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A SURVEY OF CONSTITUTIONAL DEVELOPMENTS IN ARGENTINA AND URUGUAY

Ignacio Winizky†*

INTRODUCTION

AFTER the discovery of America by Christopher Columbus, the Spanish nation by the efforts of its hardy and indomitable "conquistadores" rapidly explored and appropriated the newly discovered territory, thus becoming mistress of much of the Western Hemisphere. The River Plate Region was discovered 23 years after Columbus landed on American soil, in the year 1515 by a Spanish captain, Juan Diaz de Solis. Seeking a route to the Indies he sailed into the mouth of the great River Plate which was so wide that he called it "Sweet Sea." In his endeavor to find a route to the East, he failed, but he did land on the soil of a region which now comprises the two modern South American nations of Argentina and Uruguay. With its early genius of administrative organization, Spain divided its American possessions into vast Viceroyalties, among them that of the River Plate which included what is today Argentina, Uruguay, Paraguay and part of Bolivia. The capital city was Buenos Aires, a little village on the coast of the river, and the enormous expanse of territory governed by the Spanish Viceroy from Buenos Aires was distinguished in that it was the poorest of all the Viceroyalties from an economic point

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of view, for no gold or silver was produced to enrich his Catholic Majesty's coffers. Only cattle roamed the area and from this source the few inhabitants eked out a precarious living from the exportation of salted hides. Their loyalty to the Spanish crown remained unbroken until the early part of the 19th century when the winds of the French Revolution, the behavior of the North American colonies, and the influence of the encyclopedists began to shape the minds of the people. A restlessness began to appear. When Napoleon invaded Spain and Ferdinand VII of Spain abdicated, the historical moment came. The year 1810 marks the beginning of the revolutionary movements against Spain in almost all the Spanish American colonies. Some years thereafter, the Spanish domination in the Americas had been broken and the Latin American Republics had come into being.

Approximately one century and a half ago the countries of Argentina and Uruguay entered the community of nations as independent states. They organized themselves constitutionally, approximately ninety years ago in the case of Argentina, which adopted a federalist form of government, and 120 years ago in the case of Uruguay, which organized itself as a unitary nation. In recent years changes have been made in the constitutions of both nations. In Argentina these changes were largely the result of a political revolution which took place successfully in 1943. Since that time a large number of legal alterations have occurred in Argentina, a principal one being the amendment of the Constitution in 1949 after 89 years of an unaltered constitution. These amendments resulting from political, social and economic change are still so near from a viewpoint of time that it is difficult to gain sufficient perspective necessary to make an objective and scientific synthesis of them. There is no vast amount of doctrinal study or court decisions yet available. Still it is possible to give account of the leading changes brought about by these constitutional amendments.

ARGENTINA

The Constitution of 1853

From the time of Argentina's acquisition of independence from Spain until 1853, the nation struggled for political organization. Prior to the adoption of the Constitution of 1853, the land passed through anarchy followed by tyranny, such conditions lasting almost twenty years exacting a heavy price in economic chaos and bloodshed. These conditions were brought about in large measure by the struggle between the forces of centralization and decentralization. When the revolution against Spain took place in 1810, the River Plate Viceroyalty was divided into administrative sections in charge of governors who had their offices located in the principal city of each section. Such a system created a feeling of autonomy and governmental decentralization. When the Spanish authorities fell a struggle between these sections or provinces began. The Province of Buenos Aires with its capital city was by far the richest province both financially and culturally. It was only natural that Buenos Aires should desire to lead and to control and to do this, of course, it was an exponent of a centralized government emanating from this province. Buenos Aires led the fight for a unitary type of government, such as that prevailing in France or in Spain. But the other provinces jealous of their autonomy largely supported a federal system so that power would be dispersed in the various provinces or states with the central government possessing only limited powers sufficient to unify the country as a nation. Thus a constitutional struggle based on sectional antagonism ensued, which lasted from the date of independence until 1853. During those years a so-called constitutional organization existed under the form of provisory rules, provisional statutes and the constitutions of 1819 and 1826. From these various provisions the principal characteristics of the Constitution of 1853 began to emerge.

When the dictatorship of Juan Manuel de Rosas, which lasted

almost twenty years and during which culture was exiled and economic progress stopped, was overthrown by a military government headed by General Urquiza, governor of the rich province of Entre Rios, all the provinces were convoked in order to create a constitutional organization which would preserve their rights and autonomy and at the same time create a central government capable of uniting the nation, promoting the progress of the republic, and securing internal peace. From this convocation the Constitution of 1853 emerged. This Constitution was not accepted by the Province of Buenos Aires and for something like six years two politically independent regions existed in what is now Argentina, *i.e.*, the Argentine Confederation and the Province of Buenos Aires. In November 1859, Buenos Aires was defeated in battle and after negotiations, both parties agreed to convoke another constituent congress to discuss amendments proposed by Buenos Aires. These amendments were adopted to protect the position of Buenos Aires, following which the capital province entered the union.

