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An Opportunity for Constitutional Reform in Argentina: Re-Election 1995

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COMMENT

AN OPPORTUNITY FOR CONSTITUTIONAL REFORM IN ARGENTINA: RE-ELECTION 1995

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I. INTRODUCTION

Establishing democracies in nations traditionally ruled by dictators is a long and arduous process. Such is the tragic story of Latin America. Over the years, many leaders in Central and South America have tried to institute the fundamental individual freedoms and governmental restraints that constitute democracy.¹ Yet, most have failed under the weight of economic disorder, social unrest, and ultimately, coups d'etat.²

Argentina is a country where only a decade ago the military controlled the operation of the state and, in many respects, the thinking of the people.³ Argentina's shift to free and open elections in 1983, however, marked the beginning of a profound

1. See generally GUILLERMO O'DONNELL, *MODERNIZATION AND BUREAUCRATIC-AUTHORITARIANISM: STUDIES IN SOUTH AMERICAN POLITICS* (1973) (giving examples of attempts to create democracy in eight different Latin American nations); Don Podesta, *S. American Democracy Takes Hold Even as Rulers Try to Stay On*, WASH. POST, Jan. 1, 1994, at A20.

2. Salvador Allende, the Chilean president who was overthrown and killed by General Augusto Pinochet's military coup in 1973, is just one of the many examples of Latin American leaders who failed to bring democracy to their respective countries. See Podesta, *supra* note 1, at A20. The reasons for the economic, social, and political problems that have overcome much of Latin America is beyond the scope of this paper. For different views of this problem, see generally STANLEY J. STEIN & BARBARA H. STEIN, *THE COLONIAL HERITAGE OF LATIN AMERICA* (1970) (discussing the theory of economic dependency on Europe and the United States); *POLITICAL CULTURE AND DEMOCRACY IN DEVELOPING COUNTRIES* (Larry Diamond ed., 1993) (discussing the role of popular political culture in the development of democracy and economic progress); O'DONNELL, *supra* note 1 (discussing the bureaucratic-authoritarianism model of political institutions).

3. See Marcelo Cavarozzi, *Political Cycles in Argentina since 1955*, in *TRANSITIONS FROM AUTHORITARIAN RULE 21* (Guillermo O'Donnell et al. eds., 1986) (discussing the government's "shock treatment" of violence and repression used to condition Argentine society after 1966).

transition to democracy.⁴ As the nation's history has demonstrated, this transition is a highly fragile process.⁵ Argentine leaders must not only reform political institutions. They must also rethink their roles within those institutions. These leaders must prove to a skeptical society that the years of extra-constitutional political abuses have passed. Only then will Argentina's population truly embrace democracy.⁶

In recent months, Argentina's transition has entered a crucial stage. Argentine political leaders, behind the impetus of President Carlos Menem, have called for the revision of the nation's 140-year-old constitution.⁷ At stake is a realistic opportunity to solidify and legitimize democratic principles and to foster economic stabilization and growth. If successful, Argentina will serve as a powerful example for many other Latin American nations. To achieve such results, the Argentine leaders must place national interests above personal motives. Ironically, the personal agenda most dangerous to the success of democratic reform is also the one which has led the drive for constitutional change in Argentina: President Menem's desire to assure his own re-election.

Part II of this Comment discusses Menem's re-election initiative and the coalition that has made constitutional reform a possibility. Part III provides the basis for understanding why reform is necessary at this time by analyzing the history of the Argentine Constitution and its centralist origins. Part IV examines the institutional problem of hyper-presidentialism⁸ in Argentina. It posits that a presidential re-election provision—without commensurate authority-limiting constitutional

4. See Irwin P. Stotzky, *The Fragile Bloom of Democracy*, 44 U. MIAMI L. REV. 105, 105-06, 109, 113 (1989).

5. *Id.* at 113-14.

6. Former Argentine President Raul Alfonsín provides a good working definition of the type of democracy which he hopes his nation will become. See Raul R. Alfonsín, *The Function of Judicial Power During the Transition, in TRANSITION TO DEMOCRACY IN LATIN AMERICA: THE ROLE OF THE JUDICIARY* 41-42 (Irwin P. Stotzky ed., 1993). According to Alfonsín, the requirements of democracy include, among others: (i) respect for political liberalism and human rights; (ii) incorporation of republican principles of representation, political opposition, and separation of powers into the workings of government; and (iii) deference to the rule of clear and universal laws. *Id.* See generally President Raul R. Alfonsín, *Building Democracy*, 12 YALE J. INT'L L. 121, 123-24 (1987).

