the new decentralisation brought about by the 'Citizens' Constitution' has entailed, albeit only theoretically at times, a redistribution of resources to the disadvantaged regions and seen increased political weight of the parliamentarians from the more developed regions.²⁶

Although the country is characterised by a broad cultural, social and economic mix that creates highly nuanced needs best dealt with by more local governments, one can observe that decentralised federalism remains largely unachieved. This is evidenced by the fact that most of the legal, political and legislative power is concentrated hands of the Union, minimising and even marginalising the involvement of the other constituent units.²⁷

The embrace of a single way of enforcing laws and codes is not a well-suited approach given the diversity of Brazil's population. This is because

24 Marcello Carmagnani, *Federalismos latinoamericanos: México, Brasil, Argentina*, Fondo de Cultura Económica (2016).

25 Carlos Cabrera Beck, *El Nuevo Federalismo Internacional, La Soberanía En La Unión De Los Países*, Porrúa, México (2004).

26 Alicia Hernández Chávez, *¿Hacia un nuevo federalismo?* Fondo de Cultura Económica, Ciudad de México, México (2016).

27 João Camilo de Oliveira Torres, *A formação do federalismo no Brasil*. Edições Câmara. Brasília, Brasil (2018).

the one-size-fits-all model is based on the idea of the ‘average citizen’, typically seen as metropolitan inhabitants from the Southeast, who are, of course only, one segment of Brazilian society.

53 This reality is one of the explanatory factors for the difficulties small, rural and ethnic municipalities face in obtaining funds, as the vast majority of national funding is collected by the Union that prioritises spending in other areas.

54 In addition, the size of the country makes it difficult to maintain control and exert governmental power throughout the states and municipalities, coupled with the lack of funding means the effectiveness of public administration in such places is extremely low, especially in regions with poor infrastructure.²⁸

55 It is therefore obvious that Brazil still has an extreme need for decentralisation, not only because this is provided for in its constitutional model but also because doing so would better ensure the inclusion and development of the most diverse regions and cultures present in the country. This necessitates that the administrators of states and municipalities have greater autonomy, detaching themselves from their current heavy reliance on the Union. Doing so allows these second and third-tier political entities to analyse and address the needs of their respective regions, ensuring that financial, technical and cultural resources are delivered to meet the needs of local populations.

V. Argentina

56 Argentina is a federal republic with a presidential system of government established in 1853 although, like many Latin American States, it has undergone several changes over the years.

57 In the Argentine federal system, sovereignty is shared between the federal government, 23 provinces and one autonomous city. The federal government has exclusive jurisdiction over issues such as foreign policy, national defence and interprovincial commerce, while the provinces have jurisdiction over matters such as public safety, education and health care.²⁹

28 Matheus Carneiro Assunção, *Federalismo fiscal em perspectiva comparada*, Revista da AGU, vol. 12, no 38. Brasília-DF, Brasil (2013).

29 Andrés Domínguez, *El federalismo unitario Argentino (1994–2014)*, Pensar en Derecho 5, pp. 91–103. Universidad de Buenos Aires, Buenos Aires, Argentina (2015).

The Argentine federal system is characterised by a relatively strong central government with significant powers and resources. The President of Argentina is both the head of state and the head of government and is responsible for overseeing the administration of the federal government. The National Congress of Argentina is bicameral, with a Senate and a Chamber of Deputies, and is responsible for enacting federal legislation.³⁰

Although many prominent jurists and historians have pointed to numerous sources of Argentine federalism, most agree that the historical roots of this phenomenon can be found in the Spanish municipal system through the *cabildos*. These former Spanish political entities gave rise to the provinces (a term used to designate the federative units in Argentina) and help explain the strong local sovereignties that were originally lacking at the national level.³¹

However, federalism was not only a consequence of the particular characteristics of the Spanish conquest and colonisation in the Americas but also the form of State chosen to resolve the serious interprovincial conflicts resulting from the great internal social and political heterogeneity and the different levels of development. This was, in essence, a legacy of the remarkable differences and inequalities that existed in the Viceroyalty of the Río de la Plata since its founding in 1778.

