

*Between Shared Understandings and Strategic Conflicts*  
*The Making of a Presidential Republic in Argentina, 1853-1860\**

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There is no good faith in America, nor among the nations of America. Treaties are scraps of paper; constitutions, printed matter; elections, battles; freedom, anarchy; and life, a torment.

Simón Bolívar

## **Introduction**

The history of most Latin American countries during the early decades of the nineteenth century is characterized by the persistent failure to create a relatively stable constitutional order. The typical image of the process that followed independence from Spain is one of a fierce struggle between opposing groups, liberals and conservatives, federalists and centralists, constantly writing and re-writing constitutional rules according to the shifting balance of forces. In the midst of this conflict, Latin America became a fertile ground of institutional experimentation in almost every possible area of constitutional design, from monarchies to republics to different variants of federalism and centralism, unipersonal and collegial executives, unicameral and bicameral legislatures. Throughout the second half of the nineteenth century, however, a more or less dominant institutional paradigm emerged: that of a presidential republic based on the separation of powers principle. Different historical factors, common to most countries of the region, converge to explain the adoption of this general model.

With few exceptions—Brazil and, to some extent, Mexico, the most preferred option among Latin American elites after the 1820s was the creation of a republic rather than some form of constitutional monarchy. This option somewhat constrained the range of constitutional models in which the framers could find inspiration. Only the American constitution provided the example of a prosperous and politically stable republic. No parallel example existed in France, where the brief and quite unhappy experience with a parliamentary republic after the revolution was followed by the plebiscitary dictatorship of Napoleon, the restoration of traditional monarchy, and the constitutional monarchy of Louis Philippe. At the same time, important aspects of the American constitution seemed to fit local conditions and past institutional experience. Such was the case of a unipersonal executive whose election and duration in office was independent of the legislature. In a context of permanent external threats and internal conflict, most countries learned that collegial executives and executives controlled by legislative assemblies were often unable to provide for a strong, stable government.

There is little doubt, however, that the adoption of the American constitution in Spanish America was selective from the very beginning. Most new republics created a presidential office that was much stronger than its American counterpart. In the area of government, most Spanish American constitutions granted the president the power to

appoint cabinet ministers and top administrative officials without any form of congressional approval, and unilateral command over the army to intervene in external or internal conflicts. In terms of legislation, most presidents received formal authority to initiate bills in congress, exclusive initiative on budgets, and the authority to convene congress for extraordinary sessions to deliberate on matters proposed by the president. Finally, the typical president in Spanish America enjoyed discretionary emergency powers. These centralizing institutions clearly signaled a common concern of the framers for political order and stability.

These general features, however, are insufficient to account for variations in constitutional choice. The design of executive powers varied widely across constitutions in almost every aspect, from duration in office and term limits to powers of government, legislation, and emergency. In addition, most constitutions adopted different versions of separation of powers and check and balances principles, as well as different frameworks for organizing the relation between central government and local powers. Given this variation, one cannot rely on ideology or historical conditions alone to understand the origin of these institutions.

This article seeks to explain the particular model of distribution of powers that emerged from the constitution-making process of 1853-60 in Argentina. I will focus on two of the central characteristics of this design: the structure of presidential powers and the institutions that regulate the relations between the central government and regional units. In both dimensions, I will show that the constitution of 1853-60 represented a tension between power-concentrating and power-sharing structures of government, a somewhat odd combination of elements of presidential dominance and centralism with principles of checks and balances and federalism.

I will argue that the most general aspects of this design reflected a shared understanding among political actors about the institutions that could best fit the historical conditions of Argentina. In this sense, both the regime type and some basic options of design were greatly influenced by a conservative, “state-building” version of liberalism overly concerned with political order and government stability in a context of territorial fragmentation and inter-elite conflict. Matters of detail and distributional issues, however, were shaped by a self-interested bargain among actors with different expectations about the future and various levels of bargaining power to make their institutional preferences prevail. From this point of view, I will argue that the power-concentrating aspects of the constitution emerged as a consequence of the influence that the future president had over the organization of the constituent process and the task of constitutional design. The power-sharing aspects of the constitution, instead, emerged from necessary concessions made by the future president to his local supporters and from the veto power of the leaders of Buenos Aires, who expected to be a minority in the future government.

I will divide this article in four sections. Section **I** briefly considers the institutional conflicts that from 1810 to 1852 characterized the interaction between Buenos Aires and the rest of the provinces. Section **II** analyzes the bargaining process and procedures that shaped the making of the constitution of 1853. Section **III** explains the impasse that preceded the reform of the constitution in 1860 and the final integration of Buenos Aires to the federation. Section **IV** concludes with an

analysis of the impact of the constitution of 1853-60 on the future stability of the liberal regime that followed its creation.

### 1. The stalemate between Buenos Aires and the provinces (1810-1852)

Let me start with a brief presentation of events. As head of a centralist and absolutist empire, the fall of the Spanish monarchy left no legitimate local or national institutions in place from where to start the task of national organization. The independence of the Viceroyalty of River Plate, as everywhere else in Spanish America, was immediately followed by a gradual disintegration of large administrative divisions into new entities claiming autonomy from their former political centers and participation in the formation of national authorities. Federalism was the natural choice for these actors. Yet, groups that had access to the main centers of economic and political power during the colony resisted this form of government. These groups wanted to retain control over the central government, and therefore rejected local demands of autonomy and representation at the national level (Safford 1974: 102-111). Different from the process of constitution-making in the former British colonies of North America, this struggle for the division of political power was not constrained by previous forms of organization and representation (like local legislatures or other constituted authorities) that could be accepted as starting points of discussion or as focal points of agreement on which the actors could rely to resolve their disputes. From this perspective, the final form of organization of the national state in Latin America was, as it were, up for grabs.<sup>1</sup>

Since the revolution of 1810, the political elite of Buenos Aires, main international port and center of economic, administrative, and military power of the former Viceroyalty of River Plate, attempted to monopolize the conduction of national events. In this sense, for instance, the leaders of Buenos Aires reserved for themselves a key position in every—provisional—national authority created.<sup>2</sup> Representing the province with the largest population, they often did so by establishing a rule of proportional representation in constituent bodies. In 1819, while national forces were still fighting against the Spanish army, a constituent Congress dominated by delegates from Buenos Aires created a centralist constitution that let the provinces without any significant sphere of representation as independent political units.<sup>3</sup> Although *porteño* (inhabitants of the city of Buenos Aires) leaders managed to obtain some support in the interior of the country, the provinces of the littoral, which did not attend the sessions, rejected this constitution and threatened the formation of an independent state, perhaps in association with Uruguay, former governorship of the Viceroyalty. Two years later, after a period of civil war that followed the fall of national authorities, a new plan to call a constituent Congress

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<sup>1</sup> On the particularities of the process of nation-building and constitution-making in Spanish America,

<sup>2</sup> Such was the case with the first national institutions, like the juntas, triumvirates, and directorates.

<sup>3</sup> The provinces received only a partial form of representation in the Senate of a bicameral legislature. For more details about this design, see Sampay (1975).

was made. However, the attempt to provide this Congress with equal representation from all the provinces failed due to the opposition of Buenos Aires.

In 1826, after a period in which most provinces were already existing as *de facto* independent political units, a new constituent Congress was formed to provide the country with a national constitution. This Congress, organized and controlled by Buenos Aires, produced a constitution that, though centralist, contained several concessions to the provinces. In the first place, it created a national president, selected by electors from the provinces, and a bicameral legislature with a Senate with equal representation for the provinces. It also federalized the city of Buenos Aires, from then on capital of the nation, and divided the province of Buenos Aires into two different provinces. Finally, and crucially from the point of view of the economic interests of the provinces, the new constitution nationalized the revenues of the customhouse of Buenos Aires, the most important source of revenues in the country.

The new constitution, however, did not recognize the right of the people of the provinces to elect their own governors. In its final design, governors would be appointed by the president, from a list of candidates provided by provincial councils of administration (Sampay 1975). Both the littoral and interior provinces rejected the new constitution and, like in 1819, all national authorities were suspended. The difference with the previous situation, however, was that one of the main centers of opposition to the centralist constitution came now from the province of Buenos Aires itself. In reaction to the nationalization of the rents of the port of Buenos Aires, the cattle producers of this province rebelled against the centralist party and managed to obtain the election of the *estanciero* (rancher) Juan Manuel de Rosas as governor of Buenos Aires (Burgin 1960: 41).

Once in power, Juan Manuel de Rosas (1829-1832/1835-1852) initiated a long pause in the struggle for the constitution, by succeeding in creating an informal confederation in alliance with the provinces. In 1831, a federal pact was signed between Buenos Aires and the littoral provinces and later accepted by the rest of the provinces. The pact created a Representative Commission, a sort of national deliberative body composed by delegates from all the provinces in equal representation. It also established the provisional delegation of the conduction of foreign affairs to the governor of Buenos Aires, who *de facto* became the national executive authority. The central purpose of the agreement was to signal the commitment of all the parties involved to call as soon as possible a constituent Congress to create a federal constitution.

Through time, however, only the power delegated to the governor of Buenos Aires remained. While paying lip service to the federal cause, Rosas dismantled the Representative Commission and consciously aborted the creation of a federal constitution. With the economic power of the province intact, by the 1840s, Rosas managed to build an important army and gain gradual political hegemony over the rest of the provinces by a wise combination of pacts of mutual protection with provincial *caudillos* and distribution of economic benefits among supporters. The most powerful competitors in the provinces disappeared and different rebellions in the interior and the littoral were defeated one after another. For the first time, some form of national government with control over the provinces seemed to be in place

(Linch 1985: 644). Rosas' rule, however, was weaker than it seemed to be. Rosas depended too much on the support of the governor of Entre Ríos, Justo José de Urquiza, to maintain control over the littoral provinces, whose economic interests were increasingly at odds with those of Buenos Aires (Donghi 1982: 394). While Entre Ríos was experiencing a period of rapid economic growth based on cattle production, further economic expansion depended on the opening of the Paraná River, whose navigation and trade Rosas restricted.

The opportunity to alter the existing balance of forces emerged during the 1840s, when Rosas intervened in the internal politics of Uruguay to place an ally government in this country. Uruguay, like Brazil, shared with the littoral provinces an interest in breaking the blockade of Buenos Aires over the navigation of the River Plate system. Brazil, in addition, saw the intervention of Buenos Aires in Uruguay as a potential threat to its traditional hegemonic influence over the internal affairs of this country (Donghi 1982: 398). It was in this context that after a previous alliance with Uruguay and Brazil, in May of 1851, Urquiza suspended the delegation made in 1831 to the governor of Buenos Aires to conduct the foreign relations of his province. Soon after, Corrientes followed the example and a coalition formed by Corrientes, Entre Ríos, Uruguay and Brazil declared war against Rosas. In February of 1852, the allied forces defeated Rosas in the battle of Caseros.

## **2. Breaking the deadlock: the constitution of 1853**

Whereas in the past Buenos Aires failed to gain sufficient support to establish a centralist constitution, the defeat of Buenos Aires under the leadership of Urquiza opened the opportunity to create a federal constitution accepted by the majority of the provinces. The feasibility of this task, however, was not immediately evident. On the one hand, the use of military force could be only a temporary solution to break the opposition of Buenos Aires. In the long run, military defeat must be transformed into some form of voluntary agreement. On the other hand, the making of a federal constitution could be also frustrated by the emergence of internal conflicts within the federalist coalition itself. Although it was in their interest to support a federal constitution, potential internal divisions, as in the past, could be exploited by Buenos Aires to produce the collapse of the coalition.<sup>4</sup> From the point of view of Urquiza, then, the creation and sustainability of the new constitution depended on his success in two interrelated bargaining processes: one internal to the coalition itself, in order to keep his supporters together, another external, between the federalist coalition and Buenos Aires. This success, in turn, depended on the powers he would be able to obtain in exchange for certain concessions to provincial leaders and on the resources that the coalition itself could use to induce Buenos Aires to accept an agreement.