7. See *infra* notes 18-22 and accompanying text.

8. See *infra* notes 110-117 and accompanying text.

amendments—may intensify Argentina's present anti-democratic predicament. The final two sections of this Comment explore the actual process of constitutional reform and democratic consolidation. Part V studies how and why past attempts at constitutional reform have led to crisis situations. Part VI argues that coalition-building can strengthen the legitimacy of the Argentine political system.

Although this Comment focuses on Argentina, the lessons to be learned here are applicable to all of Latin America. Argentina's leaders will, ideally, set a democratic precedent for the rest of the continent.

II. THE RE-ELECTION INITIATIVE

A. Menem's Intentions and Article 77

President Menem has been firm about his intention to run for re-election in 1995. He told *Radio América*, for example, the week before the October 3, 1993 congressional elections, "[w]e have gone far in four years . . . [but] I need ten years to consolidate the reforms we have introduced."⁹ Menem's desire for re-election only strengthened after his party's success in those congressional elections.¹⁰ Menem and his Peronist Party¹¹ supporters saw the positive results of the October election as evidence of the popular approval of their administration.¹² As Menem told reporters on election night, "[i]t would be hypocritical if I said that after tonight's victory my desire to be re-elected has not increased."¹³

9. *Argentine President Says He Needs Another Term*, REUTERS, Sept. 26, 1993, available in LEXIS, NSAMER Library, ALLNSA File.

10. See William R. Long, *Argentine Ruling Party on Roll After Elections*, L.A. TIMES, Oct. 8, 1993, at A4 (noting Menem's desire to run for re-election).

11. The official name of the party is the Justicialist Party. President Juan Perón founded the coalition in 1949, and his followers still comprise much of its voting members. This paper will use the Peronist Party, the more commonly used name of Perón's Party.

12. See *Menem Claims Ample Victory in Key Argentine Poll*, REUTERS, Oct. 3, 1993, available in LEXIS, NSAMER Library, ARGEN File; see also *Menem Wants a Second Term*, ECONOMIST, Oct. 2, 1993, at 47 (explaining the election served not only as an indicator of the Peronists' popular edge over the Radicals, but also as an indicator of Menem's popularity compared with rival Peronist presidential hopefuls, such as Senators Antonio Cafiero and José Octavio Bordón).

13. Nathaniel C. Nash, *Argentine Ruling Party Wins, Fueling President's Re-election Bid*, N.Y. TIMES, Oct. 5, 1993, at A3.

Menem's ambition to serve another term in the *Casa Rosada* (the Argentine executive office) will require more, however, than a solid campaign and a strong approval rating. Article 77 of the Argentine Constitution prohibits the re-election of an incumbent president.¹⁴ Should Menem abide by the Constitution, he would not be eligible to take office again until the year 2001, when he would be seventy-one years old.¹⁵ But Menem is not a complacent individual.¹⁶ One prominent businessman in Buenos Aires said of the President, "[h]e is a rainmaker, the most astute politician in Argentina, possibly in Latin America."¹⁷ On the issue of his own re-election, this "rainmaker" has created a constitutional storm.

B. *The Unlikely Coalition*

Before November 1993, only Menem believed that the Peronists could garner the congressional support necessary to abolish Article 77.¹⁸ The Peronists needed to secure the votes of two-thirds of both legislative houses to call for the convention required to amend the Constitution.¹⁹ In November 1993, the Peronists had the thirty-three votes they needed in the Senate, but they lacked this requisite majority in the 257-seat Chamber of Deputies.²⁰

14. ARG. CONST. art. 77. "The President and Vice President hold their offices for a term of six years; and they may not be re-elected except after an interval of one term." *Id.*, translated in Fortuna Calvo Roth, *Argentina*, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 15 (Albert P. Blaustein & Gisbert H. Flanz, eds., 1983).

15. See Peter Bate, *Argentines Vote in Election Key to Menem's Plans*, REUTERS, Oct. 3, 1993, available in LEXIS, NSAMER Library, ARGEN File. The next presidential election will be held in 1995.

16. See *Argentine President Says He Needs Another Term*, supra note 9 (reporting Menem characteristically told reporters that "in politics you don't win if you don't run any risks").

17. Nathaniel C. Nash, *Argentine Leader Gains Support to Change Constitution to Allow for 2d Term*, N.Y. TIMES, Nov. 16, 1993, at A5.