When the May Revolution of 1810 took place, freedom was decreed as a precursor to independence from Spain and what would grow to become modern Argentina was born. The people of Río de la Plata embraced a political-institutional movement that started in Buenos Aires and then spread throughout the Spanish-speaking areas of Latin America. By conviction or force, almost all the larger and smaller cities that made up the geographic-political map of the colonial period, and which later became provinces, gradually joined the first government that broke away from the Spanish crown and called itself the United Provinces of the Río de la Plata.³²

In the decade after May 1810, the United Provinces of the Río de la Plata existed as a sovereign State and was embroiled in a protracted war of independence that it eventually won. However, despite nominally being the United Provinces, the new State in this period failed to form a central

30 Antonio María Hernández, *El federalismo argentino*, Revista general de derecho público comparado, no 23, pp. 3 (2013).

31 Víctor Bazán, *El Federalismo Argentino: Situación Actual, Cuestiones Conflictivas y Perspectivas*, Estudios Constitucionales, vol. 11, n. 1, San Juan, Argentina (2013).

32 Tulia G. Falleti / Lucas González / Martín Lardone, *El federalismo argentino en perspectiva comparada*, Revista SAAP, vol. 7, no. 2, Buenos Aires, Argentina (2013).

government and draft a constitution due to political and economic conflicts (e.g. over control of the State's only international port and its customs revenues, trade policy and the desired form of political institutions).

63 The independent and sovereign provinces were divided according to their different interests where, for example, some wanted free navigation of rivers while others favoured monopoly control of the port; some wanted to nationalise customs revenues while others sought provincial control over their own customs revenues; some favoured trade protectionism while others favoured free trade and, finally; some wanted to centralise power while others wanted it decentralised because they understood this was more favourable to the development of all the new State's regions.³³

64 The central State model appeared to be the optimal institutional solution for the political preferences of the Buenos Aires revolutionary elite. In the short term, a unitary system offered a more efficient structure to meet the demands of the war of independence while in the long term, if the revolutionary elite gained control, a central State offered better tools for hegemonic political control of the entire State, resulting in economic benefits for Buenos Aires. However, the central alternative would also incur high costs for Buenos Aires, as this province would have to make the main contribution to the administration and fiscal provisions of the whole country.

65 As far as the federal construction of the nation was concerned, the elite in Buenos Aires was aware that this would only be feasible if Buenos Aires maintained a certain level of political independence and control over its trade policy and economic resources. The prerequisite for this was that the inhabitants of Buenos Aires politically controlled the national representation and decision-making mechanisms and maintained their influence (hegemony) over the other provinces. The interior provinces, for their part, were inclined towards a decentralised federal system as this was their only means of attaining a high degree of local autonomy and the possibility of participating in decision-making at the national level.³⁴

66 Between 1810 and 1830 several manifestations of central government tried to remain in power in Buenos Aires but failed: the First Junta (1810), the Junta Grande and the Junta Conservadora (1811); the Second Triumvirate (1812–

33 Víctor Bazán, *El Federalismo Argentino: Situación Actual, Cuestiones Conflictivas y Perspectivas*, Estudios Constitucionales, vol. II, n. 1, San Juan, Argentina (2013).

34 Antonio María Hernández, *El federalismo argentino*, Revista general de derecho público comparado. no 23, pp. 3 (2013).

1814), the Directorio (1814–1820) and, finally, the Presidency from 1826–1827. This stream of ‘permanent provisional State’ reflected the tensions and conflicts between the provinces and the highly centralising preferences of elites in Buenos Aires and prevented the emergence of an alternative to combine provincial independence and sovereignty with unification.

The provinces knew that the only way to counterbalance the power of Buenos Aires was for them to be incorporated into a national entity, for which they had to agree to a constitution. Thus, in 1853, with the aim of creating national unity, strengthening the judiciary and consolidating internal peace, it was agreed that a constitutional congress would meet in Santa Fe, albeit without the participation of the province of Buenos Aires. Based on a belief in their institutional and economic strength, the interior provinces agreed to the Constitution of the Argentine Confederation without the participation of Buenos Aires.³⁵

The Santa Fe Conventions of 1853 approved the Constitution, which was based on the American model of 1787. In accordance with the principles of the American federal system, a coexistence of the State (federal) with different orders of regionally-based (provincial) government was proposed for Argentina. In the distribution of competences, the federal legal order was granted only the expressly delegated powers while the provinces had all residual powers and retained their autonomy in institutional (constitutional power), political, financial and administrative matters.