The Constitution of 1853 was created by men well acquainted with the historical and philosophic currents predominating in that and earlier years. They were influenced by "natural law" ideas developed by Pufendorf, Grotius, and Rousseau. They knew perfectly "L'esprit des Lois" of Montesquieu and "The Federalist" of Madison, Hamilton and Jay. These and other authors and their philosophical, political and juridical ideas inspired Juan Bautista Alberdi when writing his book, "The Bases and Starting Points for the Organization of the Argentine Confederation." This book ended with a projected constitution, the book and project forming the fundamental sources of the constitution itself. This author and the other men of the Constitutional Congress also bore in mind the Federal Act of the Swiss Constitution, the French Constitutions of 1793 and 1848, and very specifically the Constitution of the United States. The influence of the latter was very strong. In fact a debate occurred among the Argentine

jurists as to whether the Argentine Constitution was or was not a copy of the North American Constitution. The debate was decided by the Supreme Court of the nation which stated that the charter was not a copy, that local facts and cases, not the United States Constitution, should be the first sources of interpretation. Even though the United States Constitution was a great inspiration, still the historical, geographical and demographical characteristics of the nation as well as its economic and cultural practices were facts which had the most important influence on the creation of the Constitution.

The constitution begins with a preamble which reads as follows: "We, the representatives of the Argentine Nation, assembled together in General Constituent Congress by the will and election of the Provinces that compose it, in fulfillment of pre-existing pacts, with the object of constituting a national union, establishing justice, consolidating internal peace, providing for the common defense, promoting general well-being, and securing the blessings of liberty to ourselves, to our posterity, and to all men in the world, desirous of dwelling on Argentine soil: invoking the protection of God, source of all right and justice, do ordain, decree and establish this Constitution for the Argentine nation." Slight but important differences can be noted between the preamble of the Argentine Constitution and that of the American Constitution. Two differences are worthy of discussion. The United States preamble states that the objectives of the constitution are for "ourselves and our posterity," while the Argentine Constitution states such objectives to be for "our posterity," and *for every man in the world who may wish to live on Argentine soil*. Another divergence is that the Argentine preamble ends with an invocation to the protection of God, stating that he is "the source of all rights and justice." Here the Catholic Spanish mind shows its influence.

Declarations, Rights and Guarantees

The preamble is followed immediately by the First Part of the constitution, headed "Declarations, Rights and Guarantees." Herein the fundamental features of constitutional organization and the rights and duties of the inhabitants of the country are detailed in 35 articles.

In the first article there is a declaration that the Argentine Republic adopts for its government, the Representative Republican and Federal form, that is, that sovereignty emanates from the people, that they govern through their representatives, and that each political section of the Republic, called provinces, retains certain powers and some sovereignty.

The second statement deals with the status of the Catholic Apostolic Church, stating that the Federal Government maintains that religion. It is interesting to notice here the balancing of the Spanish Catholic mentality with the liberal ideas of the French thinkers. A less liberal formula than that "of maintaining the Catholic religion," was desired by some who wished to see the Catholic religion be made the state or official religion, or the religion of all the members of the Federal Government. This is understandable when one considers that among the members of the Constitutional Congress there were influential Catholic priests and that all of the congressmen proclaimed their Catholicism. However, Sarmiento, a great Argentine leader well known beyond the frontiers of Argentina, in an extensive speech pleaded for a liberal formula. He said that "the liberty of conscience is the foundation of all other liberties, the foundation of society and of religion itself." Hence the compromise in the words noted above resulted. Certainly during the period when the Constitution of 1853 was in force almost complete separation of church and state was maintained. Moreover secular education was granted by law.

Fundamental rights and duties rest on three basic ideas: liberty, equality and the sovereignty of law. Article 19 states the following: "The private conduct of persons, which in no manner contravenes public order and morality, nor in any way prejudices third parties, is only to be judged by God, and not subject to the authority of judges. No inhabitant of the country shall be obliged to do what the law does not compel him to do, nor shall he be prevented from doing what the law does not prohibit."

Equality is assured in several articles, particularly in the 16th in which it is declared: "The Argentine Nation recognizes no prerogatives of blood, nor of birth, no personal privileges or titles of nobility. All inhabitants enjoy the same legal rights, and may hold public posts, as long as they be suitable therefor; taxation shall be imposed on a basis of equality, as well as all public charges."

The third fundamental is included in many portions of this chapter of the constitution. With the exception of liberty of conscience, no other absolute right is recognized for everyone has his rights according to the laws that rule them.

The guarantee of liberty and individual security is established in Article 18: "No inhabitant of the Nation can be punished without previous trial, based on an earlier law than the date of the offense, nor be judged by special commissions, nor taken from the jurisdiction of judges legally designated before the date of the trial. Nobody shall be compelled to give evidence against himself, nor be arrested without presentation of a written order signed by a competent authority. The defense at law of individuals and rights is inviolable. Domicile is also inviolable, as well as correspondence and private documents; and a law shall stipulate in which cases, and for what reasons their search and seizure shall be allowed. The death penalty for political reasons, and all kinds of torture and whipping are forever abolished. The national prisons shall be hygienic and clean, for the

safety and not for the punishment of the prisoners, and the judge who may allow any steps to be taken further than those necessary, shall be held responsible therefor."