18. See Carl Honore, *Menem, Archrival Alfonsín Embrace, Agree on Reforms*, MIAMI HERALD, Nov. 18, 1993, at A25.

19. ARG. CONST. art. 30. "The Constitution may be amended entirely or in any of its parts. The necessity of amendment must be declared by the Congress by a vote of at least two thirds of the members; but it shall not be effected except by a convention called for the purpose," translated in Roth, supra note 14, at 7; see also *Como funciona la convencion constituyente*, CLARÍN, Nov. 28, 1993, at 8-9 (Arg.).

20. See Long, supra note 10, at A4 (reporting that the Peronists picked up nine seats in the Chamber of Deputies in the October 3 elections, falling just two seats short of a majority. The opposition Radical Party, in contrast, lost a seat.).

Despite this lack of support in the Chamber of Deputies, the President has all but buried Article 77. Jubilant supporters have already posted banners trumpeting "Menem 1995" along the boulevards of Buenos Aires.²¹ This sudden change of fortune, permitting Menem supporters to celebrate, has come from the most implausible source. On December 13, 1993, former Radical President Raul Alfonsín, Menem's archrival, signed an agreement which promised Menem the votes he needed in the lower house.²² Nine days later, the Chamber of Deputies passed legislation calling for the creation of a constitutional assembly with an overwhelming majority.²³

The Peronists' prospects of forming a consensus with the *Unión Cívica Radical* (the UCR or Radical Party) seemed ludicrous a short time ago.²⁴ Many Radical members saw Menem's plan for re-election as a self-serving initiative driven by personal greed for power and disrespect for democracy.²⁵ Alfonsín, who

21. Honore, *supra* note 18, at A25.

22. *Argentine Lower House Approves Constitutional Reform*, UPI, Dec. 22, 1993, available in LEXIS, NSAMER Library, ALLNSA File. The formal Peronist-Radical compact—which the press has labeled the "Olivos Pact," after the city where the executive residence is located—came a month after Menem and Alfonsín had initially come to mutual terms. The Radical party officially voted to support the agreement on December 3, 1993. *Id.*

23. The final vote was 188 to 53. Nathaniel C. Nash, *Argentine Senate Backs Menem on Second Term*, N.Y. TIMES, Dec. 30, 1993, at A5. The bill did not pass the Chamber without friction: it took 30 hours of debate and a fistfight between two congressmen. *Id.* The following week, the Senate passed the same bill more peacefully by a 38 to 7 margin. *Id.*

24. *UCR Announces End of Co-operation; Campaign Against Menem's 'Authoritarian Excesses'*, LATIN AM. WKLY. REP., Oct. 8, 1992, at 11, available in LEXIS, NSAMER Library, ARGEN File. Initially, Peronists and Radicals had come to the negotiating table a number of times to discuss possible constitutional reform. Former Radical President Raul Alfonsín stated in October 1992 that the time for cooperating had come to an end. He did this after Menem's Minister of the Interior tried to deny the Radicals a seat legally won in the Senate by claiming that the vote never took place and then calling a new election. *Id.*; see also *Menem Starts to Get Political Again; Electoral Deals for 1991 & Accord with UCR on Reforms*, LATIN AM. WKLY. REP., July 19, 1990, at 2, available in LEXIS, NSAMER Library, ARGEN File (listing several points of reform that the Peronists and Radicals shared).

25. See *Setback for Menem's Re-election Drive; Departing Minister Accuses Campaigners of Dirty Tricks*, LATIN AM. REGIONAL REP., Sept. 9, 1993, at 6, available in LEXIS, NSAMER Library, ARGEN File [hereinafter *Setback*] (stating that the Radical leaders were threatening to issue to the Argentine population a statement that the Menem Administration was "on the verge of breaking the legitimacy of the constitutional process"); see also Andrés Wolberg-Stok, *Row Over Menem's Re-election Bid Breaks into Open*, REUTERS, Aug. 24, 1993, available in LEXIS, NSAMER Library, ARGEN File; Don Podesta, *Argentine Vote May Become Referendum: Menem Asks*

spearheaded this critical group, had to relinquish his power to a gloating Menem six months before the end of his presidential term in 1989, due to Argentina's severe economic crisis.²⁶ Since that time, Alfonsín has likened President Menem to Adolf Hitler and former Paraguayan dictator Alfredo Stroessner.²⁷