However, the provinces still needed Buenos Aires, which was unwilling to acquiesce to their unification plan. This impasse resulted in the Battle of Cepeda in 1859, Buenos Aires lost and was forced to sign the Pact of San José de Flores by which it would become part of the Argentine Confederation. In 1860, the 1853 text was revised and supplemented, including the use of the title ‘Constitution of the Argentine Nation’ and the National Congress that politically controlled the provinces was abolished to better decentralise power. This brought about a strengthening of the provincial authorities to the detriment of the extensive powers that had previously been granted to the federal government.³⁶

In 1862, the Battle of Pavón took place, in which Buenos Aires, under the command of General Mitre, was victorious and extended its influence

35 Marcello Carmagnani, *Federalismos latinoamericanos: México, Brasil, Argentina*, Fondo de Cultura Económica (2016).

36 Carlos Cabrera Beck, *El Nuevo Federalismo Internacional, La Soberanía En La Unión De Los Países*, Porrúa, México (2004).

to the rest of the interior provinces. Mitre became the nation's president and the three powers of the State (executive, legislative and judicial) were transferred to the city of Buenos Aires, although the national government had no administrative authority over the city as it was part of the province of Buenos Aires. The need to federalise the city, and with it the port and customs revenues, led to a series of disputes that culminated in the defeat of Buenos Aires Province in 1880 and the subsequent federalisation of the city of Buenos Aires, which became the federal capital of the country.

71 In general, during the period from 1862 until the return to democracy in 1983, the central government repeatedly tried to impose its will on the provincial authorities by various means. The main instrument used to try to maintain an iron grip on the federal system was the constitutional provision that empowered the national government to intervene in provincial administrations. This formula was interpreted in such a way that the provinces were subjected to constant intervention by the central government and eventually had to abandon their traditional orientations and the defence of their interests. These sacrifices were necessary to gain momentary relief and individual advantages under the 'protection of the instructions' received from the national government.³⁷

72 Argentine federalism has also suffered in the past from the vicissitudes of its political life. This has manifested not only in the threats of federal intervention but also with the greater economic-financial resources of the central government and a strong presidential system that has played a de-federalising role to some extent. These vagaries were made worse by the repeated de facto (military) governments that followed each other from 1930 to 1976 which not only put an end to federal powers by abolishing provincial autonomy but also ended democratic provincial governments by making the governors a direct agent of the central government.

73 Finally, the system of co-participation created in 1935 to coordinate the distribution of tax revenues collected by the central government has not helped to strengthen the federal system, as the percentages of primary distribution have always significantly favoured the national state to the detriment of the provinces.

74 However, the restoration of democracy in 1983 gave rise to the government of President Raúl Alfonsín (1983–1989) and saw a rebirth in the exercise of provincial and municipal autonomy that has had a profound

37 Tulia G. Falleti / Lucas González / Martín Lardone, *El federalismo argentino en perspectiva comparada*, Revista SAAP, vol. 7, no. 2, Buenos Aires, Argentina (2013).

impact on the modernisation of Argentine public law. The constitutional reform of 1994 had, as one of its main premises, the strengthening of the decentralisation of power throughout Argentina.

Put simply, Argentine federalism is a combination of two forces: one centripetal and one centrifugal. The first, which goes from the periphery to the centre, presupposes the existence of an entity in the Argentine State that is sovereign, while the second, which goes from the centre to the periphery, entails decentralisation that allows for the existence of a multitude of provinces that have an autonomous character. The federal system now ultimately aims to create unity within plurality through the principles of autonomy and participation.³⁸ 75

Article 1 of the Constitution states that the Argentine nation shall adopt a representative, republican and federal form of government. The first two are forms of State forms, while the third is a of government that assumes a link between power and territory, where power is politically decentralised on a physical or geographical basis. In this context, the three powers of the State provide checks and balances on each other and help to ensure power remains decentralised. 76

The constitution also establishes three orders of government in the Argentine Federation: a) the federal government (Arts. 44 to 120 of Part Two); b) provincial governments (Arts. 121 to 128), including the autonomous government of the city of Buenos Aires, with the character of a 'city-state' distinct from the provinces; and municipalities (Art. 129). The maxim enshrined in the basic norm is that the provinces have reserved and unlimited powers and that the federal administration exercises the delegated powers expressly or by implication, i.e. they are limited powers. This results in a system where there are powers that remain with the provinces; powers delegated to the federal government; concurrent powers between the two orders of government; extraordinary powers of the provinces; extraordinary powers of the federal government; powers shared between the federal State and the provinces, i.e. requiring a double integrative decision; and powers prohibited to any State institution. 77