The 14th Article further defines individual rights and liberties in a rather specific manner. It states: "All inhabitants in this country shall enjoy the following rights, subject to the laws governing their exercise: viz.—to work and exploit all licit industry, to navigate and trade, to present petitions to public authorities, to enter, remain, cross, and leave Argentine territory, to punish their opinions in the press, free from all previous censure, to use and dispose of their property, to associate for purposes of utility, to profess freely their religion, and to teach and to study."

The Argentine Constitution is almost unique in the rights and liberties which it grants to aliens. Such an attitude is easy to understand when one considers the great expanse of the country—almost three million square kilometers and the insignificant population in 1853 which was estimated at 900,000 inhabitants and which today has grown to approximately 16,000,000. Such a small population explains the romantic and liberal spirit of the founding fathers which found its place in the constitution. It explains why Alberdi and other statesmen adopted the slogan "to govern is to increase population," for only by increasing the population rapidly could the Republic's progress, both economic and cultural, be achieved.

Hence Article 25 states: "The authorities of the Federal Government shall encourage European immigration, and shall not restrict nor tax in any way the entrance into Argentine territory of foreigners coming with the object of agricultural labor, improving industry, or introducing and teaching the sciences and arts." No deliverance is established between a native and a foreigner in private and civil activity. In public activities equality is granted with some exceptions concerning political activities.

Referring to the conception of private property and property rights, the constitution states: "Property rights shall be invoidable, and no inhabitant of the land shall be deprived thereof, save by proper legal decision. All expropriation for reasons of public utility must be justified by law, and previously indemnified. Only Congress has the right to impose the taxation referred to in Article 4. No personal service is obligatory save in accordance with law, or in accordance with a legal decision based on law. Every author or inventor is the sole proprietor of his work, invention or discovery, for the time allowed by law. The confiscation of property is eliminated permanently from the Argentine Penal Code; no armed body has the right to make levies, nor demand assistance of any sort whatever."

It should be mentioned that despite the appearance of rigidity when defining and protecting property, the Constitution does provide limitations making the matter more flexible and permitting legislation thereon, but still following the individualist system.

Organization of the Federal Government

The second part of the constitution deals with the organization of the Federal Government. It divides power into three branches: Legislative, Executive and Judicial which brings about the traditional separation of powers of government. The constitution therefore seeks to balance the influence of each department of government with the influence of the other two. A system of checks and balance is created in an effort to secure the supremacy of the constitution and the observation of liberty and equality within the limits of the law.

The Executive Power is composed of a president, the chief of the nation, and a vice-president, who is also the chairman of the senate. By the terms of the Constitution of 1853 these officers were elected for a period of six years and were not subject to reelection. They were elected indirectly as in the United States.

To be elected president or vice president the candidate must be born in the Argentine and be of the Roman Catholic faith.

The president is responsible before the congress, that is the Legislative Power can judge or impeach him.

He nominates his secretaries of state, the number of which was limited to five in the Constitution of 1853 and increased to eight by the amendment of 1860. In this nomination no other department of government interferes. The secretaries cannot be members of other departments and are responsible only to the president who can substitute them whenever he considers it necessary. To be a minister, the candidate must fulfill the same requisites as a senator. The ministers may attend congressional sessions and take part in debates, but they have no vote.

The president is chief of the national administration and commander of the army and navy. He executes the laws of the Republic, and is empowered to promote legislation by sending legislative projects to congress. Moreover he prepares the budget for the coming yearly period to be considered and sanctioned by congress. He nominates with the consent of the senate the members of the Judicial Power.

An important power of the president which has been exercised contrary to the spirit of the constitution, is that which enables him to declare a state of siege when congress is in recess. This power will be discussed *infra*.

Article 36 of the Constitution places the Legislative Power of the nation in a congress, formed by two chambers—one composed of the deputies of the nation and the other by the senators from the provinces and from the capital. The deputies were elected directly by all the inhabitants of the capital and the provinces at the rate of one deputy for every 33,000 inhabitants. This number has been increased by various laws as the total population has

increased. The senators were elected by the provincial congresses, two for each province and two for the capital, the latter being elected indirectly by an electoral college.

A deputy or senator need not be a Roman Catholic, but he must have enjoyed citizenship for a minimum of four years in the case of a deputy and six years in the case of a senator. A minimum age of 25 years is required for a deputy and 30 years for a senator. Priests could not be members of Congress. The members of congress were not to be permitted to be accused, interrogated judicially, nor molested for opinions or speeches made as legislators, and were not liable for opinions or speeches made as legislators, nor were they subject to arrest from the day of the election to the expiration of their term of office, save in cases of having been taken "in flagranti" in some criminal deed which would call for the death sentence or other severe punishment. No member of congress could accept any post or commission from the Executive Power without previous consent of the chamber.

The Congress legislates for the Republic. A marked difference between the Constitution of the Argentina and that of other federations such as Mexico and the United States, is the constitutional power of the Argentine Congress to enact civil, commercial, penal and mining codes (with the only restriction that these codes shall not affect the provincial jurisdiction). The Congress is also empowered to legislate generally for the entire country with respect to naturalization and citizenship, bankruptcy, false currency, the forgery of state papers, and the establishment of trial by jury.