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<sup>4</sup> In this respect, one should note that Urquiza did not get significant support from the provinces in his war against Buenos Aires and that, moreover, many provincial leaders were loyal to Rosas until the very end.

In this context, the first step of Urquiza was to make clear to provincial governors that he will respect the positions of power they enjoyed in their provinces as long as they provided him with support to institutionalize a federal state. As a result of this implicit agreement, on April 6, the littoral provinces appointed Urquiza as “provisional” director of the confederation and delegated on him the power to conduct their foreign affairs. This action broke with the established tradition of delegating that function to the governor of Buenos Aires. In early May, Urquiza used his influence to get Vicente Lopez y Planes, a *porteño* supporter of the federalist cause, elected governor of Buenos Aires. The most important support received by Urquiza, however, occurred in late May, when he gathered all provincial governors in *San Nicolas de los Arroyos* to sign the pact that would establish the basic procedures of the future constituent convention.

This pact represented a conscious attempt to design a constituent convention in which neither Buenos Aires could make its preferences prevail nor the particular demands of provincial delegates would put obstacles to the rapid adoption of a new constitution. The most important rules of this design were as follows:

1. Rules of representation. According to the pact, each province would elect two delegates to the convention. In contrast to the rule of proportional representation, always used by Buenos Aires to manipulate the work of constituent conventions, this mechanism guaranteed the equal representation of all provinces, regardless of population or economic importance. It also meant the formation of a very small assembly, with a maximum of 28 delegates, if all the provinces sent the required number.
2. Procedure of selection of delegates. Delegates would be elected according to the rules for the election of representatives to provincial legislatures. In principle, this meant direct election by the people of the provinces. In fact, however, the governors themselves would intervene as electors. The agreement implicitly allowed the governors to intervene (to use “legitimate” influence was the actual wording of the pact) in the election, as they were used to do. Through their intervention, the governors (and through them, Urquiza) could secure the selection of delegates loyal to the federal cause.
3. Proscription of binding mandates. Delegates to the convention could not use specific instructions of their provinces to vote in the convention. This measure was obviously aimed at facilitating internal negotiations as well as precluding the use of instructions as a precommitment device.
4. Internal procedures. A simple majority of votes would approve the constitution. This constraint over the decision rules of the assembly had the clear purpose of diminishing the bargaining power of any opposing minority (mainly, but not only, the delegates from Buenos Aires) in the convention.
5. Absence of ratification procedures. Different from previous constitutional assemblies, the ratification of provincial legislatures was eliminated as requirement for approval. This was perhaps the most conscious attempt to prevent any form of opposition coming from the provinces in general and Buenos Aires in particular. The rule also implied something about the nature of the constituent power that would create the new constitution. The ultimate

source of authority of the constitution would reside in the nation, not in the provinces.

Urquiza himself was endowed with important means to protect-and potentially influence- the work of the assembly. For instance, he received authority to control internal order in the country while the assembly was fulfilling its mission. Appointed as commander in chief of all provincial armies, Urquiza could use any means necessary to restore peace in case of armed conflicts or rebellions. In addition, Urquiza was confirmed as provisional director of the confederation and responsible for the general administration of the country. This included, of course, the regulation of commerce and navigation of internal rivers. In the absence of an ordinary legislature, Urquiza also assumed legislative powers.

Thanks to the *de facto* control that provincial governors had over local elections, Urquiza was able to exert through them an enormous influence in the selection of delegates to the convention. According to some historical accounts, he indicated the names of half of the delegates that should be elected and approved the appointment of the other half (Rosa 1963: 37). Loyalty to the federal cause and even to Urquiza himself was an important criterion of selection. There were also intellectual and ideological considerations. Most delegates belonged to a generation of moderate and pragmatic liberals who shared the view of transforming Argentina into a modern constitutional state able to create political order and encourage economic progress. Given the priority of these considerations, many delegates were not in fact representative of provincial interests as such. An important number of delegates, for instance, did not belong to the province they were supposed to represent. Such was the case of Eduardo Lahitte and Salvador Maria del Carril, delegates from Buenos Aires in spite of the fact that neither was born in that province.<sup>5</sup>

In the eyes of most political actors in Buenos Aires, the whole process looked as a sheer imposition. The rules were set to create a constitution without consulting the opinion of the provinces in general, and Buenos Aires in particular. Moreover, Urquiza, obvious candidate to lead the executive of the future constitutional government, obtained enough means of influence to grant himself an extensive list of powers to force the adoption of the constitution.<sup>6</sup> This situation, in addition to the absence of a requirement of popular ratification, predicted a constitution created under the exclusive influence of the future executive and his supporters. The constitution, in other words, would be born out of a pact between Urquiza and provincial governors.

In June, when the agreement was reviewed by the legislature of Buenos Aires, Mitre, one of the most influential leaders of the *porteño* political elite, argued against the agreement because it created in Urquiza an “irresponsible dictatorship.”

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<sup>5</sup> In Buenos Aires these delegates received the pejorative term of “alquilones” (rented people), that is, people rented to represent a province. See Rosa (1963: 16)

<sup>6</sup> Note that this suspicion was very well grounded. Not only was Urquiza the military protector of the assembly. He was even in charge of its material support. According to the Agreement, Urquiza himself was responsible of paying the stipend of the delegates and other expenditures related to the work of the assembly.

(*Asambleas Constituyentes Argentinas* 4: 314).<sup>7</sup> In similar terms, but looking at the possible outcome of the future constituent assembly, deputy Velez Sarfield stated that the agreement was designed to make certain the election of Urquiza as president, perhaps with dictatorial power (*Asambleas* 4:314). While these criticisms were cast in personal terms, in fact, they revealed a more permanent dilemma of the leaders of Buenos Aires. Given the (at least, temporary) military advantage of the federalist coalition, Buenos Aires had to accept a federal state as the starting point of negotiations. Expecting to be a minority in the future government, however, the leaders of this province wanted to protect their interests from encroachments of the central government. Specifically, they had an incentive to oppose the creation of a strong executive power controlled by the provinces.

The legislature of Buenos Aires almost unanimously rejected the agreement arguing that it could not bind the province without its approval. As a response, Urquiza dissolved the legislature, assuming himself the role of *de facto* governor of Buenos Aires. On September 11, however, few days after he left Buenos Aires to open the sessions of the constituent assembly in Santa Fe, a rebellion exploded in the city. An anti-Urquiza coalition led by Valentín Alsina, supported by military leaders of the province of Buenos Aires, forced the resignation of Urquiza's delegate, ratified the rejection of the agreement of San Nicolas, and revoked the powers of Lahitte and Del Carril to represent Buenos Aires at the convention.

Within the rebels there were, in fact, two dominant groups: a group of radicals, who wanted a complete separation of Buenos Aires from the future federation and a group of moderates, who would accept integration, but only under constitution-making procedures more favorable to this province (Scobie 1964: 61). Each group, respectively known as "separatists" and "nationalists", had different views about the strategy that Buenos Aires should follow in the future. The first group, populated by former supporters of Rosas' regime, thought that Buenos Aires should form an independent state even if that meant the risk of an open confrontation with the federalists. The second group, integrated by former *unitarios* (centralists) and a new generation of *porteño* politicians, considered that Buenos Aires should be part of the federation, but only if members of its political elite were allowed to have a substantial share in the future government (Saenz Quesada 1974: 42). In the meantime, however, both groups agreed in the need of forming a "negative" alliance to prevent the creation of a constitution according to the mechanisms designed by Urquiza.

The rebellion in Buenos Aires and the attempt of its new governor, Valentín Alsina, to invade Entre Ríos, delayed the inauguration of the constituent convention until November 20. The installation ceremony of the convention, however, shows that Urquiza had already decided that the new constitution would be created even without the participation of Buenos Aires. In the speech made for that occasion, he asserted that during the temporary absence of Buenos Aires, "the republic can and has all the necessary means to give itself a constitution" (*Asambleas* 4: 413).

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<sup>7</sup> From now on, *Asambleas*.

But why constitute a federation without Buenos Aires, if this province was so crucial for the economic viability of the new state? The integration of Buenos Aires at the time would have required either force or negotiation. Neither solution, however, was probably attractive for Urquiza. On the one hand, the use of direct military force could have had an enormous cost in terms of lives and resources, particularly given the widespread support that the rebellion seemed to enjoy in Buenos Aires. On the other hand, any negotiation with the rebels would require concessions that could put at risk the creation of a constitution favorable to provincial interests. A basic condition to negotiate with Buenos Aires would be to change the rules of procedure of the future convention, for instance, allowing Buenos Aires to appoint delegates according to population. But this would obviously increase the influence of Buenos Aires in the convention.

The decision to complete the constitution-making process without Buenos Aires presented instead some clear benefits, at least for the time being. In the first place, it would allow Urquiza to consolidate his leadership within the federalist coalition and isolate Buenos Aires from the rest of the provinces. Moreover, if the opening of littoral ports to international trade worked as expected, the federalist state could support itself without Buenos Aires and, eventually, impose the new constitution as the starting point of any future negotiation. In the same speech cited above, Urquiza stated his belief that the separation of Buenos Aires would only be a “temporary accident.” (*Asambleas* 4:413). That belief was confirmed when in early December a group of military leaders in the province of Buenos Aires demanded the resignation of governor Valentín Alsina and the participation of Buenos Aires in the convention. This event probably strengthened Urquiza’s decision to continue without Buenos Aires. The movement against the political elite of the city of Buenos Aires could help Urquiza to obtain his goal at a minimal cost.

On December 24, the constitutional assembly created the commission of constitutional affairs, the body that would centralize the preparation of the new constitution. It would be a small body, of only five members: Juan María Gutiérrez, Benjamín Gorostiaga, Manuel Leiva, Pedro Ferré and Díaz Colodrero. As it turned out, the first two, close to the intimate political circle of Urquiza, were responsible for the draft of the constitution, while the other three would simply review the project (Martire 1982; Sagarna 1938). On what basis would they work?

### **3. The making of a presidential republic**

Historical and comparative studies on constitution making show that constitutional choice, particularly at foundational moments, results from a complex interplay between impartial considerations and strategic conflicts. Following Jillson and Eubanks (1984) and Jillson (1988), however, it is possible to determine the relative importance of these factors differentiating between two different levels of

design, a "higher" level of basic options and a "lower" level of operational rules.<sup>8</sup> From this perspective, a mix of political ideology, historical experience, and impartial concerns for stability or efficiency shape the most general aspects of constitutional design. By contrast, in matters of detail and distributional issues the most important factors determining constitutional choice are the expectations of the actors about their future positions and the resources they have to make their preferences prevail.<sup>9</sup> Typically, the option between monarchy or republic, presidentialism or parliamentarism, or even certain general characteristics of the design of the powers of different branches of government, corresponds to the level of decisions made according to ideology, experience, and impartial concerns. Rules of representation, electoral rules or questions clearly affecting the distribution of power between government and opposition are instead selected according to strategic interests. The making of a presidential republic in Argentina provides a good illustration of how these two levels of analysis complement each other to explain the final outcome of constitutional choice.

The creation of a federal state and a relatively strong executive were predictable outcomes in a process dominated by provincial interests and the most likely leader of the future constitutional government. For most provincial leaders, the federation implied, at a minimum, the election of governors by the people of the provinces (rather than being appointed by the central government) along with the free navigation of internal rivers and the nationalization of external customhouses. It was also clear that the provinces attached to the federal idea some rule of equal representation in the national government to offset the influence of Buenos Aires. General Urquiza could also expect (although he did not make any explicit statement about this issue) some form of unipersonal executive with independent powers of government. This was, after all, the form of government adopted by provisional national authorities since 1820.

