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Sovereignty and Federalism as Constituent Elements of Argentine Nationality

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In my understanding, two nations have co-existed within the framework of Argentine nationality: the River Plate nation and the Andean nation. Both played a leading role in a history characterised by the quest for unity and, finally, both have lived fraternally sharing the same nationality as of the acceptance, in 1860, of the constitution enacted in 1853. This nationality has henceforth been called Argentine Republic and, from that point of view – one nationality bringing together more than one nation –, it shares a common present and past with all its neighbouring countries.

Throughout the course of the construction of our present nationality, some constant ideas common to our political thought have translated into reiterated acts and constitute the basis of the present unity. By way of illustration, we shall consider the evolution of the concepts of national sovereignty and federalism. It should be noted, however, that a similar analysis could be conducted with other political terms recurrently invoked in Argentine history.

Sovereignty

Were the founding provinces of the Republic sovereign states that agreed to merge into a federal state or, on the contrary, were they entities emerging as a consequence of their prior nationality? Until the last quarter of the 20th century, and even today, Argentine historians and constitutionalists have focused on the pre-existence of the nation as originator and founder of nationality. Thus, for example, the father of Argentine legal historiography, Ricardo Levene,

in his *Historia del Derecho Argentino* (1948) [History of Argentine Law], in contradiction to Alberdi, proclaimed the existence of a »pre-codified law of self-government« [*»Derecho Patrio Precodificado«*] that pertains »... to a new period that commenced with the revolution of 1810, whose plan consisted in declaring the independence of a nation, thus turning the legal bond of vassalage into one of citizenship as a component of sovereignty and, in addition, organising the democratic republic ...«¹ Also in 1948, Carlos Sánchez Viamonte wrote, »The Argentine nation was a unity in colonial times, during the Viceroyalty, and remained so after the revolution of May 1810. [...] The provinces never acted as independent sovereign states, but as entities created within the nation and as integral parts of it, incidentally affected by internal conflicts.«² More recently, Jorge R. Vanossi referred to our nationality as a unique national entity, successor to the Viceroyalty, which, after undergoing a long period of anarchy and disorganisation, adopted a decentralised form in 1853–1860 under the constitution.³

Needless to say, the topic has been addressed with a »patriotic« preconception. It was important to contribute towards the myth of the seniority of nationality by demonstrating that the successor state to the Viceroyalty of the River Plate was the current Argentine State. A historical continuity had to be established between one state and the other, and in order to do so it was necessary to sidestep the issue that, until the enactment of the constitution of 1853, the Argentine Confederation was not a unified state, and between 1853 and 1860 it was a state nei-

1 RICARDO LEVENE, *Historia del Derecho Argentino*, Volume IV, (Desde la Revolución de Mayo a la Asamblea de 1813–15), Buenos Aires 1948, 11.

2 CARLOS SÁNCHEZ VIAMONTE, *Historia Institucional Argentina*, 2nd ed., México, F. C. E. 1957, 196 and 197 (first edition 1948).

3 JORGE R. VANOSSI, *Situación actual del federalismo*, Buenos Aires 1964, 11.

ther identical with, nor comprising the State of Buenos Aires. These two states finally joined in 1860, thus giving birth to the present Argentine Republic. However this state was not the successor to the Viceroyalty of the River Plate; in fact it was a new legal reality that ensued from a series of mergers following the total segmentation of the old colonial jurisdiction, yet at the same time the result of huge unifying efforts by the best men of each historical period.

In the official language of the early 19th century, the term »province« was often used as analogous to »state«, as evidenced by many official texts, a fact which should not be disregarded. The provinces, emerging from the colonial governorates and intendancies, declared their independence and sovereignty, and started referring to their congressional delegates as »diplomatic agents« at the outset of the first unifying attempts. In 1820, Cordoba affirmed that »as a free and sovereign Province we acknowledge no dependence upon or subordination to another; one of our main duties is fraternity and union among all provinces as well as the closest friendship ties with them, while all together convened in General Congress negotiate the treaties of a true federation, whether at peace or war, something we aspire to, in accordance with all the remaining provinces ...«⁴ The numerous inter-provincial pacts and agreements entered into as from that year 1820 confirm this assessment, since they are mechanisms whereby sovereign entities establish relations.