Bills may be presented by members to either chamber or by the Executive Power, but only the Chamber of Deputies could introduce bills concerning taxation and the raising of troops.

The congress also is possessed of judicial duties, that is, to judge the president, vice president and the secretaries of state, the members of the Supreme Court of Justice, and of the lower

courts of justice of the nation in causes brought before it for bad performance of their duties or for felonies. In such cases the House of Deputies has the sole right to impeach before the Senate, and the latter chamber acts as judge. If the accused is the President of the Nation, the vice president as chairman of the Senate is replaced by the president of the Supreme Court of Justice in order to assure impartiality.

A bill which has been sanctioned by the chamber to which it was first presented is then sent to the other chamber. After sanction by both chambers the law is sent to the president who promulgates it either expressly or by not rejecting it within a period of ten working days. If the president rejects it the Congress shall consider it again and if both chambers sanction the bill by a special majority of votes, it then becomes law against the will of the president.

The administration of justice is exercised by a Supreme court of justice and by other lower courts.

Article 96 expressly states that "judges of the Supreme Court of Justice and those of the lower national courts shall hold their posts as long as their conduct be good, and shall receive such remuneration as may be stipulated by law, which shall not be in any way diminished as long as they hold office." To be a member of the Supreme Court the candidates must fulfill the same requisites to be a senator. Further the members must have a law diploma issued by a University of the nation and have exercised his profession for a minimum of eight years. All members of the Judicial Power are nominated by the president with the consent of the senate.

To make clear the independence of the Judicial Power Article 98 states: "On the occasion of the inauguration of the first Supreme Court of Justice, the members appointed shall take oath before the President of the nation, to carry out faithfully

their functions, to administer justice well and legally, and in accordance with the dispositions of this constitution. Subsequently, members shall take oath of office before the President of the Supreme Court itself.

Article 100 sets forth the powers of the judiciary. It states: "Jurisdiction over and decision of all cases dealing with the points governed by the Constitution and laws of the Nation belong to the Supreme Court and the inferior tribunals of the Nation, . . . and with treaties with foreign nations; of all suits concerning ambassadors, public ministers, and foreign consuls; of cases of admiralty and maritime jurisdiction; of suits in which the Nation is a party; of suits between two or more Provinces; between one Province and the citizens of another; between the citizens of different Provinces; and between one Province and its citizens against a foreign State or citizen."

Each province organizes the administration of justice in its respective jurisdiction, and courts so organized are entitled to judge all cases not included in the enumeration stated above. The provincial courts have competence to judge any case arising under national codes, certain federal laws, and provincial laws. Since the provincial courts are authorized to decide cases arising under national codes and some federal laws, differing interpretations thereof were possible. This danger was solved however for in a case of divergence, such can be sent to the Supreme Court of the nation through an extraordinary legal procedure which permits the Supreme Court to determine the proper interpretation of the Constitution or the national law involved in the case.

The Federal Courts are organized into District Courts, Appellate Courts and the Supreme Court. With respect to the District Courts the nation has been divided into judicial districts. At least one judge was assigned to each province but some additional judges have been added where the amount of judicial business

necessitates. The Appellate Courts or intermediate courts were not established until 1902. These courts were established to review cases from the district courts in order to relieve the burden of the Supreme Court. They are composed of three or five members. Finally at the top of the federal hierarchy of courts there is the Supreme Court of five members. For the most part it possesses only appellate jurisdiction except in the cases of ambassadors, ministers and foreign consuls and those in which a province shall be a party. In the latter instances it has original jurisdiction.

The Provincial Government

The Constitution of 1853 ends with seven articles dedicated to the provincial governments and in which the federal system is assured.

At the time of the nation's organization there were 14 provinces. In addition thereto there were many regions which were not politically organized and some of which were still in the hands of the Indians. These latter regions were divided into ten territories depending politically, economically and administratively on the federal government.

With respect to the provinces and their governments, the constitution permits each province to promulgate its own constitution which must be in accordance with the principal declarations and guarantees of the national constitution. By their terms these constitutions must secure the administration of justice, assure the municipal regime, elemental education and constitute a representative republican system. The provinces legislate for themselves and elect their authorities without the intervention of the Federal Government. They are possessed of those powers not delegated to the nation.

They cannot, for example, "celebrate partial treaties of a political character; nor sanction laws relative to commerce, in-

ternal or foreign navigation; nor establish provincial customs houses, nor coin money, nor establish banks with power to emit notes, without authorization from the federal Congress; nor enact civil, commercial, penal, or mining codes after the Congress shall have enacted them; nor enact any special laws regarding citizenship and naturalization, bankruptcy proceedings, false coinage, or forgery of state papers; nor fix tonnage duties; nor equip ships of war; nor raise armies except in case of foreign invasion or of such imminent danger as not to admit of delay, giving notice immediately to the federal Government; nor appoint or receive foreign agents nor admit new religious orders.”