In both respects, adopting the constitution of the American federalists could have been an expedient solution to the problem of constitutional design, particularly given the costs that an open a lengthy negotiation process could have implied for all the actors.<sup>10</sup> Not only did this model enjoy a strong appeal among federalist leaders but it also offer a set of institutions that could reconcile the conflictive interests of the main political actors. Just as the presidential structure of government could serve Urquiza to consolidate his national leadership, a bicameral legislature with equal representation in a Senate and proportional representation of the states in the Chamber of Deputies could accommodate the interests of Buenos Aires with those of

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<sup>8</sup> This construction builds on the work of Buchanan and Tullock (1962) and Ostrom (1979) who distinguish between a "constitutional" and an "operational" level of choice, one concerned with the choice of general institutional rules and the other with the preference for particular outcomes. Different from Jillson and Eubanks (1984), however, these authors do not consider that distributional issues may also play a role at the constitutional level of choice. On the topic, see also Elster (1991a,1991b,1995a,1995b,1995c).

<sup>9</sup> For a general, detailed analysis of the influence of these factors in constitution-making, see Negretto (2011; 2012).

<sup>10</sup> This was, for instance, the solution proposed by Domingo F. Sarmiento in 1850, before the defeat of Rosas. See Sarmiento ([1852] 1996: 116). See also the articles published by Muñoz (1852).

the least populated provinces.

The consolidation of political unity in Argentina, however, required tailor-made solutions to specific historical problems. One of these problems was the creation of a national authority in a context characterized by territorial fragmentation and pervasive factional conflict at the local level. Another -interrelated- problem was the overwhelming importance of a single state (Buenos Aires) and its likely resistance to be incorporated to the federation on an equal basis with the other provinces. These historical circumstances should be somehow reflected in the constitution at the time of designing the balance of power between the central government and local authorities and the scope of presidential authority. It was not apparent, however, what specific forms of institutional design could make feasible the consolidation of national authority in a way acceptable for all the parties involved.

Urquiza found a possible solution to this problem in a project of constitution sent to him on May 30 by Juan Bautista Alberdi, a liberal lawyer and intellectual exiled in Chile since the period of Rosas. The core of Alberdi's proposal was based on the idea of a centralized federation, a presidential system with strong emergency powers and a broad regime of civil rights for both nationals and foreigners. On July 22, Urquiza responded in a letter, later made public, in which he admitted that the book was "a very important means of cooperation" and that "it could not be written nor published in a better opportunity." (Cárcano 1938: 6) From June to August of 1852, the content of Alberdi's book was widely publicized in the daily press of Buenos Aires and the interior of the country. In few months, the book turned into a best seller and Urquiza himself ordered a new national edition to distribute it in the provinces (Mayer 1963: 422).

By the end of August, Alberdi prepared a second edition of the book. Apparently following a recommendation made by Juan María Gutiérrez, Alberdi included in this edition a more detailed project to be used as a framework by the coming constituent convention (Pelliza 1923: 47).<sup>11</sup> As an additional gesture of support, Urquiza sent Alberdi a new letter in November recognizing the importance of his project (Mayer 1969: 43). One month later, the constituent convention would use Alberdi's project as a preliminary draft of the future constitution.

Just like his book in general, the project was widely commented by the press. At the time the book was published, no major opposition emerged about the basic tenets of the future constitution outlined by Alberdi. In fact, it is crucial to note that most of Alberdi's central ideas were adopted by different proposals appeared at the time and that his views were generally accepted, even by those who would later become opponents of the new constitution. This shows that Alberdi's project and its underlying political philosophy reflected more a shared understanding about the general traits of the future constitution than the isolated opinion of an intellectual or the short-term interest of a partisan actor. It is therefore necessary to analyze the content of this project in some detail to attempt an explanation of its influence.

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<sup>11</sup> The title of Alberdi's work was *Bases y Puntos de Partida Para la Organización Nacional*. The following references of this work will be based on the edition of Jorge Mayer (1969). Citations in the text will be made under the name of *Bases*, followed by chapter and page number.

### 3.1 The view of Alberdi

Liberalism is often defined as a political ideology emphasizing individual and minority rights and constitutional limits to state power. This definition, however, misrepresents the contributions of important liberal thinkers involved in the founding of new republics. In Spanish America, many liberal thinkers who drafted constitutions or participated in government functions were not so much concerned with the limitation as with the creation of state authority. This type of “state-building” liberalism sought to strengthen the powers of the executive and the national government at the same time it opposed personal dictatorship and arbitrary government. Alberdi’s constitutional project is the best exponent of this thought.

The project of Alberdi followed the premise that the future constitution of Argentina should be neither a work of imitation nor a theoretical construction. It was his conviction that in order to last the constitution should be solidly grounded on historical experience. In this sense, Alberdi assumed that in post-Rosas Argentina the need to adopt some general institutions would not be disputed. After decades of conflict about the organization of the state, for instance, no major actor (nor even Buenos Aires) would question the need to adopt a federative model, at least not as a matter of principle. The parallel experience of civil war and dictatorship also prepared the ground to accept the creation of a strong national authority subject to the general limits of a constitutional state. The main problem, however, was how to formulate these institutions so that they could fit the particular historical conditions of Argentina and at the same time accommodate the still conflictive demands of the main political actors.

Alberdi thought that the new constitution should have an economic motive as its main objective.<sup>12</sup> The prosperity of Buenos Aires notwithstanding, Argentina was still a backward country in which political conflicts often reflected a struggle for the distribution of scarce economic resources. While Buenos Aires could prosper thanks to the expansion of cattle production and the exclusive appropriation of the rents of its port, the rest of the country was either underdeveloped or limited in its capacity to grow. To solve this problem, he proposed a series of transformations that were part of the program of most liberal reformers of the time: free commerce, free navigation of internal rivers, removal of internal barriers to trade and the nationalization of all external customhouses.<sup>13</sup> The final goal of these measures was to make of Buenos Aires a model of economic development for the whole country.

According to Alberdi, however, economic progress would not emerge from liberal economic measures alone. It was first necessary the elimination (or at least the contention) of the permanent state of anarchy that had affected Argentina since

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<sup>12</sup> “This is the goal of our present day constitutions”, says Alberdi, “they must tend to organize and constitute the great practical means to take our liberated America from its current obscure and subordinated state,” in *Bases* (11: 220)

<sup>13</sup> See in particular arts. 8 to 11 of the project. In *Bases*, (38: 464). See also the similar proposals made by Sarmiento [1852] (1996: Ch. 4), and Mitre in the article “Profesión de Fé,” published in *Los Debates*, April 1, 1852.

1810. This required the construction of effective political power. Alberdi understood the relation between economic development and political conflict as one of mutual causality. Whereas political conflict had poverty and economic backwardness as its main cause, the latter could not be overcome without first achieving a minimum of political order. This Hobessian reasoning led Alberdi to look for a specific set of political institutions whose main purpose was the prevention of civil war and internal divisions. It was from this point of view that Alberdi proposed that the Argentine constitution should be, like the American one, federal and presidential. But different premises led him to fill these labels with institutions that would substantially depart from the design of American constitution-makers.<sup>14</sup>

Alberdi's project created a double sphere of political authority. At the national level, power was divided between a president, a bicameral Congress and a Supreme Court, head of the federal judiciary. Governors, legislatures and provincial courts represented the local level of authority. Not really a federalist by conviction, Alberdi considered provincial autonomy as way of recognizing the power acquired by the governors. His project provided, then, for the right of the provinces to elect their own authorities and create their own institutions. It also guaranteed the provinces a sphere of equal representation in the Senate of a bicameral legislature with coequal powers of legislation. Different from the Chamber of Deputies, integrated by deputies elected by the people, this Senate would be integrated by two senators elected by each provincial legislature.

At the same time, however, Alberdi sought to restrict the sphere of provincial autonomy to a minimum. The central government, for instance, was invested with the power of "federal intervention" (*intervención federal*), which consisted of an authorization to take control of local governments (even without request from the province) in cases of sedition. In the same vein, the national Congress was invested with the power to review provincial constitutions before their approval, and the Supreme Court could decide on constitutional controversies between a province and the inhabitants of this province. These rules somewhat reversed the idea of federation that emerged from the American constitution. Rather than a union of independent states, delegating part of their sovereignty to the central government, Alberdi turned the idea of federation into the margin of authority that the central government was willing to recognize to the provinces (Botana 1983: 352).

One of Alberdi's arguments in favor of this version of federalism was the almost opposite historical path followed by Argentina and the United States. North America went from a system of mutually independent states, during colonial times, to a single collective organization after independence. Argentina, like everywhere else in Spanish America, went from a system of unity to a system of independent (in fact, quasi-anarchic) states (*Bases* 25: 346-47). Moreover, the institutional conditions of local governments were completely different from one country to another. In this respect, Alberdi saw the situation of Argentina in 1852 closer to France in 1789 than to the United States in 1787. Whereas in the United States the colonies were already

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<sup>14</sup> For a general comparison between the design of Alberdi and that of the American Federalists, particularly in relation to the presidentialist system, see Etchemendy (1997).

constituted before creating a national government, in Argentina, as in France, the regional units had no (or scarce) level of institutionalization. This is the reason why, in Alberdi's view, the federal constitution should always precede and prevail over provincial constitutions.<sup>15</sup> This is also the reason why he never thought of federalism as a limit to the power of the national government. Rather than part of a scheme of check and balances, provincial authorities were mere delegates of the central power.<sup>16</sup>

Apart from this general historical analysis, Alberdi's idea of a "mixed" federation (part federal, part centralist) was also based on the model provided by predecessor institutions. The confederation under Rosas was such a model (Romero 1963: 147). For all his hatred to Rosas' arbitrariness, Alberdi deeply admired the fact that Rosas was the first leader since 1810 to create a truly national power. Such a power, Alberdi believed, should not be eliminated but institutionalized by means of a constitution.<sup>17</sup> The secret of Rosas' power was the reality of centralization behind the façade of an informal confederation. Given the weak institutional base of their local power and the permanent threat of invasion from other provinces, provincial *caudillos* were always forced to rely on the protection and resources provided by a stronger power. The superior military strength and economic power of Buenos Aires helped Rosas to play this protective role. He obtained obedience in exchange for protection.<sup>18</sup> In the new constitution, Alberdi thought that something similar to this power was necessary to maintain order and political unity. A central government endowed with sufficient economic resources, a national army and legal instruments to control the provinces was probably its closest successor.

Following this line of reasoning, Alberdi proposed that the "efficient" secret of the new constitution should be found in the structure and powers of the presidency. "I would not doubt say", Alberdi confessed, "that the fate of the states of South America especially depends on the constitution of the executive power" (*Bases* 26: 351). In his view, the fall of the Spanish monarchy created a vacuum of power that a purely liberal republic with governments of limited powers and strong individual liberties could not fill. Latin American peoples, according to Alberdi, were unprepared for authentic republican rule. They lacked both the experience and the cultural predisposition to exercise political liberty within a minimum of order. Having neglected this reality was, in his opinion, the main mistake of early Latin

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<sup>15</sup> See Alberdi's footnote to article 7 of his project (revision of provincial constitutions by the national Congress). *Bases* (38: 463-64)

<sup>16</sup> This idea is indicated in article 107 of Alberdi's project: "Provincial governors and public officials who depend on them, are *natural agents* of the general government, to obtain compliance with the constitution and the general laws of the confederation." See *Bases* (38: 483)

<sup>17</sup> See Alberdi's essay "La República Argentina, 37 Años Después de su Revolución de Mayo," in *Obras Completas* (1886: 221-242). See also "Compromisos y Deberes en que el Gobierno Absolutista de Buenos Aires se Halla de Seguir el Movimiento Político de Europa de Este Momento," and "Importancia que para Chile tienen los Asuntos de Buenos Aires". These articles are reproduced in Barros (1997).

<sup>18</sup> Even without explaining the mechanisms of Rosas' authority, Alberdi frequently cites the ability of Rosas to obtain obedience as one of the main, albeit unintended, contributions of his rule to the purpose of national unity. See in particular, *Bases*, Chap. 29.