Alfonsín's circle was not the only group that questioned the motives behind Menem's re-election campaign. The Argentine press strongly opposed the Peronist plan.²⁸ Many respected journalists linked the President's re-election campaign with a desire to cover up corruption within his administration.²⁹ As the influential Catholic magazine *Criterio* stated, the force behind Menem's desire to remain in office was his "need to perpetuate a group in power so that the acts of corruption were not investigated."³⁰

The Menem administration has systematically repudiated any involvement in such illicit activities. Yet, recent physical assaults and anonymous death threats against members of the press have created an air of disbelief in the President's denials.³¹ An Argentine film crew recorded one of the press'

Mandate to Seek Reelection, WASH. POST, Sept. 2, 1993, at A19 (reporting that "Menem is seen by some as hungry for power for its own sake, a throwback to the tradition of strongman rule, rooted in the history of both Argentina and the party founded by Juan Perón").

26. See Honore, *supra* note 18, at A25 (stating that Alfonsín called his fellow party members to "head the opposition to [Menem's] re-election").

27. *Id.* Alfredo Stroessner was the former military leader who ruled Paraguay from 1954 to 1989. While considered a master of the political process, Stroessner consolidated much of his power through controlling his opposition, sometimes to the extent of "systematic harassment." CARLOS R. MIRANDA, *THE STROESSNER ERA* 2 (1990). In fact, Stroessner had "one of the worst human rights violation records in Latin America." *Id.*

28. See William R. Long, *Threats, Assaults Complicate Argentine Journalists' Jobs*, L.A. TIMES, Oct. 2, 1993, at A3.

29. *Id.* Reported scandals include charges against Menem's private secretary, Miguel Angel Vicco, for selling contaminated milk to government social assistance projects; handing out \$80 million in bribes to government officials during the privatization of *Aerolíneas Argentinas*; and circumventing the alien nationalization process for Menem's distant drug-smuggling cousin from Syria. Horacio Verbitsky, *Argentina Retreats from Democracy*, N.Y. TIMES, Oct. 3, 1992, at A23. Verbitsky claims that Menem discharged several top prosecutors assigned to investigate these and other charges of corruption against the government and "replaced them in some cases with officials who had been targets of their investigations." *Id.* Re-election might allow tactics like this to continue. *Id.*

30. *Church: Why Re-Election?*, LATIN AM. WKLY. REP., Sept. 9, 1993, at 6, available in LEXIS, NSAMER Library, ARGEN File.

31. See Carl Honore, *Assaults on Argentine Journalists Rise as Vote Nears*,

assailants embracing Menem at a public ceremony.³² Another journalist reported that while being beaten, his assailant warned him to stop writing that the President was hiring henchmen to silence the press.³³ Seemingly hard evidence of Menem's disrespect for freedom of the press has forced many in the media to unite against him and his government.³⁴

Verbal attacks have also come from within Menem's own camp. One of the worst setbacks to President Menem's constitutional reform initiative came when his Interior Minister, Gustavo Beliz, resigned after only nine months in office.³⁵ Beliz's resignation was controversial because many observers considered him to be one of the President's closest and most trusted advisors.³⁶ Additionally, Menem recruited Beliz for his Cabinet position after the previous Interior Minister resigned amidst corruption charges.³⁷ Beliz had the reputation of "Mr. Clean,"³⁸ an untarnished young civil servant with close ties to the Catholic Church.

It is the manner in which Beliz resigned, not the loss of a Cabinet member, which hurt Menem's credibility most.³⁹ Beliz

MIAMI HERALD, Sept., 23, 1993, at A6.

32. See Nathaniel C. Nash, *Reporters Facing Peril in Argentina*, N.Y. TIMES, Sept. 1, 1993, at A7.

33. *Id.*; see also Leon Patricios, Case Comment, *Ekmekdjian v. Sofovich The Argentine Supreme Court Limits Freedom of the Press with a Self-Executing Right of Reply*, 24 U. MIAMI INTER-AM. L. REV. 541, 544 (1993). Menem, of course, has denied involvement in the assaults. See Long, *supra* note 28, at A3. The President blamed the attacks on unidentified "beasts who don't deserve to live in civilized society." In the same breath he commented that such attacks "go with the job" of being a journalist. *Id.*

34. Nash, *supra* note 32, at A7. Juan Carlos Camano, leader of the press workers union, has headed the press' opposition to Menem. He demanded, at a rally in mid-September 1993, that the government punish those individuals responsible for the violence. *Id.* Menem commented on the press' antagonism towards his administration: "What's going on with the media, which have turned into the main opposition to the government?" Long, *supra* note 28, at A3.