To assure internal peace Article 109 states: “No province can declare nor make war against another province; its complaints must be submitted to the Supreme Court of Justice and settled thereby. Any hostilities shall be considered to be acts of civil war and held to be seditious which shall be stamped out by the Federal Government in accordance with law.”

To guarantee the republican form of government the Federal Government has the power to intervene in the territory of the provinces by the terms of Article 6. “The Federal Government may intervene in the territory of the provinces with the object of guaranteeing the Republican form of Government, or of preventing foreign invasion, and at the request of the constitutional authorities in order to sustain or re-establish them whenever they may have been deposed by sedition or by an invasion from another province.”

Moreover this power of intervention is given to the President when the Congress is in recess. It has been used for political purposes having no other object but to give a political advantage to the party in power. Through these interventions the provinces have lost their real autonomy, and step by step the federal system has become adulterated with the central government becoming each day more powerful. Also, the fact that the economic power

of the provinces is far weaker than that of the federal economic power has contributed greatly to this evolution.

As has been stated the national constitution guaranteed to each province the enjoyment and practice of its institutions. Among such institutions is the municipal regime. In the days of Spanish rule, the Viceroyalty of the River Plate was a great empty land with sparse population. The few Spaniards in occupation were concentrated in villages widely scattered over the face of the land. Due to the distances between villages and the difficulties of communication with the capital, a strong sentiment of local municipal autonomy arose. When independence came, these sentiments were so strong that it was natural that in these circumstances the governments of the municipalities occupied an important place in the minds of the people. Hence the Constitution assured the continued existence of municipal organizations in order to permit the people of each city or village to be governed by their own representatives thus aiding in the maintenance of a republican and democratic system of government.

The Amendment of 1949

For each Argentine, no matter what his political ideas, his profession or his cultural standing, the Constitution of 1853 became something of a holy scripture and all believed that within the framework of this charter, the progress of the Republic and the happiness of the people could be best obtained. To the Argentine there existed the certainty that the supremacy of law was maintained by the Constitution and that if its concepts were applied with honesty, individual rights and social welfare would be secured. Argentine jurists, no matter with what doctrinary ideas they were inculcated and even if they considered some amendment necessary, always praised the wisdom contained in this instrument of government.

The eminent Italian statesman, Orlando, regarded this Argen-

tine Constitution as one of the most perfect ever written and stated "that the congressmen were guided by a sense that had something of the miraculous.

Therefore, when in 1949 a new Constitutional Convention was called, it was clearly reiterated by all the members and by the leader of the revolution and now president of the nation, that it was not intended to change the constitution, but to amend it in such a way that its fundamental purposes to bring about the happiness of the people and the progress of the country could be carried out in a more practical and effective manner. Former Professor Sampay, member of the constitutional assembly and champion of the new amendments stated:

It is clear, Mr. President, that the Constitution of 1853 has been so long in force because of the organization of powers which is adopted. An executive Power was created which served first to permit pacification of the country politically, and later permitted the development of a strong administration which was able to settle, without ruptures with the established order, the problems of the new Argentine political entity. A Legislative Power was established which, due to its electoral base, permitted the reconciliation of economic interests, and thus was able to maintain, together with the Executive Power, the political cohesion of the organisms of the state. A Judicial Power was established which safeguarded the supremacy of the Constitution and which, by using its faculties with moderation and trying to temporize with the governmental direction of the political organisms contributed to strengthen the authority of the State and avoided what may be called the "crisis of authority of the democracies" which has permitted the establishment of totalitarianism and personal dictatorship.

A successful revolution took place in Argentina in 1943. This was the third political commotion which has occurred in Argentina since the adoption of the Constitution in 1853-1860. One of these former revolutions was in 1890 and was not successful. The other occurred in 1930 but did not represent any fundamental change in the organization of the nation nor in the economic and social life of the Republic, excepting of course the natural trouble for political parties and their leaders.

The 1943 revolution which overthrew all the constitutional authorities lasted three years as a "de facto" government, until in 1946, through elections convoked by these authorities, the leader of the revolution was elected constitutional president with a substantial majority in congress.

Since and during the revolution many legislative changes have been made through decrees particularly with respect to rights of labor. In the economic field every possible effort has been made to industrialize the country, and, with the declared purpose of enhancing the economic independence of the nation, many public services belonging to foreign capital have been purchased or expropriated by the state.

In both instances, that is, concerning the modification and changing of the status of labor and the economic transformation, the intervention of the state was very strong as exemplified by the issuance of decree laws pertaining thereto. When constitutional powers were assumed after the election in 1946 many of these decrees were ratified by congress. However the legal status of some was doubtful thus it became necessary to amend the constitution which was done in 1949, and several important alterations in the old constitution were carried out.

An addition was made to the preamble of the constitution so that it would contain the slogan of the revolutionary movement. This change reads as follows: ". . . ratifying the irrevocable decision to establish a Nation *socially just, economically free and politically sovereign . . .*"

Although the amendments did not modify in general the form of government, *i.e.*, Representative, Republican and Federal, nor the formula referring to religion, still the Federal Government was given increased powers and the Catholic Church increased its influence. The latter was accomplished not through amendment, but through a law which establishes the teaching of the Catholic reli-

gion in primary and secondary schools as well as in the universities, although those students not wishing to attend such classes may substitute therefor certain studies of morals.