American liberals. They wanted to create a political order based on the doctrine of popular sovereignty, with weak executives and extensive individual guarantees. But they woke up, he thinks, in midst of anarchy and disorder. Until the habits and ideas of Latin Americans change through the salutary effect of economic and cultural progress, there is only one possible form of free government that is compatible with order: a republic of “Kings with the name of presidents” (*Bases* 13: 229).

In Alberdi’s own view, it was in the area of presidential powers where his project more radically departed from the American precedent (*Bases* 26: 349). The role of the president in the American constitution was a key element of Madison’s interpretation of the separation of powers as a system where each department of government should have the means and the motives to preserve its own powers and prevent encroachments by others.<sup>19</sup> In this view, the specific means to avert usurpation was to provide each department of government with a partial share in the function of others so that they would be subject to a system of mutual checks and balances. The American president, for instance, was thought to prevent the expansion of legislative power (the branch more prone to power abuse, according to the framers) by means of his veto power over legislation. In order to make this control effective, the president was made independent from the legislature by means of his separate election, his fixed duration in office, the possibility of re-election and his powers over government formation. The power of the president, however, was in turn limited by his dependence on Congress to pass most legislation, to approve the budget or, in the case of the Senate, to have its approval to appoint members of his cabinet or federal judges. The president could only veto a bill as a whole and his veto was subject to a two-third majority override in the legislature. He had no legal power to act on his own in cases of emergency and was subject to impeachment in cases of violation of the constitution.

Alberdi saw the separation of powers as an essential ingredient of a liberal constitution and accepted the view that certain elements of the doctrine of checks and balances were necessary to prevent abuse and concentration of power. In his project, for instance, the roles of president and Congress would remain separate and balanced regarding legislation. While the president was entitled to introduce legislation, he was dependent on Congress for its final approval. Just like the American president, his only means of influence was a veto subject to a two-thirds majority override in the legislature.<sup>20</sup> Also similar to the design of the American constitution, while an Electoral College elected the president for a fixed term, he was subject to impeachment in Congress in cases of misconduct or violation of the constitution. Different from the American president, Alberdi’s president did not require the consent of the Senate to appoint cabinet ministers, something that

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<sup>19</sup> See Madison’s Federalist 47 to 51, in Madison, Hamilton and Jay [1788] (1987: 302-22)

<sup>20</sup> In Alberdi’s project as well as in the final text of the constitution, the president was authorized to veto the totality as well as parts of a bill. This authorization, however, did not invest the president with the power to promulgate the non-observed parts of a bill. The whole project had to be sent back to Congress and it was up to the assembly to decide whether to approve the veto or insist in the original bill.

provided him with greater autonomy in terms of government formation.<sup>21</sup> However, following the logic of checks and balances, his power to appoint federal judges, including members of the Supreme Court, was subject to that requirement.

In spite of these provisions, Alberdi rejected one of the central assumptions of the doctrine of check and balances: the idea that constitutional stability should be the product of a self-enforcing equilibrium among the different branches of government. (Manin 1995). In his view, in countries without constitutionalist tradition and affected by permanent conflicts among factions, the enforcement of the constitution depended on the existence of a strong executive power able to act with discretion in exceptional circumstances. It was in this sense that Alberdi seemed to believe (citing Juan Egaña, the intellectual forerunner of the Chilean constitution) that “it is an illusion the equilibrium of powers.” (*Bases* 26: 354). For Alberdi, when the constitution is in danger, the president is the only force able to prevent anarchy and dissolution. Individual guarantees, Alberdi wrote, would become vain words without the existence of public guarantees, the first of which is “the government, the executive power with capacity to make peace and constitutional order effective...” (*Bases* 26: 353).

This view was translated in the design of emergency powers. The project introduced the institution of the state of siege, the temporary suspension of individual guarantees that the president could declare in cases of external attack or internal disorder. Consent of the Senate was required in cases of external attack and approval of the whole Congress in cases of internal disorder. The president, however, could act alone in the event that Congress were not in session and had no obligation to convoke the Congress to extraordinary sessions. To see the ample residual power that this rule provided to the president one must consider additional provisions of Alberdi’s project, like the one establishing that Congress would remain in sessions for only five months a year, a period that only the president could extend.<sup>22</sup> This provision meant that, most of the time, the president would exercise emergency powers free from legislative control. The short duration of congressional sessions and the lack of power of Congress to extend them also had an impact in areas related to emergency powers, like the institution of federal intervention. Although the project established that federal interventions should be declared by the national government, the short duration of congressional sessions also meant that, in practice, the power of federal intervention would largely remain in hands of the president.

Alberdi formed his beliefs about the benefits of this design during his exile in Chile. Since the early 1830s, the Conservative Party in Chile created a political

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<sup>21</sup> One should observe, however, that given the power of the president to dismiss cabinet ministers at will, congressional consent for appointment, while a clear restriction, is not a powerful form of legislative control. Except in some exceptional circumstances, the Senate would not block a presidential appointment knowing that, in the end, the permanence of cabinet ministers in office is dependent on the confidence of the president. The situation is different with the appointment of judges with life tenure. Since neither the president nor Congress can dismiss judges for political reasons, the senators have an incentive to make a more strict supervision of presidential nominees to the courts.

<sup>22</sup> He discarded, then, the solution (adopted by the American constitution) of giving Congress the power to determine the extension of its sessions.

regime that, in contrast to the experience of most Latin American countries at the time, managed to secure a high degree of political stability, order, and economic progress (Collier 1985: 583). Alberdi attributed this success to the conservative constitution of 1833 and the extensive powers it provided to the president, particularly in the area of emergency powers.<sup>23</sup> Other Argentine liberals exiled in Chile during the 40s shared this idea. Similar to Alberdi, for instance, Sarmiento used to scorn as “doctrinaire” the claims of those Chilean liberals who criticized the conservative constitution for the excessive predominance it gave to the president in the political process. Although partisans of a government with legally defined powers, both Sarmiento and Alberdi believed that only a president with strong powers could prevent anarchy in countries without tradition of representative government and plagued by internal conflict.<sup>24</sup> Despotism should be avoided, of course, but not by means of weakening state authority.

Two more elements of Alberdi’s design should be mentioned for their importance: the role of elections and the duration of representatives in office. The precedent of Rosas, with his use of popular vote to legitimize dictatorial rule, convinced Alberdi as well as many other liberals of his generation of the need to restrict popular sovereignty at its base, with literacy and property qualifications.<sup>25</sup> The much-admired stability of the Chilean constitution of 1833, which adopted that solution, reinforced this belief. In spite of this opinion, however, Alberdi preferred to leave the regulation of elections for senators and representatives to each province, probably assuming that provincial constitutions and electoral laws were the adequate instruments to establish voting qualifications.<sup>26</sup> The project did include restrictions to the direct expression of popular will, like the election of the president by an electoral college or the election of senators by local legislatures, both taken from the American constitution. There were also restrictions to be elected, absent in the American model, like explicit property qualifications for senators, representatives and presidents.

With respect to the duration in office, Alberdi’s project included a rule that became typical of many Latin American constitutions of the second half of the XIX century: the proscription of presidential re-election for two consecutive terms. Whereas senators and representatives could be re-elected, the project granted the

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<sup>23</sup> See *Bases* (26: 354) and footnote to article 85, par. 22 of the project (state of siege), in *Bases* (38: 479). See also the articles published by Alberdi in *El Comercio de Valparaiso*: “Exige Reforma la Actual Constitución de Chile?” (06-14-48), “Compromisos y Deberes en que el Gobierno Absolutista de Buenos Aires se Halla de Seguir el Movimiento Político de Europa de este Momento” (07-3-48), “La Democracia en Sudamérica” (07-4-48), “Notable Diferencia entre los Agitadores y Conservadores de las Repúblicas, y los de las Monarquías” (08-22-48), and “Chile y Buenos Aires Comparados por la Reforma” (08-30-48). See Barros (1997)

<sup>24</sup> See, for instance, the articles published by Sarmiento in *El Progreso* between 1844 and 1845, reproduced under the title of “Representación Nacional,” in *Obras Completas* ([1886] 1909: vol. IX)

<sup>25</sup> Aversion to popular sovereignty and the idea of representative government as the rule “of reason”, that is, of an enlightened minority, was a popular theme among the new generation of liberals formed during the years of Rosas’ rules (the so called the “37s Generation”). Alberdi’s mentor, Esteban Echeverría was one of the main exponents of this view. It was also the position of Sarmiento and most exiles in the 40s. See Romero (1963: 145)

<sup>26</sup> See *Bases* (Ch. 13) and article 45 of the project.

president this possibility only after one term out of office. This type of provision has generally been portrayed as a safeguard against presidential despotism.<sup>27</sup> Following Alexander Hamilton, however, one could very well argue that, being an inducement to good behavior, it is the possibility of re-election (not its proscription) what should work as a *check* on the executive.<sup>28</sup> Alberdi certainly knew this position.<sup>29</sup> However, he was not so much concerned with the limitation of presidential power as with the perpetuation of the president in office. The president, he said, “always has the means to make himself re-elected and he would rarely fail to do so.”<sup>30</sup> Because of this, Alberdi preferred a presidency of 6 years without re-election to a shorter one (say, of 4 or 5 years) with that possibility. The most likely reason for this option was the need to grant some measure of rotation in office in a situation where a strong president would certainly use his various means of influence, formal and informal, to get himself re-elected. That was the case of Chile until the early 1870s, in which presidents with control over the electoral machinery always served for two terms.

As I noted before, the general aspects of this institutional design reflected widely shared views and impartial concerns about the political institutions that would best fit the particular historical conditions of Argentina. Alberdi wrote as the spokesman of a conservative version of liberalism that became predominant in mid XIX century Argentina. At the same time, however, the project had a practical political dimension: it was intended to work as a compromise among the conflicting interests of three different actors: the future president, provincial governors and the leaders of Buenos Aires. As he put it, “the constitution is a political pact dictated by the need to reconcile facts, interests and demands of the circumstances.” (*Bases* 30: 401). It is in this respect that Alberdi’s model eventually became part of a complex bargaining process in which short-term political interests and strategic resources played a predominant role in shaping the final design of the constitution.

It seems clear why Urquiza, the obvious candidate for president under the new constitution, gave Alberdi’s project such an enthusiastic support. From a strategic point of view, a presidency with strong powers to suspend constitutional guarantees or take control of local governments in cases of internal conflict was instrumental to prevent challenges to the central authority or avert internal disputes within the federalist coalition. As Urquiza knew very well, the previous failure of the federalist project was not simply due to the hegemony of Buenos Aires. Regional economic and political rivalries also created problems of coordination among provincial leaders for the formation of a stable federalist coalition. Now that this coalition was in place thanks to his leadership, it was crucial for Urquiza to have the capacity to prevent defections and counteract internal rebellions within it. In this respect, the instrument of federal intervention would give the president a powerful and potentially credible threat in order to induce discipline and collaboration among

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<sup>27</sup> See, for instance, Kantor (1971)

<sup>28</sup> See Hamilton, Alexander in “Federalist No 72,” in Madison, Hamilton and Jay [1788] (1987: 413-14)

<sup>29</sup> It was also formulated during the debates of the frustrated constitution of 1826. See *Asambleas* (3: 1159)

<sup>30</sup> See *Bases* (38:475) footnote to article 79, p. 475.

provincial leaders. The armed resistance of Buenos Aires to the constitution, of course, could only add an additional motive for an institutional design similar to Alberdi's.<sup>31</sup>

More intriguing, however, is why would provincial leaders agree to an institutional design that gave the provinces such restricted political autonomy and provided the president with so important powers. To put it differently, why do Argentine federalists, after decades of struggle against centralism, would accept a system that gives so much power to the central government in general and the president in particular? The answer, I believe, resides in the internal dynamics of the federal coalition itself. While Urquiza was dependent on the support of the governors, he also had some leverage to induce the members of his coalition to sacrifice or moderate some demands. As organizer and representative of the federalist coalition, Urquiza knew he was providing his supporters with benefits that none of them could achieve on their own or, for the moment, in alliance with other parties. These benefits were clearly a constitution that would preserve local elections, nationalize external customhouses and open internal rivers to international trade. In exchange for the recognition of their respective spheres of influence and a share in the distribution of national economic resources, Urquiza could obtain from provincial leaders the acceptance of certain restrictions to local autonomy that, from his point of view, were necessary to consolidate his national authority.<sup>32</sup>