In view of the above, it must be made clear that the provinces cannot encroach on the competences of the federation or deviate from the normative sources of the federation as these have a higher level of hierarchy than 78

38 Víctor Bazán, *El Federalismo Argentino: Situación Actual, Cuestiones Conflictivas y Perspectivas*, Estudios Constitucionales, vol. II, n. 1, San Juan, Argentina (2013).

that of the provinces. As noted above regarding Argentine federalism as enshrined in the 1853/60 Constitutions, the State and the provinces were the main actors while the municipalities were largely overlooked. After the 1994 reform, municipalities' status as subjects participating in federal relations through the province to which they belong was specified in Article 123, which establishes the principle of subsidiarity directly linked to the principle of decentralisation of power.³⁹

79 Article 123 declares that "each province shall establish its own constitution, [...] which shall guarantee municipal autonomy and regulate its scope and content in the institutional, political, administrative and financial order". The autonomy arrangements provided for in the aforementioned norm include: the institutional, i.e. the power of the municipalities to determine their basic order through a convention convened for this purpose; the political, i.e. the ability to appoint their authorities and be governed by them; the administrative, i.e. the power to manage and organise local interests, services and works; and the economic-financial, i.e. the power to design their revenue model, manage their budget as well as their resources and investments.

80 As can be seen, these far-reaching powers granted to the municipalities set limits to the provincial government and indirectly also to the national government. Under no circumstances should autonomy interfere with the distribution of competences between the federal State and the provinces in general, and in the area of taxation in particular.⁴⁰

81 Executive power is exercised in each province by the governor who is elected by the constituents; gubernatorial duties include ensuring that the constitution and the laws of the nation are enforced in his/her province, which is why they are referred to in the national constitution as the natural representatives of the federal government. Legislative power in each province is exercised by its provincial parliament, which may consist of one or two chambers. Each province is divided into departments, except for the province of Buenos Aires, where these divisions are called *partidos*. Each department/*partido* is in turn subdivided into districts which are, in turn, further subdivided into municipalities. The Municipalities are administratively subdivided, mainly according to the number of inhabitants.

39 Tulia G. Falleti / Lucas González / Martín Lardone, El federalismo argentino en perspectiva comparada, Revista SAAP, vol. 7, no. 2, Buenos Aires, Argentina (2013).

40 Antonio María Hernández, El federalismo argentino, Revista general de derecho público comparado, no 23, pp. 3 (2013).

In Argentina, as in Mexico and Brazil, the tax system is the area where the relationship between the State and the provinces is most conflictual. The current system of federal tax sharing was established in the 1930s when an act of Congress decided that a portion of national indirect taxes (the largest part of the tax income) would be distributed to the provinces. The amount and terms of these transfers have fluctuated over time, but remain a constant source of dispute between federal and provincial governments given the heavy concentration of funds that flow into federal coffers. Despite the mandate of the 1994 constitutional reform to find a lasting solution to this issue, it has not yet been possible to reach a consensus and pass a law to do so, making this one of the most important unresolved problems in Argentina. 82

In summary, the fact that the population and productive capacities of Argentina are concentrated in the city of Buenos Aires and the Pampa Húmeda area (89 % of its 38.6 million inhabitants), coupled with the inequality of incomes and living conditions of inhabitants in various provinces is strong, leads some to describe Argentina as a "poorly integrated" or "socially unjust" country. Whilst this assessment can be viewed as somewhat subjective, it in no way detracts from Argentina's federal character.⁴¹ 83

VI. Venezuela

Venezuela has aspired to the decentralisation of political power since its independence in 1830. The nation has always leant toward the Anglo-Saxon federalist model which, over the years, has proved difficult to achieve. Venezuela has had 25 national constitutions since 1811, most of which defined the country as a federation, however, those exercising power has swung like a pendulum from autocratic regimes to various decentralised systems and back again. Venezuela initiated a notable programme toward decentralised federalism in 1989 when governors and mayors were elected via a popular vote for the first time. This experiment lasted nine years: from 1990 to 1998.⁴² In 1999, after the election of President Hugo Chávez, the 84

41 Tulia G. Falleti / Lucas González / Martín Lardone, *El federalismo argentino en perspectiva comparada*, Revista SAAP, vol. 7, no. 2, Buenos Aires, Argentina (2013).