A *methodical modification* was made in the text of the constitution. The first part of the Charter was divided into four chapters headed as follows: "Form of Government and Political Declarations"; "Rights Duties and Guarantees of Personal Liberty"; "Rights of the Laborer, the Family, Old Age and Education and Culture"; "The Social Function of Property, Capital and Economic Activity".

In the first part there are incorporated amendments, the principal one being a new article which states: "The State does not recognize the liberty to attack liberty." This concept is understood to be without prejudice to the individual right to publish his thoughts within the doctrinary fields, subject only to the prescriptions of law.

The State does not recognize national or international organizations, whatever their purpose may be, supporting principles contrary to the individual rights recognized in the Constitution or contrary to the democratic system which inspires it. Persons belonging to such organizations are declared to be unable to fulfill public functions in the Powers of the State. Moreover the organization and activity of militia or similar groups other than those of the State, as well as the use of uniforms or distinctive symbols of organizations whose objects are prohibited by the Constitution or the laws of the Nation, are prohibited.

As a result of the amendment of the Constitution, the navigation of interior rivers which had been absolutely free is now made subject to restrictions as required by defense, common security, or the general welfare of the nation.

In the second part an amendment was effected which is particularly worthy of mention. In article 28 which corresponds to Article

16 of the former Constitution, there is included a statement to the effect that no racial differences are admitted in the Argentine Nation. This is the first time that such a humanitarian, liberal and civilized statement has been made in a constitution.

In Article 29 which corresponds to former Article 18, reference is made to the writ of Habeas Corpus in the following manner: "Each inhabitant can introduce by himself, or through his relatives or friends, the recourse of habeas corpus before competent judicial authority for the investigation of the basis and proceedings of any restriction or threat to the liberty of his person. The court shall cause the person complained of to appear and, on summary proof of the violation, shall cause the restriction or threat to cease immediately."

As to citizenship, a fundamental modification has been made which depends for its clarity upon supplementation by law. With the purpose of assimilating foreigners and to give them the status of an Argentine as soon as possible, Article 31 states: "The foreigners that enter the country without violating the laws enjoy all the civil rights of Argentines, as well as political rights, five years after having obtained Argentine nationality. Upon their petition they may be naturalized if they have resided two consecutive years in the territory of the Nation, and they shall acquire Argentinian nationality automatically at the end of five years of continuous residence in the absence of express declaration to the contrary. The law shall establish the causes, formalities and conditions for the grant of nationality and for its loss, as well as for the expulsion of foreigners from the country."

The faculty now incorporated into the constitution to expel a foreigner was not included in the former constitution, although a law existed which granted to the Executive Power the right to do so. This law is still in force and has been applied many times.

The third chapter is entirely new. In one article divided into

four parts, the constitution sets forth the rights of the worker, of the family, of the aged, and educational and cultural rights. Each part is divided into the above mentioned titles or rights followed by an explanation of the meaning of each right which serves to give some doctrinary explanation.

The rights of the worker or labor are the following: the right to work, the right to just remuneration, the right to self-development, the right to proper working conditions, the right to protection of health, the right to comfort, the right to social security, the right to protection of his family, the right to economic improvement and the right to the defense of professional interests.

Referring to the family, there are four declarations in which it is declared that the state protects matrimony, guarantees the juridical equality of both husband and wife, and the "patria potestas," guarantees the economic status of the family, and the care of mother and child.

In the third section of this article, ten rights are granted to the aged which aim to guarantee that the elderly have the right to be considered as human beings despite their lack of economic possibilities. For instance they are guaranteed the right to a home, to be provided with healthy food, to free enjoyment of spiritual development, compatible with morals and religion, and to be respected by the community, etc.

The fourth chapter of this article deals with educational culture for which the state is responsible and is called upon to grant the maximum facilities to permit everyone to study and improve his knowledge.

Chapter IV is entitled "The Social Function of Property, Capital and Economic Activity." Herein it is said that private property has a social function and is therefore subject to the obligations established by law for the public welfare. The State is placed under the duty to supervise the distribution and use of land, to

intervene for the purpose of developing and increasing its yield in the interest of the community, and to afford each farm worker or farming family the opportunity to become the owner of the land which he or it cultivates. Capital is said to be at the service of the national economy and its principal purpose is the common welfare. The State pursuant to a law may intervene in the economy and monopolize specified activities for the protection of general interests and subject to the limits fixed by the fundamental rights guaranteed by the Constitution. Import and export activities are to be managed by the state with limitations established by law.

Public services belong originally to the State and cannot be sold or given in concession and those in the hands of private capital should be bought or expropriated.

As to the organization of government, the three powers and their fundamental characteristics are maintained. The Legislative power is still composed of two chambers, but the senators are elected by direct elections, the terms of office are changed and unified, so that both deputies and senators are elected for six years, and each chamber changes half of its components every three years. Moreover the Chamber of Deputies loses its prerogative to initiate laws dealing with taxes and raising of troops.

The amendment permits the President and Vice President to be reelected. As with senators their elections are to be by direct vote of the people.