One should also note that provincial leaders did not necessarily see certain restrictions to local autonomy, such as the power of federal intervention, as in conflict with their fundamental political interests. Since their power was constantly challenged by internal and external competitors, the president could use the mechanism of federal intervention to help them to remain in power, at least as long as the president was also dependent on those provincial leaders to govern. A similar type of exchange, after all, cemented the relative stability of the confederate system under Rosas. The constitutional design proposed by Alberdi also provided provincial leaders with several safeguards that could be used to check and control the power of the executive. The election of the president, for instance, depended on electors from the provinces (in a number equal to the deputies and senators each province sent to Congress). Given the *de facto* control that provincial governors had over local elections, this rule meant that any president would have to obtain their approval (at least of a majority of them) in order to be elected. Due to the principles of separation

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<sup>31</sup> In fact, the correspondence between the political interests of Urquiza at the time and Alberdi's design of presidential powers was so close that some historians saw in the model "more a constitution for the vanquisher of Rosas than for the Argentine Nation." See Pelliza (1923: 92). This claim may be exaggerated. As we saw, Alberdi's conception of the executive power was primarily based on his beliefs about the cultural and social conditions of Latin American countries, the success of the Chilean constitution and the need to create some continuity with predecessor institutions. However, the fact that the model of a strongly presidentialist republic was also instrumental to realize the interests of Urquiza tell us something about the relation between ideas and interests in political life. Although ideas may and do often emerge independently from interests, they rarely become influential without the support of dominant actors who find in those ideas a good translation of their interests.

<sup>32</sup> For the analysis of Alberdi's design as a system of trade-offs between Urquiza and provincial leaders, see Tonelli, (1995).

and balance between president and Congress in the area of legislation, provincial leaders could also rely on the idea that they would control the levels of presidential support in the legislature, particularly in the Senate. The Senate had important legislative powers, provided approval for the state of siege, participated in the appointment of federal judges and, according to the project, had even the exclusive right to propose amendments to the constitution.

Following this analysis, it seems apparent that Alberdi's project could not be the basis of an acceptable negotiated agreement for Buenos Aires. This province would lose its economic monopoly and political advantages without obtaining any substantial concessions in exchange. Not only the rents of the port would be nationalized but also the city of Buenos Aires would be declared capital of the Republic. The majority in Congress, both in the Senate and the Chamber of Deputies would be in hands of provincial interests, and the Presidency, with its strong emergency powers and powers of intervention, controlled by the leader of this majority. A simple evaluation of their future position under the new constitution, would confirm for the leaders of Buenos Aires their initial decision to resist the integration of the province under these terms.

### **3. 2 The view of the delegates**

A complete explanation for the adoption of Alberdi's model as well as of the reforms introduced to this project in the final design would require a thorough examination of the actual positions of the delegates in the debates of the convention. Documentary evidence about the debates is unfortunately fragmented and incomplete. There are no records of the work of the commission of constitutional affairs that elaborated the draft and only few complete reproductions of the debates in plenary sessions. Scarce as it is, however, the evidence available is enough to argue that the majority of delegates did not adopt Alberdi's design as a mere matter of expediency, given the lack of alternative projects. Fragments of recorded debates as well as the events surrounding the work of the assembly suggest that most of the delegates shared the idea that Alberdi's project provided the best set of institutions not only for the country but also for the strategic context under which the constitution was being made.

Benjamín Gorostiaga prepared the official project of constitution with the collaboration of Juan María Gutiérrez, both representatives of the views of the liberal majority at the convention and strong supporters of Urquiza. Their project confirmed the main elements of Alberdi's design.<sup>33</sup> The project proclaimed the free navigation of internal rivers, the elimination of internal barriers to trade and the nationalization of the rents of all external customhouses. It also declared the city of Buenos Aires capital of the Republic. However, as a compensation for the separation of the city from the province, the project provided that the city of Buenos Aires

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<sup>33</sup> Apart from Alberdi's project, other sources of the constitution included the centralist constitution of 1826 and the American constitution of 1787 and the Cádiz constitution of 1812. See Bacque (1915: 141-43). See also Vanossi (1976).

would be entitled to elect deputies for the Chamber of Deputies and senators for the Senate.

Regarding the distribution of powers between the central government and the provinces, the project reproduced the model of a centralized federation advocated by Alberdi. In this sense, the central government maintained the power to intervene in the provinces, even without request of local authorities, and the Congress preserved the right to revise provincial constitutions. It is interesting to note, however, that the project of the commission invested the central government with even *stronger* powers than Alberdi's. The federal judiciary, for instance, was in charge of a new form of centralized control: the power to decide in conflicts between different branches of provincial governments.

Just like in Alberdi's model, the different branches of government were separated and elements of mutual checks were introduced to secure the balance of executive-legislative relations. Regarding the legislative process, just like in Alberdi's project, the president could only participate in it by means of his authority to initiate laws and exercise a veto subject to a two-thirds majority override.

The prerogative power of the president, however, was visibly enhanced in the project of the commission. Whereas in Alberdi's project the president could not declare the state of siege by himself when the Congress was in session, the project of the commission allowed him to bypass congressional authorization altogether in cases of extreme urgency. At the same time, a general provision was included authorizing the president to act by himself in *all* cases where the consent of the Senate was required but the Congress was not in session. In combination to the short duration of congressional sessions, these new rules clearly increased the residual powers of the president to act in unforeseen circumstances. Perhaps the only partial exception to this accentuation of presidential powers was the inclusion of the right of Congress to request reports to cabinet ministers and the proscription of delegation of legislative powers to the president.

The general scheme for the election of representatives and duration in office recommended by Alberdi was maintained.<sup>34</sup> Apparently, however, the framers did not share with Alberdi his same preventions against universal suffrage. According to the new constitution, the law of elections would be regulated by the national government, not by the provinces. The first national Congress enacted this law in 1857, which established universal male suffrage. Moreover, the national Congress rejected local constitutions when the latter attempted to impose voting qualifications (Cantón 1973: 20).

Although the project was ready for discussion by mid February, it was not submitted to plenary sessions until April. One obstacle was the emergence of internal conflict in the commission of constitutional affairs. While the project prepared by Gorostiaga and Gutiérrez synthesized the existing consensus among the liberal majority, members of the conservative minority at the convention (Colodrero,

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<sup>34</sup> We should note, however, two variants. On the one hand, the property qualifications to be elected deputy were removed while those required for president increased. On the other hand, the duration of senators in office was extended from 6 to 9 years, apparently to make this body a more conservative element in the system of government.

Ferré and Leiva) controlled the commission itself. This group opposed the liberals in a few but important aspects such as the location of the capital in Buenos Aires, the elimination of internal barriers to trade, and above all, the issue of religious tolerance.<sup>35</sup> In order to remove this obstacle, on February 23, two new members, Derqui and Zapata, were added to the commission and Ferré, then participating in the negotiations with Buenos Aires, was replaced by Zavalía (Martire 1982: 8-10). Even after these changes, however, the dynamics of the conflict with Buenos Aires made impossible the discussion of the project.

In spite of the siege, Buenos Aires showed an extraordinary capacity to resist thanks to its advantageous economic position. In January, the convention authorized Urquiza to use any necessary means to cease the conflict, implicitly including force (Scobie 1964: 81). Urquiza, however, decided to send a delegation to negotiate with Buenos Aires, perhaps expecting that the persistence of the conflict and the threat to use force in case of a failure to reach an agreement would convince the city to make concessions. Delegates of Urquiza reached a compromise on March 9 but its terms were completely unacceptable for the federalist leader: Buenos Aires required the appointment of delegates according to population and the limitation of Urquiza's powers to the conduction of foreign affairs (Scobie 1964: 84).

With the suspension of negotiations in March, further delays were unnecessary and, in fact, there seemed to be an extreme urgency to approve the constitution as soon as possible. The project was finally presented on April 18 and the discussion in particular took place between the 21st and 31st of the same month, that is, in only 10 days. A record in celerity, the average time of discussion for each article was 11 minutes and 30 seconds.<sup>36</sup> In spite of the brevity of discussions, it is possible to reconstruct some of the motivations that led the framers to the particular design of executive powers and the distribution of power between the central government and the provinces.

Most of the arguments on behalf of a vigorous executive authority were cast in terms of the belief that the greatest evil in Argentina was not so much the abuse of power by the government as the absence of an effective power to consolidate national unity. Just like Alberdi, most delegates in the convention seemed to perceive that only a strong power, capable of counteracting the political instability and extreme localism of the provinces, could save the country from anarchy. During the discussion of the Agreement of San Nicolás in the legislature of Buenos Aires, Juan María Gutiérrez, then minister of government of that province, defended the need of a strong executive authority against the argument that the Agreement was creating in Urquiza a despotic power. "All our evils," said Gutiérrez in response to Mitre, "come from the absence of a power, a force to tie up and give consistency to

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<sup>35</sup> From an average of 18 members that were present in the convention at the time of initiating the discussion of the project, around 10 were part of the liberal group that included leading figures such as Del Carril, Gorostiaga, Gutiérrez, Zavalía, and Seguí. The conservative group was composed of 6 delegates: Ferré, Díaz Colodrero, Zuviría, Pérez, Zenteno, and Leiva. In the jargon of the assembly the first group was called "círculo" and the latter "montonera." See Rosa (1963: 364).

<sup>36</sup> The calculus was made by Rosa (1963: 374).

otherwise separated elements.” (*Asambleas* 4:322). All those who defended the powers granted to Urquiza by the Agreement made similar arguments.<sup>37</sup>

Although impartial considerations were certainly involved in these views, it seems clear that the proposal of an executive invested with strong emergency powers was also based on a concrete political evaluation of the strategic context faced by Urquiza and the federalist coalition. Between May and August of 1852 alone three provincial governments were replaced by local revolts.<sup>38</sup> In this context, the rebels of Buenos Aires could easily frustrate the creation of the federal constitution by exploiting internal conflicts among provincial leaders. This fear was not preposterous. The province of Corrientes itself, located in the heart of Urquiza’s area of influence, provided support to a frustrated attempt of Buenos Aires to overthrow Urquiza in October of 1852 (Minutolo 1985).

We can perceive the presence of these concerns in the debate over the opportunity to approve the constitution while Buenos Aires was separated and on the verge of war with the federalists. On April 20, Zuviria, president of the convention and opponent of the institutional and political views of Urquiza’s supporters, argued for the convenience of suspending the approval of the constitution until peace between Buenos Aires and the federation was achieved. He presented a paradox: either the constitution would create a power so limited as being unable to restore order or so strong as to put at risk the very existence of a constitutional government of limited powers. By presenting this second alternative, Zuviria was clearly warning the delegates that they might be designing the powers of the president with an exclusive short-term concern, namely, the incorporation of Buenos Aires in terms favorable to the federalists.

Against Zuviria’s opinion that the new constitution would be impotent to resolve the crisis in Buenos Aires, delegate Zavalia stated that the best guarantee of order in the country is that “the constitution creates a treasury, an army, *and above all*, a Supreme Magistrate invested with detailed legal powers.” (*Asambleas* 4: 481)<sup>39</sup> Similarly, delegate Huergo said that in his opinion the constitution was the only efficient means to bring peace to the country. The Argentine Republic, he argued citing Alberdi, “needs a strong and vigorous government, but a government born out of the constitution.” (*Asambleas* 4: 483). Segui, finally, argued that the current rebellion of Buenos Aires made even more compelling the need to create the constitution to make, “if not impossible, at least more difficult the reproduction of similar events.” (*Asambleas* 4: 486).