42 Ma. Fernanda Ortega, *El olvidado federalismo de Venezuela*, https://presidencia.gencat.cat/es/ambits_d_actuacio/desenvolupament_autogovern/institut-destudis-autogovern/observatori/50-ombres-del-federalisme/oblidat-federalisme-venezuela

country stopped any decentralisation efforts and a new authoritarian cycle began. Since then, and despite Chávez's death, decentralisation has been abandoned as its premise contravenes the government's revolutionary objectives given that Chavista authoritarianism does not accept power-sharing. Venezuela finds itself in a situation in which, on the one hand, the powers of the federal entities (also called states in Venezuela) and municipalities represent one of the main assets of democracy and, consequently, become fundamental actors in politics; on the other hand, the regime has set out to impose its model of a communal State and eliminated autonomous governorships and mayoralties.⁴³

VII. Concluding Remarks

- 85 Chaires Zaragoza concludes his exhaustive study on federalism in Latin America with strong words: "Federalism in the countries of Latin America has not worked. The autonomy of the provinces has been cleverly used by the local ruling elite as a political-legal subterfuge to cover corruption and impunity. Federalism in Latin America, instead of serving to defend distinct cultures and traditions of the regions and to establish limits to power, has prevented forging the necessary checks and balances". Zaragoza goes on to opine that the reason for this development is that "unlike [the United States of America], Latin American countries did not have their own federal culture. That is, the provinces did not have a tradition of self-government, as did the thirteen colonies which allowed them to establish a political and democratic culture among their citizens. To put an end to the areas of opacity and impunity of Latin American countries at the local level, protected by a false autonomy, it is necessary to break certain dogmas and recognise that a more effective control and supervision system is needed, standardising and unifying principles, laws and procedure, even if it means violating the federal system".
- 86 It is important to note that the specific reasons that a State anywhere and at any time in the world implements federalism may vary, typically based on its unique historical, cultural and political contexts. Nevertheless, several commonalities can be observed that lead States towards federalism:

43 Carlos Mascareño Quintana, *Presidencialismo autoritario contra federalismo descentralizado*, Venezuela 1999–2016, Estudios Latinoamericanos, no 39, pp. 119–138, Universidad Nacional Autónoma de México (2017).

- **Distribution of Power:** Federalism allows for the distribution of power between the central government and regional or state governments. This helps prevent the concentration of power in a single authority, promoting a more balanced system and avoiding potential abuses of power.
- **Protection of Local Interests:** Federalism allows for the protection of local interests and the accommodation of regional diversity. In recognising that different regions may have unique needs, cultures and preferences, federalism allows such regions to have some degree of autonomy in making decisions that affect their local communities.
- **Efficient governance:** Federalism can enhance the efficiency of governance by delegating certain responsibilities and decision-making powers to regional or state governments. This allows for more localised decision-making to be made by *in situ* governments that are often better equipped to understand and address the specific needs and issues of their communities.
- **Experimentation and Innovation:** Federalism provides an environment where different regions can experiment with various policies and approaches to governance. It allows for policy diversity and encourages healthy competition between regions, as successful policies can be adopted by other regions while unsuccessful ones can be abandoned. This promotes innovation, learning and the development of effective policies.
- **Conflict Resolution:** In countries with ethnically and/or economically diverse populations that may also be prone to regional tensions, federalism can serve as a mechanism for conflict resolution. By granting some degree of autonomy to different regions, federalism allows for the peaceful coexistence of various ethnic, cultural and linguistic groups within a country. It provides a framework for negotiation where compromise and the accommodation of different interests is possible.
- **Safeguarding Liberties:** Federalism can help safeguard individual liberties and protect against potential abuses of power. With power distributed between multiple levels of government, there are additional checks and balances on authority. This division of power helps prevent a central government from becoming too powerful and potentially infringing on individual rights and freedoms.

Looking at the distribution of power in Latin American federalism, it becomes clear that the presidential systems common to the region have not fostered a balance between the central governments, often embodied by the person of the president, and the constituent states. In contrast to the

USA, no parliamentary countervailing power has developed in the form of a senate that primarily, if not exclusively, represents the interests of the constituent states.