35. See *Setback*, *supra* note 25.

36. *Id.*

37. Menem "Disciple" Quits, *Focuses Criticism on Re-Election Efforts*, LATIN AM. INFO. LETTER, Sept. 30, 1993, available in LEXIS, NSAMER Library, ARGEN File [hereinafter *Menem "Disciple" Quits*].

38. *Id.*

39. See generally Wolberg-Stok, *supra* note 25. Belize had allegedly made several enemies within the Menem camp, who the local media blamed for organizing a violent attack on reporters in August 1993. The media speculated that Beliz's foes staged this and other incidents to discredit Beliz as incompetent at his ministerial post. *Id.*

left office verbally criticizing the tactics of the "ultra-Menemists" who worked to give their leader an opportunity for re-election "at any cost."⁴⁰ He claimed that Menem and his cronies were engaging in anti-democratic practices that were quickly "generating an unacceptable state of suspicion."⁴¹ Finally, Beliz warned that such tactics would "not only frustrate the possibility of reform but also generate a crisis of unpredictable consequences."⁴²

C. *Change of Position*

At the time of Beliz's resignation, Alfonsín heralded the departure as a true indication of the Peronists' political indiscretion.⁴³ Not all Radicals, however, shared the former President's dogmatic view. Many members favored cutting a deal with Menem.⁴⁴ Alfonsín's quick shift to this latter camp have caused political observers to question his motives.

The press has described the former President's new position as a method of "damage control."⁴⁵ Such a label seems to characterize appropriately the repairs Alfonsín and the Radicals must make to their party. The Radicals desperately need to

40. *Menem "Disciple" Quits*, *supra* note 37. One of the main targets of Beliz's attack was Eduardo Bauza, the General Secretary of the Presidency. Beliz also mentioned that several loyal Peronists, such as Ramón Ortega, the Governor of Tucumán, and Domingo Cavallo, the Minister of Finance, supported his view. *Id.* These allegations are unsubstantiated.

41. *See Setback*, *supra* note 25 (citing an article in the newspaper *Clarín* which quoted Beliz as saying that some of the most loyal Presidential aides were prepared to buy the votes they needed to secure the two-thirds support in both houses of Congress).

42. *Id.* Menem dismissed these charges by saying that, "[e]veryone has the right to speak. Beliz did so, and now everything will continue as before." Marcela Valente, *Government Downplays Minister's Denunciation*, IPS, Aug. 24, 1993, available in LEXIS, NSAMER Library, ARGEN File.

43. *See Valente*, *supra* note 42 (quoting Alfonsín as saying that Beliz "did a service for the country in unmasking the electoral motives behind this alleged constitutional reform").

44. *See Menem Wants a Second Term*, *supra* note 12, at 47. Governor Eduardo Angeloz is one of the most cordial Radicals to Menem's plans. Angeloz changed the provision of Córdoba's Constitution to allow for his own re-election. *Peronist Landslide Lends Supports to Menem Reelection*, LATIN AMER. INFO. SERV., Oct. 15, 1993, available in LEXIS, NSAMER Library, ALLNSA File. Before the Menem-Alfonsín compact, Angeloz seemed to be one of the front-runners to face a Peronist presidential candidate in 1995. *Id.* He still may be.

45. Honore, *supra* note 18, at A25.

secure popular support.⁴⁶ The UCR has faltered in the polls since it relinquished power in 1989, winning only thirty percent of the national vote in the October 1993 congressional elections, and only nineteen percent in the April 1994 elections for representatives to the Constitutional Convention.⁴⁷

The Radical Party's need to repair its internal break-down, however, is even more important than minimizing the damage to its public image.⁴⁸ The Radical party is sharply divided over the issues of re-election and the economy.⁴⁹ One side consists of those members who followed Alfonsín's message of opposition to Menem and his programs.⁵⁰ The other side consists of those who have lauded President Menem for his economic programs and have, as a consequence, remained silent, even tolerant, of Menem's re-election bid.⁵¹

The Peronists targeted this moderate Radical group when Menem announced after the October 3, 1993 elections that the government would hold a national plebiscite on the issue of constitutional reform.⁵² The referendum would be non-binding

46. *Id.*

47. Long, *supra* note 10, at A4; *Results from Constituent Assembly Elections*, NOTISUR, Apr. 15, 1994, available in LEXIS, NSAMER Library, ALLNSA File. Among the party's most symbolic and visible losses, in both elections, was in the traditional Radical stronghold of Buenos Aires. *Id.*