One should note, however, that different from the arguments in favor of strong executive powers, some the arguments made in support of centralist institutions within the federal state seemed even less directly related to short-term partisan

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<sup>37</sup> See, in particular, the speech of Vicente Fidel Lopez. He argued, for instance, that the desire to organize the country since 1810 “never failed due to dictatorship but to anarchy”. He further specified that by anarchy he meant the predominance of local interests and provincialism over the collective good. See, *Asambleas* (Vol. 4, pp. 375-381)

<sup>38</sup> In two of these cases Urquiza used his personal influence to restore the previous governments. His intention was to avoid the spread of similar revolts. See Scobie (1964: 51)

<sup>39</sup> [my emphasis].

motivations. In a frequently cited statement, delegate Gutiérrez said on the session of April 20 that the United States provided the model of federal state that the constitution was about to create.<sup>40</sup> As we know, however, this model was adapted in significant ways, particularly in reference to the relatively high degree of centralization of power in the federal government. Adaptations such as the emergency powers and powers of federal intervention in hands of the president, certainly derived from the immediate interest in breaking the resistance of Buenos Aires. There were, however, more long-term concerns involved in other aspects of the centralist character of the future constitution, as one can conclude from the debate that led to the inclusion of provincial governors among the authorities that could be impeached by the national legislature.

On the session of April 26, Regis Martínez, delegate from La Rioja, suggested the inclusion of provincial governors among the officials that the Chamber of Deputies had the right to impeach. Alluding to the extreme personalization of power in the provinces, Martínez justified the addition arguing that it would be absurd to expect the impeachment of these governors by provincial legislatures. The majority of the members of these bodies, in his view, were either paid by the governor or under his influence (*Asambleas* 4: 520). Coming from a delegate that was supposed to represent state interests, this proposal shows an important degree of independence, particularly from the governors.

The proposal of delegate Martínez received the support of Zavalía, member of the commission of constitutional affairs. He argued that the impeachment of governors by Congress, like the right of federal intervention or the revision of provincial constitutions by Congress, fitted the model of a centralized federation, the only feasible federation in a country like Argentina, without republican traditions (*Asambleas* 4: 522). In spite of the opposition of Gorostiaga, the arguments of Zavalía in support of the provision decided the vote of the majority. On April 30, using arguments similar to Martínez and Zavalía, delegate Zenteno suggested that the lack of judicial independence in the provinces would justify the inclusion of conflicts between a provincial governor and a citizen within federal jurisdiction. This proposal, however, was defeated on the grounds that it would imply an excessive form of intrusion of the central government on local affairs.

Part of the reason for the celerity of the discussions, or even lack of debate in some cases, was the absence of strong divisions in the assembly. Few additions or corrections were made to the original project and many articles, particularly those related to the structure and division of powers, were approved by unanimity. As mentioned before, some cleavages existed between a conservative minority and a liberal majority. The minority, for instance, expressed disagreement about making Buenos Aires capital of the republic, the abolition of internal customhouses between the provinces, and very specially, to the issue of religious tolerance. The opposition, however, never threatened the stability of the assembly in spite of the fact that the

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<sup>40</sup> More exactly, he said that the American federation was “the only federation of the world that deserves to be imitated”. See *Asambleas* (Vol.4: 479).

only concession they obtained from the majority was the requirement that the president must be catholic.

Another reason for the celerity of the sessions was the seeming agreement within the majority to avoid long debates.<sup>41</sup> Probably by decision of Urquiza, the constitution had to be approved on May 1.<sup>42</sup> This decision makes sense in the context of the conflict with Buenos Aires. The race to approve the new constitution started few days after Urquiza abandoned the pretension to induce Buenos Aires to negotiate. In effect, by mid April Urquiza decided to take direct participation in the siege of the city of Buenos Aires that the rebels in the province of Buenos Aires were sustaining since the beginning of December (Scobie 1964: 86). In that context, the rapid approval of the new constitution was intended to signal the leaders of the city that, from then on, they would have to accept the constitution in the form it was approved or suffer an indefinite siege that could very well end in the direct use of force.

By May 1, then, the main task was concluded. A federation was finally formed and Urquiza, the obvious candidate for president, would now receive permanent legal powers to maintain the support of the provinces and force Buenos Aires to accept the new constitution as a *fait accompli*. To make more credible the commitment to impose the new constitution, the constitution-makers of 1853 included a provision according to which no reforms could be made before passing ten years. But in this respect, at least, the leaders of the federal republic would prove to be wrong.

#### 4. The incomplete constitution: the federation between 1853 and 1860

By the time the constitution was approved, there was no evidence that Buenos Aires would abandon its resistance. The resources that the port-city managed to obtain to resist the siege were significantly higher than those that Urquiza and the rebels of the province of Buenos Aires were able to collect together. In June, the failure of a blockade to the port of Buenos Aires led the siege toward a dead end. Without more resources to maintain his own forces, in July of 1853, Urquiza accepted a mediation to put an end to the siege.

From that date until 1860, the federation of thirteen provinces and Buenos Aires would *de facto* organize as separate states. This, however, only meant a temporary suspension of negotiations during which both sides would struggle to induce the other to back down from their respective positions. From the point of view of the leaders of Buenos Aires, at least for those who rejected the possibility of creating an independent state, the acceptance of a federal state was an inevitable element of any possible agreement. So was the acceptance of a relatively strong presidential office. They hoped, however, to introduce certain changes so that the new institutions would be less

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<sup>41</sup> Santiago Baque makes this observation for the session of April 21, when the delegates were discussing the convenience of declaring Buenos Aires capital of the federation. I think, however, that this observation is also valid for the rest of the sessions. See Baque (1915: 153).

<sup>42</sup> May 1 was the second anniversary of the Urquiza's manifesto against Rosas.

damaging to their political and economic interests. *Porteño* leaders expected, for instance, concessions in the design of rules of representation to give this province more weight in the making of national decisions, the resignation of Urquiza as president and/or the moderation of some of his “dictatorial” powers.

#### 4.1 Between bargaining and force

With Urquiza concentrated in building the new federal state, the different groups that dominated the political situation in Buenos Aires tried to debilitate the position of the federalists by using different strategies. The most radical group (the “separatists”), which gained control of the province after 1853 intended to signal the federalists that Buenos Aires had the capacity and the disposition to create a sovereign state and resist by force its integration. It is significant, however, that they avoided a formal declaration of independence that would have certainly caused a new war between Buenos Aires and the federalists.<sup>43</sup> Moderates (or “nationalists”), instead, wanted to make clear that the *de facto* independence of Buenos Aires was simply a temporary situation, a suspension rather than a complete breakdown of negotiations. Both groups, however, relied on the ability of Buenos Aires to sustain itself during the secession and hoped that in the absence of sufficient revenues, the federalists would be forced to make some important concessions. In other words, even if the constitution of a totally independent state was impossible in the long run, Buenos Aires had a clear capacity to wait for better conditions of negotiation than those imposed by Urquiza and his supporters in the provinces. In the meantime, the leaders of Buenos Aires would attempt to break the current majoritarian coalition by creating or exploiting divisions in it, eventually making alliances with potential defectors.

The strategy of Urquiza, in turn, had three main components. In the first place, he sought to isolate Buenos Aires from the rest of the provinces. The goal was to eliminate any possible form of influence of Buenos Aires in the provinces. The success of this move, of course, depended on the previous unification of the thirteen provinces under Urquiza’s leadership. Apart from his personal influence, Urquiza tried to achieve this goal by resorting to his new institutional powers. As expected, the power of federal intervention and the state of siege were crucial instruments in this task. Between 1853 and 1858 the national executive took direct political control of several provinces affected by internal turmoil, such as La Rioja, Santa Fe, Jujuy and San Juan. Some other provinces, like Corrientes, were declared under state of siege (Pelliza 1923: 199-201; Scobie 1964: 107-112). In all these cases, the president used these constitutional powers to contain internal struggles within the federation or prevent challenges against his own authority.

A second, crucial move was to increase the capacity of the federation to survive without Buenos Aires. The economic dependence of the federation on Buenos Aires could only be overcome by eliminating the monopoly of its port over international trade. The first step in this direction was originally taken by a decree of August of

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<sup>43</sup> While in 1854 a constituent convention dominated by radicals created a new constitution for Buenos Aires, it left undefined the exact political status of this province. See Scobie (1964: 165)

1852, by which Urquiza established the free navigation of internal rivers and opened the ports of the littoral provinces to the free commerce with foreign nations. This was one the main motivations behind the war against Rosas and a key aspect of the new constitution. In fact, so much hope was placed on the economic benefits of the free navigation of internal rivers that some people, like Alberdi himself, thought that if the strategy was successful, the federation could very well do without Buenos Aires.<sup>44</sup>

A final element to induce Buenos Aires to accept the federal constitution was making credible the threat to use force in case of intransigence of this province. In a way, this depended on the results of the previous actions. The more solid the coalition of federal forces under Urquiza's command and the more able the federation to sustain itself economically, the more credible would be the threat to use force as a last resort. To strengthen this strategy, Urquiza made an additional move. He attempted to obtain the recognition of the federation as a new state (thus making appear the separation of Buenos Aires as a simple case of internal sedition) and revive the alliance with Brazil and Uruguay that in 1852 helped him to win the war against Buenos Aires.<sup>45</sup>

In sum, the strategy of Urquiza had a double objective. On the one hand, by making the federal state self-sufficient he wanted to increase his capacity to hold out while negotiations were suspended or even create an outside option if the bargaining process finally collapsed. On the other hand, by making more certain the use of force in case Buenos Aires remained intransigent, he also wanted to worsen Buenos Aires' alternative to a negotiated agreement.

Until the end of his presidential period, and in spite of numerous conflicts in the provinces and attempts by Buenos Aires to produce internal divisions, Urquiza was able to maintain some unity within the federation. He failed, however, to provide the new state with sufficient economic resources to survive on its own. The opening of internal rivers to international commerce never really broke the monopoly of the port of Buenos Aires, more accessible and better equipped for trade (Scobie 1964: 157-8). The availability of foreign credit, in turn, was too scarce to compensate the insufficiency of funds. Through time, this situation obviously weakened the bargaining position of Urquiza. In the eyes of the political elite in Buenos Aires (whether they were moderate nationalist or radical separatists) it was evident that the rest of the provinces needed Buenos Aires more than this province needed them. The leaders of Buenos Aires had no rush to reach an agreement and, in fact, they realized that the more they were able to wait, the more concessions they could expect to obtain from the federalists.

In the end, however, the greater ability of the leaders of Buenos Aires to hold out produced a mixed result. The intransigence of *porteño* leaders led to a breakdown of negotiations. In 1859, Urquiza finally decided to initiate a new war against Buenos

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<sup>44</sup> See letter of Alberdi to Urquiza of October 21 1852, in Cárcano (1938: 18-19)

<sup>45</sup> As it was noted, the alliance with Uruguay and Brazil was created in 1852 to support Urquiza in his war against Rosas. The participation of Uruguay and Brazil was at the time motivated by the interest of these countries in breaking the blockade imposed by Buenos Aires on the navigation of the River Plate system by foreign ships. With the accomplishment of this objective, the alliance was dismantled.

Aires in which the latter was defeated.<sup>46</sup> The immediate consequence of this result was an agreement where Buenos Aires was forced to accept its integration to the federation under political conditions equal to those of the other provinces. At the same time, however, this was an agreement in which Buenos Aires obtained several concessions from the federalists. In spite of having lost the war against the federation, Buenos Aires did not accept the constitution as it was written in 1853 in all its parts. A condition for incorporation, as we will see, was a constitutional reform in which Buenos Aires was able to postpone the immediate nationalization of the rents of its port, avoid the federalization of the city of Buenos Aires as capital of the nation, reduce the powers of the central government and eliminate some of the discretionary powers of the president. In other words, while the federalists obtained the integration of Buenos Aires in a constitution that maintained some of the essential traits of its original design, neither actor was ultimately able to induce the others to accept his most preferred set of institutions.