Following the dissolution of the 1824–27 Congress, the language of *jus gentium* was explicitly adopted to govern the relations among provinces, and it was accepted that congressional delegates acted in their capacity as »diplomatic agents«. No supra-provincial entity could make any decision directly affecting the popula-

tion of a province without the approval of the government thereof. Provinces were sovereign states, both *de facto* and *de jure*, and the fact that they retained sovereign powers entailed they were sovereign subjects of international law, capable, *inter alia*, of delegating their representation.

Some years later, Juan Bautista Alberdi, Vicente Fidel López and Bartolomé Mitre, to mention only three of the intellectual creators of what we now call the Argentine Republic, encouraged the formation of national consciousness. This Republic is not a long-standing political entity, but a very young one – in historical terms it is almost newly born – where the affirmation of sovereignty and independence is a postulate by »intellectual founders« and, for some, even a thesis subject to disproof by future facts.⁵

Federalism

In my opinion, a similar explanation should be provided for the use we have made of the terms »confederation« and »federation« during the first half of the 19th century. In fact, the confusion between »confederation« and »federal state« was very common in the 19th century.

Seldom do we reflect that Buenos Aires, identified with unitarianism for most of Argentine historiography, was also the cradle of confederalism. This took place after Rivadavia had made an attempt to fragment the territory by expropriating the capital city and a large portion of territory, bringing about the resignation and exile of Governor Juan Gregorio de Las Heras. This position, needless to say, consolidated during the government of Juan Manuel de Rosas, so much so in fact that it seems clear that, at the time of the signature of the Federal Pact on

4 Archivo de la H. Cámara de Diputados de la Provincia de Córdoba, Córdoba 1912, Volume I, 1820–1825, »Sesión del 18 de Marzo de 1820«, 9 et seq.

5 José Carlos Chiaramonte. Paper given at the Symposium »Argentina – Brazil, Somebody Else's View, an interdisciplinary approach to the question of sovereignty«, organised by Fundação Centro de Estudos Brasileiros,

Fundação Alexandre Gusmão and the National Library of Argentina; Buenos Aires, 5–6 of December 2000.

4 January 1831, the provinces regarded themselves as sovereign states. Nevertheless this did not prevent them from looking for the right opportunity to create a new national state.

On the other hand, »the assumption that the provinces are sovereign and have agreed on a confederal organisation, which therefore may revert upon the will of those sovereign peoples, laid the foundations for the alliances forged by some provinces with foreign countries, such as the one formed by the province of Corrientes with France in 1838 to fight against Rosas, or also the one formed by the provinces of Corrientes and Entre Ríos with Brazil and Uruguay to overthrow Rosas in 1851. Further, as we have noted, it was the pretext used by Buenos Aires to justify its rejection of the San Nicolás Agreement and its secession between 1852 and 1860.«⁶

In those years, the term »federal« was given a completely different meaning from the one it had in the United States, synonymous with »national« and making reference to a »federation« where, despite retaining a high level of autonomy, each State of the Union delegated the most essential part of its sovereignty to the central government, who was thus vested direct jurisdiction over the citizens of the different states.

In Argentina, the confederation was always an association of sovereign states without a cen-

tral government having direct jurisdiction over the inhabitants of the provinces, whose governments could abide by the rules and regulations of the different entities that tried to organise them or not. The provinces continued having their own armies, printing their own money, and delegating the exercise of their foreign affairs to the governor of Buenos Aires. The Argentine Confederation was not a unified state until 1853, and between 1853 and 1860 it was also a different state from that of Buenos Aires.

Just as in 1820 it was decided that our form of government would be a republic and not a monarchy, in 1853 federalism was enshrined in our federal constitution as a form of state, but resorting once again to assembling expressions it was stated that »the Argentine Nation adopts the federal, republican, representative form of government, as established in this constitution«.

In fact, we could assert that in our presidential republic, federalism has been one of the paths to construct nationality, and that the process of de-federalisation which the Argentine Republic is undergoing at present is beginning to threaten the country's balanced development.

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⁶ The question of sovereignty in the creation and formation of the Argentine State. Paper given at the Symposium »Argentina – Brazil« (see note 5).