48. See Honore, *supra* note 18, at A25.

49. See *id.*

50. See *Peronists Win Diluted Victory in Reelection Vote*, LATIN AMER. INFO. SERV., Apr. 15, 1994, available in LEXIS, NSAMER Library, ARGEN File. Many of the Radical leaders who followed Alfonsín during his verbal battle against Menem, now lead that opposition in Alfonsín's absence. In the April 10, 1994 elections to select representatives to the Constitutional Convention, these Radicals refused to participate in the campaign. *Id.*

51. See *Menem Wants a Second Term*, *supra* note 12, at 47. The debate over Menem's re-election often returns to the issue of the economy. Even Menem's critics recognize the dramatic economic reforms that this administration has implemented, especially in the area of deregulating industry and curbing inflation. See William R. Long, *Argentine Ruling Party on Roll After Victory*, L.A. TIMES, Oct. 8, 1993, at A4. Inflation had reached 196% per month in 1989; today the inflation rate has stabilized at approximately 1% per month. *Id.* Menem's successes in this area cannot be understated; however, whether his ability to transform the economy allows Menem the right to demand another term as President is highly problematic. As much of this Comment will discuss, the methods and tactics that Menem has utilized to pass his economic program may be considered highly undemocratic. See Verbitsky, *supra* note 29, at A23.

52. See Long, *supra* note 10, at A4 (reporting that a plebiscite would place pressure on the Radicals).

on the Congress.⁵³ But, it would serve as a powerful weapon for the Peronist Party, which planned to use a favorable response to coerce "middle-of-the-road" opposition legislators and to divide further the Radical Party.⁵⁴ It is not surprising that Alfonsín signed the agreement with Menem on the condition that the Peronists suspend the referendum initiative.⁵⁵

Some observers have also stated that Alfonsín had personal motives for his sudden reversal of opinion. One reporter writes, "[h]is about-face has a hint of farce, almost as if Ross Perot had suddenly thrown his support behind NAFTA."⁵⁶ Alfonsín had been out of the news for quite some time, as President Menem dominated the headlines in Argentina and abroad.⁵⁷ The pact with Menem finally returned Alfonsín to a position of some influence and power.⁵⁸

But even the most sceptical observers of Alfonsín's motives doubt that ego was the sole driving force behind his desire to negotiate with the enemy.⁵⁹ Alfonsín and his supporters have preached the necessity of constitutional change since 1983.⁶⁰ Thus, the former President may simply view his pact with the Peronists as the first and only realistic opportunity he has to pass part of the reform package his administration initiated a decade ago.⁶¹

53. *Id.*

54. See Honore, *supra* note 18, at A25. President Menem announced that the government would conduct a national referendum on November 21, 1993, only a week before Menem and Alfonsín reached the agreement. "A defeat in the constitutional reform plebiscite . . . would have ruined Radical moral. And widespread support for reform could have pushed some Radical congressmen to lend their votes to the Peronists." *Id.*

55. *Id.* Menem stated that he would have recalled the use of plebiscite should the Radicals have backed out of the agreement. Peter Bate, *Argentina's Menem Leaves Door Open to Plebiscite*, REUTERS, Nov. 15, 1993, available in LEXIS, NSAMER Library, ARGEN File.

56. Honore, *supra* note 18, at A25.

57. See *High Note of Optimism Rings in a New Year of Continuing Reform*, LATIN AMER. INFO. SERV., Jan. 7, 1994, available in LEXIS, NSAMER Library, ARGEN File. Many news stories have focused on Menem's economic reforms and industrial privatization program. See Long, *supra* note 51, at A4. In January, the Organization of American States awarded Menem the Leadership-94 Pan-American prize for the implementation of his economic reforms. Alexander Trushin, *Argentina's President Awarded by OAS for Economic Reforms*, TASS, Jan. 12, 1994, available in LEXIS, NSAMER Library, ALLNSA File.