#### **4.2 The reforms of 1860 and the integration of Buenos Aires**

In 1857, the Minister of Interior sent a note to the governor of Buenos Aires inviting this province to examine the constitution of 1853. Implicitly, this was an offer to negotiate some constitutional reforms even though the constitution was not supposed to be amended until 1863. The government of Buenos Aires, then in hands of Valentín Alsina, a radical opponent of Urquiza and the federalists, rejected the offer.<sup>47</sup> Knowing the already weak economic position of the federation, the governor speculated that at this point there was an additional reason to hold out. With presidential re-election precluded by the constitution, Urquiza would finish his term in 1859. This opened the possibility that a new president, probably more debilitated than Urquiza, could be forced to make extensive concessions in exchange for the integration of Buenos Aires to the federation.

Given this context, by the early months of 1859 Urquiza faced two interrelated choices: whether to continue in power after the end of his term and whether to launch a military attack to incorporate Buenos Aires by force. The end of Urquiza's presidency without the incorporation of Buenos Aires could mean both the collapse of his future political influence and the likely defeat of his effort to achieve national unity in terms favorable to provincial interests. In this situation, one possible plan, supported by some members of the government, was to obtain the re-election of Urquiza against the explicit proscription of the constitution.<sup>48</sup> Urquiza was able to do that given the support he was still able to obtain among a majority of provincial governors. This option would eliminate the immediate problem of presidential succession and perhaps

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<sup>46</sup> The break of a war is an indication that Urquiza's threat to launch a successful military attack might not have been credible in the eyes of the leaders of Buenos Aires. As Jon Elster points out, the fact that a threat has to be carried out, obviously shows it has not worked. See Elster (1995d)

<sup>47</sup> Valentín Alsina, leader of the rebellion of 1852 and governor of Buenos Aires for a brief period, was elected governor again this year.

<sup>48</sup> In relation to this alternative, see the letter that Alberdi sent to Urquiza on May 6, 1859, in Cárcano (1938: 523-33)

secure the survival of the coalition that sustained the federal state. The continuity of Urquiza, however, would preclude the possibility of any future negotiation with Buenos Aires. With the government of Buenos Aires under the control of the radical group, the latter would never accept a negotiation with the federalists if Urquiza remained as president. This meant that an open war would be the only option left to achieve the integration of Buenos Aires.

From this perspective, it is necessary to analyze what was a stake in a war between the federalists and Buenos Aires. If Urquiza considered that his probability of success was high, a war could be perhaps the best choice. The defeat of Buenos Aires could force the resignation of governor Valentín Alsina and induce Buenos Aires to negotiate its incorporation under a new governor, perhaps a moderate more inclined than Alsina to a negotiated agreement with Urquiza. The probability of success, however, was uncertain. Urquiza spent the whole year of 1858 desperately seeking support from Brazil or Uruguay in case of a war against Buenos Aires. This support was crucial to block the entrance of ships to the port of Buenos Aires and break the capacity of the city to resist a long siege. Yet, this help never came. This meant that short of a rapid defeat, the situation of 1853, a long and costly siege of the city of Buenos Aires, could be repeated.

Between April and May of 1859 Urquiza finally made two crucial decisions. In the first place, he decided to leave the presidential office to a person of his choosing so that he could have control of the future government without violating the proscription of re-election imposed by the constitution.<sup>49</sup> At the same time, right after proclaiming Santiago Derqui (his Minister of Interior and close adviser) as future presidential candidate, Urquiza decided to risk of a war against Buenos Aires.

The outcome of this war has been traditionally regarded as a puzzle in Argentine history. While Urquiza managed to obtain a quick victory over Buenos Aires, he backed down from destroying the armed forces of this province and imposing a total defeat. Urquiza let the leader of the *porteño* army escape with most of his forces intact and avoided entering the city. He also invited Buenos Aires to negotiate the conditions of its integration rather than dictating them. Why?

The rationale of this action may become clear when analyzed in the context of the bargaining game between Urquiza and the leaders of Buenos Aires. The defense of Buenos Aires was in charge of Mitre, a moderate who was by then one of the strongest candidates for governor of Buenos Aires. Given that some form of voluntary agreement was ultimately desirable, this meant that Urquiza had to save Mitre's face if he wanted to preserve the latter as a potential substitute of incumbent governor Valentín Alsina in the negotiations (Tonelli 1995: 22). This interpretation of events might explain why Urquiza limited himself to demand the resignation of Alsina and the negotiation of a peace agreement preparing the integration of Buenos Aires to the federation.

On November 11, Urquiza and Buenos Aires signed an agreement establishing the conditions for the incorporation of the latter to the federal state. In an apparent

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<sup>49</sup> In this respect, Urquiza seemed to have followed the advice of Alberdi. See the letter Alberdi sent to Urquiza on May 6, 1859, in Cárcano (1938: 523).

paradox, the defeated party obtained several concessions. The reason for this attitude on the part of Urquiza was probably the same as for limiting the extent of his military victory: he knew that only by making some concessions to the moderates in the city would they be able to keep the radicals at bay and reach a rapid agreement.

Buenos Aires was forced, of course, to resign its status as a separate state. Yet, its incorporation to the federal state would not be made without first providing some guarantees. In the first place, Buenos Aires was given the option between accepting the constitution as it was approved in 1853 and proposing reforms. In the last circumstance, a national convention, in which Buenos Aires could appoint delegates according to population, would be in charge of accepting or rejecting the reforms. There would be no ratification requirement for the decisions of this convention, but Buenos Aires would not be forced to accept any division of its territory without previous consent. In particular, it could not be forced to accept the federalization of the city or the division of the province. According to the agreement, the customhouse of Buenos Aires would be nationalized. Yet, Buenos Aires would maintain the same level of rents as in 1859 until five years after its final incorporation (Sampay 1975: 381-84).

Buenos Aires decided to call a provincial convention on February of 1860 and, as one could expect, it proposed several reforms to the federal constitution. In spite of the extension of the reforms and the fact that some of them were obviously intended to protect the political and economic interests of Buenos Aires, they were accepted without relevant opposition by a national convention formed in September.

The general logic of the reform was oriented toward a stronger defense of provincial interests against potential encroachments of the central government and a certain limitation of presidential powers. The delegates at the Buenos Aires convention made public their disagreement with the rule of equal representation of the states in the Senate, but did not insist in changing this rule. Evidently, they knew that such reform would never be accepted by the national convention. Given this constraint, the convention decided to eliminate some of the previous powers of the Senate such as its exclusive initiative to propose constitutional amendments. Regarding the powers of the central government, the reform eliminated the revision of provincial constitutions by the national Congress, its right to impeach provincial governors, and the power of the federal judiciary to intervene in conflicts between different branches of provincial governments. The institution of federal intervention was maintained, but request by local authorities was necessary in cases of internal rebellion or invasion by other provinces. The federal government could only act by itself in cases of foreign attack or to defend the republican form of government.

With respect to presidential powers, the main target of the reform was to eliminate areas of discretionary authority. The institution of the state of siege, for instance, was preserved but the reform would eliminate the possibility that the president could declare it when the Congress is in session. Following a similar logic, the delegates from Buenos Aires proposed that the president could not make permanent appointments that require consent of the Senate during the recession of Congress. In other words, a relatively strong presidential office, particularly regarding the power to intervene in internal conflicts, was maintained. The future executive, however, would have a more limited capacity to decide in these cases by his own authority.

The delegates at the convention justified these reforms arguing that they would make the Argentine constitution more compatible with the logic of the American constitution, the supposed model on which it was based. Delegate Sarmiento, the liberal thinker who in the 1840s celebrated with Alberdi the virtues of centralism and concentration of powers in the executive, was now the main speaker of this position. According to his view, the constitution of 1853 (as well as its precedent, Alberdi's project) was not an original creation but just an imitation—and a bad one at that—of the American constitution. Sarmiento depicted the “originalities” of the constitution, like the idea of a centralized federation or the strong emergency powers of the executive as deviations from the original model that only the ignorance or the bad faith of the designers could explain. Put it differently, according to Sarmiento, either the delegates did not know much about constitutional law or they were consciously making a constitution to meet the needs of Urquiza. In any case, he saw the constitution as an incoherent text that invited national authorities to abuse their power.<sup>50</sup>

Following these ideas, the report of the convention argued that the concept of federation was perverted in 1853 with “the deceitful excuse of originality.” (*Asambleas* 4: 769). But there can be no originality, according to the same report, in matters where Argentina had no experience. How can Argentine constitution-makers, asked the report, decide the proper balance of power between the central government and the provinces if the idea of federal law had no precedents in this country? (*Asambleas* 4: 769). The Argentine federation, delegate Velez Sarfield argued, was always an invention borrowed from United States (*Asambleas* 4: 791). If Argentines wanted a federation, or so the argument went, they should go back to the sources.

Although these arguments were formulated in impartial terms, it is clear they were mostly strategic. The American constitution, no doubt, was attractive to the delegates. It was a commonplace among the liberal elites of the time to admire the economic and political success of the American federalists. Yet, like Sarmiento few years before, many of the *porteño* delegates shared the view that the institutional model of the American constitution did not suit the political conditions of a country like Argentina.<sup>51</sup> In fact, the real problem for the delegates was not centralized government or a strong presidency but a government controlled by interests inimical to Buenos Aires. Expecting to be a minority in the new state, representatives of Buenos Aires naturally tried to eliminate those institutions that were dangerous for the independence and autonomy of the provinces—now including Buenos Aires itself, like the revision of provincial constitutions by Congress.

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<sup>50</sup> The new institutional views of Sarmiento were known in 1853, when after making public his disagreements with Urquiza's leadership, engaged in a polemic with Alberdi about the meaning and interpretation of the new constitution. Sarmiento argued that since the source of the constitution of 1853 was the American constitution, the former should be interpreted and applied according to the constitutional jurisprudence of the United States, particularly in those aspects where it seems to depart from the precedent. Alberdi, in turn, argued that the constitution was an original creation that should be interpreted and applied according to national precedents. See Sarmiento, *Obras Completas* (1909), Vol. VIII, and Alberdi, *Obras Selectas* (1920), Vol. X.

<sup>51</sup> Indeed, some of the delegates were well-known sympathizers of a centralist state.

As a hedge against an uncertain future, the delegates from Buenos Aires also had an interest in restraining the power of the executive to act in cases of internal conflict. Since the presidency was currently in hands of federalist forces and they could not predict yet who will control it in the future, people like Mitre or Sarmiento, otherwise defenders of a strong executive authority, were now advocating a limitation of emergency powers and powers of federal intervention. From this perspective, it should not be surprising that few years later, when the same actors gained control of the presidency, they would renege in practice the same principles they were now defending in theory.<sup>52</sup>

More complex is perhaps to explain why did Urquiza, then commander in chief of the national army and governor of Entre Ríos, and Derqui, the new president of the federation, supported these reforms. We can also find in this context the presence of strong strategic reasons. Urquiza had two interrelated objectives at the time. On the one hand, he wanted to exercise national influence from his position of power in Entre Ríos. His province was the most important center of economic and military power of the federation and, as such, the only real counterweight to the influence of Buenos Aires over the national government. On the other hand, Urquiza wanted to preserve his control over President Derqui. In both respects, it is clear that the attenuation of the powers of the central government and the president, was not against his immediate political interests.

President Derqui, in turn, though he surely disliked the reforms, was in a weak position to oppose the demands of Buenos Aires. Since June of 1860, at least, it was evident that he wanted independence from Urquiza in the conduction of the national government. He could only do that, however, by obtaining support from Buenos Aires. In this sense, accepting a decrease in his future powers can be read as the price paid by Derqui to neutralize the influence of his own creator.

The document that resulted from the reforms of 1860 sealed then an institutional compromise in which the interests of all the relevant political actors would be protected or at least not seriously threatened in the presence of changing political conditions. Like in the original pact between Urquiza and provincial leaders, the governors would maintain their spheres of local influence in exchange for support to the national government. The national government and particularly the president would maintain essential instruments of control over the provinces, such as the power of federal intervention and the state of siege. The attenuation of the most centralist features of the constitution of 1853 provided the leaders of Buenos Aires and the leader of Entre Ríos, the second most powerful province, additional guarantees that their positions of power would not be altered by the eventual alternation of different interests in the presidency.