88 With regard to the deepening of local or regional interests, it is striking that these interests were neither clear at the genesis of the various federalist constitutions adopted in Latin America nor were they clearly developed later. The delegation of power has not been seen as a mechanism to strengthen the efficiency of governance but as a mechanism that weakens existing competences. The diversity made possible by federalism has not been seen as a unifying opportunity but as a threat to the unity of the State. To the extent that regional conflicts exist in Latin America, they cannot be traced back to spatially definable causes but, as a rule, have been caused by problems affecting entire States (poverty, crime, drug trafficking and so forth). As such, federalism is not a panacea to these issues and can only contribute to their solution to a limited extent.

89 Kent Eaton therefore rightly writes: "Federalism remains a dirty word in large parts of Latin America.⁴⁴" Federalism as a principle of State organisation in Latin America does not seem to be advancing, instead, limited decentralisation spurious presented as federalism seems to be gaining traction. Most States, even declared unitary States, are decentralised to some extent. However, decentralisation often means the delegation of some State functions from the centre to territorial units (regions, districts, municipalities) or informal structures simply for reasons of practicality. Positive approaches can be found in various Latin American States, as evidenced by increased participation of populations in legislative and administrative decisions. Citizen participation refers to the active involvement of citizens in public affairs and decision-making that affect their community, city or country. It implies that individuals have the opportunity and means to express their opinions, contribute ideas and proposals as well as collaborate in the construction of policies, programmes and projects that improve the quality of life for all.

90 Citizen participation is an essential component of democracy, as it allows citizens to have a voice and to influence decisions that concern them. It goes beyond the simple exercise of voting in elections, as it implies active and ongoing participation in public life.

44 Kent Eaton, 'Federalism and Decentralization in Latin America', 50 *Shades of Federalism* (2018).

There are various forms of citizen participation, ranging from participation in public meetings, citizen consultations and roundtables, to the use of digital tools such as online surveys, virtual participation platforms and social networks. In addition, citizen participation can also manifest itself through the creation of civil society organisations, the presentation of legislative initiatives and participation in peaceful protests, to mention just a few. 91

The benefits of citizen participation include increased government transparency and accountability, the generation of more inclusive and equitable policies, the identification of problems and solutions from a local perspective and the strengthening of trust and cooperation between citizens and authorities. The result of this decentralisation through citizen participation is an open State, not a faux federal State. 92

Further Reading

- Assunção, Matheus Carneiro. *Federalismo fiscal em perspectiva comparada*. Revista da AGU. vol. 12, no 38. Brasília-DF, Brasil. 2013.
- Chaires Zaragoza, Jorge. *El fracaso del federalismo en Latinoamérica. Un estudio comparado con la cultura federal de los Estados Unidos de Norteamérica*. Revista Vía Iuris, Fundación Universitaria Los Libertadores. Edición 23. Bogotá, Colombia. 2017.
- Cohen, Alexandra Lizbona. *La paradoja de la estabilidad política en Venezuela: un federalismo centralizado*. Provincia. no 29, p. 111–134. Universidad de los Andes. Mérida, Venezuela. 2013.
- de Oliveira Torres, João Camilo. *A formação do federalismo no Brasil*. Edições Câmara. Brasília, Brasil. 2018.
- Falleti Tulia, González Lucas y Lardone Martín. *El federalismo argentino en perspectiva comparada*. Revista SAAP. Vol. 7, No. 2. Buenos Aires, Argentina. 2013.
- Fernández Segado, Francisco, *El federalismo en America latina, Cuadernos Constitucionales México-Centroamérica*. Edición 41. Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma De México. México. 2003.
- Hernández, Antonio María. *El federalismo argentino*. Revista general de derecho público comparado. no 23, p. 3. 2013.
- Galeana Caballero, Juan Carlos. *El federalismo en México tras la transición a la democracia*. Tesis Doctoral. Universidad Complutense de Madrid. Madrid, España. 2018.
- Madero Muñoz, Gustavo. *Diagnóstico sobre el federalismo en México*. Pluralidad y Consenso. Vol. 9, no 40, p 136–142. México. 2019.
- Serna de la Garza, José María, *Constitutional Federalism in Latin America*, California Western International Law Journal 30 2 (2000), p. 277–301.