Two amendments respecting the Judicial Power are worthy of mention. The judges of the inferior courts are to be tried and removed in a manner determined by a special law, subject to prosecution by members of the judicial power itself. The most important amendment is that which gives to the Supreme Court the character of "cour de cassation" for all the courts of the country in matters ruled by the civil, commercial, penal and mining codes as well as the aeronautic, sanitary and social codes formulated by the national congress.

No substantial modification was made in the last part of the constitution pertaining to provincial governments. By Congressional act, however, two territories have been given political autonomy so that now Argentina has 16 provinces, 7 territories and 2 military governments.

In conclusion it may be said that the 1949 amendments were intended to bring about a closer correspondence between practice and theory and also to introduce a new conception of economic and social rights which had been advanced by the leaders of the revolutionary movement. The manner in which these amendments will be fulfilled and any possible gap between theory and practice will be demonstrated by experience, through supplemental laws and their execution, court interpretation, and above all in the manner in which the population acts in accord with the ideas inspiring these concepts.

Only time will permit an objective judgment with respect to the scientific, political and social value of the amendments.

URUGUAY

Today Uruguay is a country of 187,000 kilometers with a population of 2,200,000 inhabitants. In Spanish days it constituted part of the River Plate Viceroyalty being located east of the River Plate in a section denominated "Banda Oriental." Its independence has its origin in the manifestations of autonomy proceeding from patriotic elements of the inhabitants of this region. When Spanish sovereignty was overthrown Uruguay did not gain immediate independence. This region for some time thereafter was subjected to intervention by Argentina and Brazil. Its independence was finally recognized by the Convention of Peace of 1828 celebrated between Argentina and Brazil under the patronage of the Ministry of Foreign Affairs of Great Britain. It was agreed that it should give itself a constitution subject to the

approval of these two states and Great Britain. This first constitution was dated September 10, 1829, and took effect in July of 1830.

This constitution created a unitarian, republican and representative system of government. The classical three powers of government doctrine was followed giving to the Legislative Power a two chamber organization, to the Executive Power strong and centralized organization, and to the Judicial Power a very real independence that exists today.

This constitution was long lived and it was not until 1918 that a new charter was promulgated which had as its principal forms the creation of the so-called "Entes Autónomos" (autonomous entities or governmental service organizations) and the re-organization of the executive power. The latter was a culmination of the desire to weaken the executive power to insure a more democratic political organization. This constitution created a bifurcated executive branch, *i.e.*, a president in charge of foreign relations, the police and armed forces, and a national council of administration in charge of purely administrative matters of the state.

In 1934 the Constitution of 1918 was substituted. By this latter constitution the autonomous entities were further developed and the Executive Power was again concentrated in the president of the nation, assisted by his ministers. However a minister council was created which was empowered to revoke decisions approved by the President, together with the respective minister or ministers, by an absolute majority of those present.

In 1942 a fourth amendment occurred aimed mainly at a re-organization of the Legislative Power, and in 1951 the latest amendment was carried out concerning in the main a change in the Executive Power, organizing a collegiate Executive Power which will be discussed *infra*.

Eduardo J. Couture and Hector Hugo Barbagelatta in their book "Current Legislation in Uruguay" state clearly that the va-

rious Uruguayan Constitutions, and their amendments, grant juridical, political and social equality to all inhabitants and these constitutional declarations are carried out in practice. Individual liberty is also granted and ratified by many laws and documents. In theory as well as in practice liberty of opinion, liberty of public meetings and liberty of association exist.

The Constitution of 1830 declared the Catholic Religion to be the religion of the State, but the Constitution of 1918 incorporated a new article on religious liberty stating that no official religion existed and that all religions were to be accorded the same rights. Today there is an absolute liberty and respect for all sects.

Foreigners and the problem of immigration have received similar treatment in Uruguay as in Argentina, and aliens are granted the same civil rights as natives and naturalized citizens.

Articles 7 and 8 of the Constitution, corresponding to Articles 130 and 132 of the 1830 charter state: "The inhabitants of the Republic have the right to be protected in the enjoyment of their life, honor, liberty, security, work and property. Nobody can be deprived of these rights, excepting in accordance with laws promulgated for reasons of general interest."

All persons are equal before the law, and no other distinctions are to be recognized between them but those of talent and virtue.

Foreigners are permitted to obtain Uruguayan citizenship and in this character they can be elected to every political and administrative position of government with the exception of the presidency or membership on the Supreme Court. It is also interesting to note that citizenship cannot be lost by natives upon the adoption of another nationality. Upon their return to Uruguay and recording their names in the civil register, they recover their rights as Uruguayans. Finally, the married alien of good behavior who has resided at least fifteen years in the Republic and possessed of capital or property or a profession has the right to vote.

Uruguay has inaugurated a regime of social democracy, and has incorporated into the constitution principles of social and economic security creating a pension fund for all workers, employers, employees, laborers including rural laborers and domestic servants. Such funds are also accorded the aged. Moreover education from the primary level to the university level as well as medical and hospital assistance are free.