Although this institutional compromise would prove to be successful in creating a stable constitutional government in Argentina, the effective application of the new constitution took two more years and a new war from which Buenos Aires finally gained the command of the national government. Right before the formal

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<sup>52</sup> On the use of presidential power during the presidencies of Mitre and Sarmiento, see Matienzo (1910).

incorporation of Buenos Aires to the federation, the political conflicts between Derqui and Urquiza created a situation that played in the hands of Bartolome Mitre, governor of Buenos Aires since 1860.

By 1861, the cohesiveness of the federal coalition was completely broken: the provinces were already divided between supporters of Mitre, Urquiza and Derqui. In September of that year, Mitre provoked a new war, which he knew Urquiza had neither the interest nor the clear capacity to win. In the battle of Pavón, after a farce of combat, Urquiza withdraw his troops and let Mitre proclaim the victory. In one year, previous resignation of Derqui, Mitre was being elected president of the federation.

### **Conclusions: the origins of a presidential republic**

I have argued in this article that the constitution of 1853-60 can be explained at two different, but in the end complementary, levels of analysis. In its general aspects, such as the presidential form of government and some areas of executive power, it was mainly the result of a conservative brand of liberalism concerned with the creation of political order and the building of effective state power in a context of territorial fragmentation and civil strife. In matters of detail and distributional issues, however, the final design emerged from a protracted bargaining process, punctuated by the use of force. In this respect, different expectations about the future and different levels of bargaining power among the main actors were crucial in determining the outcome of the constitution-making process.

For more than four decades, the country experienced a stalemate between federalists in the interior and littoral provinces and anti-federalists in Buenos Aires. As we have seen, this situation was only solved in 1852, when in alliance with neighbor countries, the governor of Entre Ríos was able to defeat Buenos Aires and create a federalist constitution with the support of local leaders. The constitution was made under the influence of Urquiza, military leader of the federalist coalition and sure candidate to the presidency. Given the primary interest of provincial governors in incorporating Buenos Aires, Urquiza was able to demand and obtain from them a broad delegation of powers to organize a constitution-making process aimed at preventing the likely opposition of this province. Urquiza personally selected or supervised the names of most delegates, no ratification process in the provinces was required, and the principle of simple majority was observed to adopt decisions at the convention. All provinces, in addition, would have an equal number of representatives.

While these rules would effectively weaken the bargaining position of Buenos Aires at the convention, they would also make possible for Urquiza and his supporters at the convention to adopt institutions with a relative degree of autonomy from the governors. This autonomy was translated in the creation of a central government and particularly a presidential office with important means of control over the provinces. While Congress was invested with the authority to revise provincial constitutions and impeach governors, the president obtained the most important residual powers to act in cases of internal conflict. Such were the powers to decide the suspension of constitutional guarantees and declare the intervention of provinces in cases where the Congress was not in session.

The power of Urquiza over the governors, however, was never absolute. Although the approval of the constitution did not require formal ratification by the provinces, it was clear that, to be accepted, the constitution should contain some minimal safeguards to protect the interests of local governors. Some of these safeguards were the separation of power between executive and legislature, the indirect election of presidents by electors from the provinces, bicameralism, the rule of equal representation in the Senate, and, above all, the local election of governors. One should note, however, that the most important mechanism in hands of the governors to check the power of the national government resided in their *de facto* control over local elections. Due to this control, the governors were not only arbiters in the election of presidents but also the ones who decided the level of legislative support that presidents would have in the Chamber of Deputies and the Senate.

This constitutional arrangement was unacceptable for the leaders of Buenos Aires. After the military defeat of the province, the creation of a federal state could not be disputed. Yet, there were different areas of design where *porteño* leaders could expect to obtain a better agreement, such as one adopting proportional rules of representation in the Senate. Being a sure minority in the future, they also wanted a more limited central power and a relatively weaker presidential office than the one created by the federalists. This was the reason why the province would finally reject participation in the convention and resist its integration to the federation for seven years.

While the negotiations that preceded the integration of Buenos Aires gave many concessions to this province, in the end, neither Urquiza nor the leaders of Buenos Aires were able to induce the other to accept an agreement in their own terms. Since the union of all federal forces had the potential to defeat Buenos Aires in an open war, Urquiza attempted to use this capacity as a threat in case of a total breakdown of negotiations. This military advantage of the federalists, however, was never so great as to permit imposing on Buenos Aires an easy or rapid defeat.

The financial position of the federalists was weak and a relatively long war would have for them an enormous cost. Buenos Aires, in turn, had sufficient material resources to survive while negotiations were suspended and even resist for some time a military attack, in case of a failure of negotiations. This is the reason why the strategies of radical separatists and moderate nationalist in Buenos Aires eventually converged. While the intransigence of separatists forced the federalists to launch a war against Buenos Aires, the impatience of the federalists to reach an agreement led to a compromise with the moderates in which the province obtained partial satisfaction of its demands. The leaders of Buenos Aires did not succeed in introducing rules of proportional representation or eliminate all the centralizing features of the constitution that were a threat to their interests. They did succeed, however, in placing several limitations to the powers of the central government and the president as well as delay the immediate and complete nationalization of the rents of the port.

The system of distribution of power that emerged from this process was, as I argued in the introduction, an odd mixture of power-concentrating and power-sharing elements. While a federalist state was created, the central government in general and the president in particular were able to control local powers by means of the institution of federal intervention. Although some checks-and-balances principles were adopted in the organization of executive-legislative relations, the president was invested with

strong emergency powers that could turn him into a hegemonic actor in situations of internal conflict. It was unlikely that under conditions of open political competition this system of distribution of powers could provide mutual guarantees for government and opposition. Yet, given the conditions of limited competition and electoral control under which the constitution was created, the design of the constitution of 1853-60 became a source of stability for seven decades. Let me analyze this point in more detail.

Many issues, like the federalization of the city of Buenos Aires, remained unresolved after the compromise of 1860. The institutions that emerged from the latter, however, created a lasting equilibrium among the interests of the main political actors. While presidents were invested with strong emergency powers to regulate internal conflict, they were also forced to compete for electoral support in the provinces in order to be elected and form a solid legislative support. According to this arrangement, the president would protect the authority of provincial governors in their local spheres of influence as long as governors collaborated in supporting the president in office. The whole logic of the system, however, was sustained by an *informal* norm: the control of local elections by the governors. Local control of elections made possible not only the formation and perpetuation of local oligarchies but also provided a reliable source of political support to the president. On the one hand, it could give the president a stable majority support during his term in both the Senate and the Chamber of Deputies. On the other hand, given the participation of the provinces in the election of presidents, local control of elections could also sustain a national system of control of presidential succession.

Urquiza (1854-60) was the first president who controlled his own succession by appointing Santiago Derqui (1860-62) as the president who would complete the task of national unification. The growing conflicts between Urquiza and Derqui, however, led to the disintegration of the federalist coalition that sustained Urquiza's government. Neither Mitre (1862-68) nor Sarmiento (1868-74) were able to reestablish a stable alliance with provincial governors in order to control the mechanism of presidential succession. Since the election of Avellaneda (1874-80), however, this alliance was again in place and was able to overcome the dissent of some members of the elite, like Mitre, who protested the manipulation of electoral results. By the election of Roca, in 1880, the alliance between the central government and a majoritarian coalition of provinces already became the symbol of a hegemonic system of oligarchic domination known as National Autonomist Party (PAN).<sup>53</sup>

The existence of informal agreements between regional oligarchies and the central authority on the rules of political competition played a strategic role in the observance of constitutional rules for the transfer of power (Negretto and Aguilar Rivera 2000). While neither presidents nor governors could be re-elected, the mechanism of electoral control provided them with an influence over their successors that reduced the temptation of an extra-legal continuation in power or the promotion of constitutional reforms to establish the possibility of re-election. At the same time, once they left power, a large number of governors and several presidents also found a place in

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<sup>53</sup> On the formation and consolidation of this system, see Botana (1985: 74-5)

institutions, like the Senate, from where they could continue exercising political influence or wait until they could be re-elected (Botana 1985: 110-12). In this sense, although the system prevented a real alternation in power between different parties it did facilitate a limited circulation of power among different fractions of the elite.

The practice of sharing power by inter-elite agreements and electoral control became part of a complex set of arrangements aimed at lowering the stakes of political competition and restraining the power of majorities. This was particularly the case of the competition for the presidency, the highest prize in the system, but it also applied to the competition for seats in the Chamber of Deputies, which according to the constitution should be distributed by simple majority rule. Some formal institutions created in 1853 interacted with informal norms to produce a similar practice of sharing power. Such was the case of separation of powers, federalism, bicameralism, or the indirect election of presidents. A system of independent courts, which since 1864 received the power of judicial review, also integrated the set of guarantees provided to minority interests. Finally, a highly stringent amendment procedure, requiring two-thirds of the vote of Congress to convoke a constituent convention, mandated the necessary agreement with the minority to approve changes to constitutional rules.

Over time, however, the system of mutual balances inscribed in the constitution and in informal practices was gradually destroyed, as the presidency became an increasingly independent and dominant institution. From 1862 to 1880, the federal intervention and the state of siege were applied 27 and 15 times, respectively, in most cases by executive decree (Botana 1993: 235; Molinelli 1991: 136-7). These measures were aimed at eliminating the old-style provincial *caudillos* who defied the national government or attempted the creation of regional hegemonies by invading or intervening in the local affairs of other provinces. This process, however, culminated by 1880, when after the federalization of the city of Buenos Aires, no real opposition remained to counterbalance the powers of the central government.

From 1880 to 1916, the coercive powers of the president were less visible. The use of state of siege became less frequent and federal interventions were declared most of the time by congressional law (Molinelli 1991: 136). This greater involvement of Congress, however, signaled less a decrease in the power of the president than his stronger command over stable legislative majorities during the period of the PAN domination. As Botana has observed, following the analysis of Sommariva, the use of federal intervention in this period played a more central role both in the control of potential oppositions within the coalition of provinces that supported the president and in the regulation of local conflicts (Botana 1985: 131). In the latter cases, the intervention was not always directed to preserve the existing authorities and, in fact, in most cases where they were declared without request from local authorities, the federal government tended to support opposition groups (Botana 1985: 133). This use of the federal intervention, in which the central government reserved for itself the role of an arbiter, indicates a more effective use of the institution as an instrument of political manipulation.

Ultimately, the stability of the constitution was closely dependent on its ability to provide political space and influence to actors with veto power over the system. As long as all the relevant political groups felt that their interests were sufficiently protected under the existing arrangements, no major challenge emerged. Over time,

however, the liberal regime produced different exclusions. By the 1890s, various opposition groups were formed demanding political participation by means of open and free elections. The largest and most important of these groups was the Radical Civic Union (UCR), which rejected any form of compromise short of a comprehensive and effective electoral reform.

In 1912, after successive attempts to co-opt the opposition and under the threat of growing political unrest, president Roque Saenz Peña finally agreed with the leader of the UCR, Hipólito Yrigoyen, an electoral reform that would grant fair and competitive elections. This pact sealed the demise of the liberal republic and, with it, also the end of the stability of the old constitution.

Once free competition for power was allowed, the traditional parties of the liberal republic experienced a gradual decline in popular support until in 1916 Yrigoyen won the presidency. In the eyes of the new president, his election meant not simply a change of government but a transition from an oligarchic to a democratic regime in which the old political class should have no place. Accordingly, Yrigoyen felt no political constraints to use the powers of the executive, like those of federal intervention, to reduce the institutional space of the traditional parties, still strong in the provinces and the Senate. The response of the latter did not take long. Unable to regain control of the presidency by means of competitive elections, the old elite retaliated by supporting a conservative coup that put an end to the democratic experience in 1930.

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