58. Honore, *supra* note 18, at A25.

59. See *id.*

60. See generally Alfonsín, *Building Democracy*, *supra* note 6, at 129.

61. See Nash, *supra* note 17, at A5 (reporting that "[t]he Radicals, who are in

After the October 3, 1993 elections and the announcement of a national referendum which never occurred, Menem's party stood in a dominant negotiating position relative to the Radicals. Alfonsín felt enormous pressure to meet Menem at the bargaining table.⁶² In addition to the threat of a plebiscite and further divisions within his party, the Radical leader feared that the President might grow impatient and decide to drive his re-election package through Congress without the UCR's formal approval.⁶³ For instance, the Peronists had advanced the argument that only two-thirds of the congressional members present in the voting chambers, not two-thirds of all members of Congress, would be needed to call for a Constitutional Assembly.⁶⁴ In short, the possibility that Menem would call a surprise session of Congress to pass his proposal without opposition was quite real.⁶⁵

D. The Menem-Alfonsín Agreement

Speaking on behalf of his Peronist Party, President Menem expressed his willingness to concede some issues to the Radicals in exchange for Alfonsín's support of his re-election amendment.⁶⁶ Creation of a coordinating ministerial position, analogous to a prime minister, was one important concession provided in the bi-partisan agreement. The coordinating minister would be in charge of the government's daily operations.⁶⁷ The

a very weak position, see this as an opportunity to get more checks and balances on the executive").

62. See generally Long, *supra* note 28, at A3.

63. See Honore, *supra* note 18, at A25 (reporting that the Peronists may have been tempted to call a surprise session of Congress).

64. *Id.* The integrity of this interpretation of the Constitution, however, was suspect even among some of Menem's own party members, such as José Octavio Bordón and Antonio Cafiero who, in August, called for the establishment of a coalition to legitimately pass the bill. See *Argentina Postpones Constitutional Reform Debate*, REUTERS, Sept. 10, 1993, available in LEXIS, NSAMER Library, ARGEN File.

65. See generally Honore, *supra* note 18, at A25. Under Article 86, clause 12, the President can call the Congress to session "when some grave interest of order or process requires it." ARG. CONST. art. 86, § 12.

66. See Long, *supra* note 10, at A4.

67. *Main Points of Radical-Justicialist Reform Accord Reported*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 4, 1993, available in LEXIS, NSAMER Library, ALLNSA File [hereinafter *Main Points*]; *Texto Completo del Documento*, LA NACIÓN, Nov. 15, 1993, at 12 (Arg.). The Radicals first proposed the idea of establishing a quasi-parliamentary system of government in 1983 under a report published by the

President would be responsible for appointing this official. However, the minister would be directly responsible to Congress, which would have the authority to remove him by a majority vote of censure. The coordinating minister would, in short, assume some of the powers presently afforded the President.⁶⁸

A second major concession the two leaders reached was the reduction of the presidential term from six to four years.⁶⁹ While President Menem announced his acquiescence to the shorter mandate more than a year ago, he had never definitively agreed to such a provision.⁷⁰ For many in Alfonsín's circle, this proposal had pragmatic appeal. Most Radicals were uncertain about their ability to win the *Casa Rosada* in 1995, due to their faltering public support. But no Radical politician wanted to risk waiting until the next presidential election in 2001 to regain control.⁷¹

Third, the compromise contained provisions limiting the President's authority to declare executive decrees on issues of a legislative nature, including penal law, taxes, and electoral and political party law issues.⁷² In the area of federal intervention, the agreement reaffirmed the constitutional provision that such power was vested in Congress, not the President.⁷³

These provisions are significant. They address opponents' claims that Menem has used executive decrees and federal intervention abusively over the past four years to advance the policies of his administration.⁷⁴

Council for the Consolidation of Democracy. See Alfonsín, *Building Democracy*, *supra* note 6, at 129.

68. In addition to having control over the actual administration of the government, the new ministerial position would, in theory, assume direct authority over the military. See Carlos S. Nino, *The Debate Over Constitutional Reform in Democracy in Latin America*, 16 *FORDHAM INT'L L.J.* 635, 647 (1992-93).

69. See *Main Points*, *supra* note 67.

70. Jurists of the Justicialist Party, *Contents of the Reformation of the National Constitution* 37, June 2, 1992 (providing for a four year term limitation). President Menem never officially endorsed this document.

71. See Long, *supra* note 10, at A4. Alberto Kohan, the Secretary General of the Peronist Party told reporters that the Radicals "knew they would lose in 1995 no matter which Peronist candidate they ran against, and if Menem was not allowed to run, he would be back in the next election and they'd lose that as well So the thinking was better to let Menem have this time in office now and start preparing a credible Radical candidate for 1999." Nash, *supra* note 17, at A5.

72. See *Main Points*, *supra* note 67.

73. *Id.*; see also ARG. CONST. art. 86, § 19.