Couture and Barbagelatta in their book state proudly that the budgets for public education and public sanitary assistance are each higher than those for the army, navy and air forces.

In 1951 the most recent change in Uruguayan Constitution was brought about by amendment. The principal changes are the following:

(a) The presidency of the Republic is substituted for a National Council of Government composed of nine members. This Council has all those powers previously granted by the constitutions to the President of the Republic.

(b) The nation's representation is conferred on the President of the National Council. Each member of the Council acts as its president for a period of one year.

(c) The government and the administration of the Departments (administrative regions) are exercised by a Departmental Board with legislative power within each Department of the Republic.

(d) The civil service is regulated in a detailed manner granting essential guarantees for the permanence of public functionaries and for justified promotions.

(e) The regime of the autonomous entities is carefully regulated.

The Legislative Power of the Republic is exercised by the General Assembly and has always been composed of two chambers.

The Chamber of Representatives is composed of 99 members elected directly by the people. The senate is composed of 31 members. In the latter body the political parties including Catholics and communists, are proportionally represented. Both chambers have the same prerogatives and as a rule act separately except in special cases such as the election of members of the Supreme Court.

A Permanent Commission of Senators and Deputies, which functions during recess of the General Assembly, is designated which shall be the guardian of the observance of the constitution and the laws, and which shall make the necessary representations to the Executive Power in this respect. If these representations, if made for the second time do not produce any effect, the Commission may according to the importance and gravity of the matter in question, convoke the General Assembly on its own responsibility.

The Judicial Power is vested in the Supreme Court of Justice and in other tribunals and courts provided by law. The Supreme Court is composed of five members named by the Legislative Power for ten years. They cannot be reelected until five years have elapsed after they have ceased their duties. The Supreme Court nominates all other judges and court functionaries, the approval of the Senate or the Permanent Commission being required only for the members of the Courts of Appeal. The Constitution also provides for Appellate Tribunals (Courts of Appeal), consisting of three members, to be established and granted such powers as the law may confer upon them; for lower courts of such number to be consistent with the exigencies of a prompt and efficient administration of justice located in various parts of the republic and possessing such powers as shall be established by law; and for Justices of the Peace in each judicial district into which the territory of the Departments is divided.

With the exception of the members of the Supreme Court and Justices of the Peace all judges remain in office during good con-

duct, although they must retire upon attaining the age of seventy years.

Thus in Uruguay there is found the separation of powers doctrine with each of the three powers of government organized in such a way as to check and balance the other. The Executive Power is controlled by the Legislative Power through the semi-parliamentary system which permits censure and inquiry of ministers. Moreover, the Executive Power is controlled as to legality of its acts by the Judicial Power. The Legislative Power is controlled by the Judicial power which can declare in concrete cases the unconstitutionality of legislative acts. An independent judiciary is created but still the Legislative Power cooperates in the nominations of some of its members.

The nation is divided into 19 departments which have their authorities elected by the people. Departmental administrative and political organization is also divided between the executive and deliberative power. The Departmental Board exercises the legislative and supervisory functions of the Departmental Government, and the Departmental Council exercises the executive function. The constitution preserves the autonomy of the departments by means of constitutional recourse to the Supreme Court.

To conclude this review of the constitutional life of Uruguay some mention must be made concerning the electoral system. Suffrage is universal, women and men being equally qualified to vote. The vote is secret, obligatory and direct. Elections are regulated principally by a law dated the 9th of January, 1924, and by laws of January and October, 1925. Ordinary elections take place for national and municipal offices every four years. Article 77, section 4 forbids judicial magistrates, members of the Contentious-Administrative Tribunal and the Tribunal of Accounts, directors of the Autonomous Entities, persons in active military service, and police

officials from taking part in any political club or party or intervening in any form, private or public, in any act of a political character with the exception of voting.

Article 322 of the Constitution creates an Electoral Court which is empowered to act in matters relating to electoral acts or procedures; to exercise directive, disciplinary, advisory, and economic supervision over electoral organs; and to render final decision on all appeals and claims that may arise and act as judges of the elections to all elective offices, and of plebiscites and referendums.

CONCLUSION

In concluding this study a rather curious anomaly can be noted in the constitutional life of Argentina and Uruguay. On the one hand the Argentine Federation each day becomes more centralized in its governmental processes. Sparse population in the provinces and their limited economic activity as well as political reasons have created conditions in Argentina leading to a strong and powerful central government. On the other hand Uruguay, a rather small nation with a unitarian form of government each day becomes more decentralized in its administrative life and in the political form of its government.

It may be noted that nothing absolutely new may be found in the constitutional developments of these two nations, but constitutional trends and experiences are of great interest. In each nation by the terms of the constitution a democratic way of life is sought to be established. These constitutions grant individual rights and create duties. Both the individual and the state are given some control so that the rights and duties of each person may be correctly exercised to benefit the happiness and welfare of each human being thus contributing to the progress of each nation.

I am aware of the fact that this essay—in order to be complete—

should also take into consideration the practical application of these constitutional provisions inasmuch as even more important than the words and the written rules, is the measure in which liberty, equality and separation of power are living and working institutions.

Such a study would take both considerable time and space not available to the author.

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