74. See Verbitsky, *supra* note 29, at A23.

Fourth, the compact provided for a Council of Magistrates to administer the federal judicial branch.⁷⁵ The Council would be responsible for submitting lists of possible nominees for federal courts and the Supreme Court.⁷⁶ The President would nominate the judges, with final Senate approval by an absolute majority of all its members.⁷⁷

The Menem-Alfonsín pact also contained provisions for removing the requirement that the President be a member of the Roman Catholic Church and a plan for revamping the electoral college system.⁷⁸ Under the proposed agreement, the President would be elected by direct popular vote,⁷⁹ as would be the provincial Senators to the federal government.⁸⁰ Additionally, the City of Buenos Aires, presently governed by a presidential appointee, would have a freely-elected mayor.⁸¹

Members of the Constitutional Convention, elected April 10, 1994,⁸² will be under strong pressure to ratify the proposed changes in their entirety.⁸³ Legally, however, the assembly is not bound to adopt the Menem-Alfonsín compact. In fact, the assembly can adopt any constitution they wish.⁸⁴ That fact frightens many observers who believe that certain interest groups, including the ultra-left and the military, may exert their influence to gain specific constitutional provisions.⁸⁵

75. See *Main Points*, *supra* note 67.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*; see also Bate, *supra* note 55.

80. *Alfonsín Makes Unexpected U-Turn: Talks and Agreement with Menem of Reform of Charter*, LATIN AMER. REGIONAL REP., Dec. 23, 1993, available in LEXIS, NSAMER Library, ALLNSA File [hereinafter *Alfonsín Makes Unexpected U-Turn*]. Each province will receive one extra senator, to have a total of three. *Id.*

81. *Id.*

82. *Peronists Win Diluted Victory*, *supra* note 50; see also *Results from Constituent Assembly Elections*, *supra* note 47. The Peronists won 37.7% of the vote, and the Radicals 19.2%. Although the two parties will comprise a solid majority of the assembly, neither party showed as strongly as their leaders had hoped. *Id.* Some political analysts read the election results as public disapproval of Alfonsín's leading role in the Radical Party and of the on-going corruption scandals in the Menem Administration. See Nathaniel C. Nash, *Menem Gains in Bid for New Term in Argentina*, N.Y. TIMES, Apr. 14, 1994, at A5.

83. See Nash, *supra* note 23, at A5. The assembly will meet in June 1994, to begin deliberations on the new Constitution. The delegates must finish within 90 days, or else call a new convention. See *Results from Constituent Assembly Election*, *supra* note 47.

84. *Id.*

85. See Edgardo Buscaglia, Jr., *It's Too Soon to Alter Argentina's Constitution*,

Additionally, while the compact passed a formal vote of the UCR on December 3, 1993,⁸⁶ there are still many sceptical party members. Radical Congressman Rafael Pascual, for example, told reporters soon after the pact was announced, "[t]his is not a historic agreement, as some would have it. It's a pact between two political leaders to expedite the only thing that matters to the President—his re-election."⁸⁷ Similarly, Radical Senator Fernando de la Rúa stated, after casting his negative vote for the bill, that the proposed changes constituted merely "reform for the ruling class that wants to stay in power."⁸⁸ Pascual and de la Rúa's less enthusiastic positions may garner support before the convention meets this summer. A reputable group of opponents to the Menem-Alfonsín compromise could jeopardize its adoption and disrupt the entire Constitutional Convention.⁸⁹

III. CENTRALIZATION OF POWER UNDER THE CONSTITUTION OF 1853

Like many other Latin American charters,⁹⁰ the Argentine Constitution of 1853 fosters the present condition of executive dominance in the federal government.⁹¹ It is this imbalance of

CHRISTIAN SCI. MON., Dec. 27, 1993, at 18. These groups did, in fact, have a strong showing in the election for representatives to the Constitutional Convention. See *Results from Constituent Assembly Election*, *supra* note 47. The *Frente Grande* (Broad Front), which represents renegade Peronists, Communists, and Liberals, won 13% of the vote; while the rightist *Movimiento por la Dignidad y la Independencia* (*Modin*), lead by former army rebel Aldo Rico, won 9.1% of the vote. *Id.* Although not in a position to challenge seriously Menem's re-election initiative, these two groups will be able to broker concessions and agreements from the Peronist-Radical coalition. *Id.* Out of 305 members to the Convention, the *Frente Grande* and *Modin* have 32 and 18 delegates respectively. The Peronists and Radicals have 139 and 74 delegates respectively. *Id.*

86. *Alfonsín Makes Unexpected U-Turn*, *supra* note 80. The Radical Party passed the pact's provisions by a vote of 196 to 87 after 11 hours of debate and another fistfight. See Nash, *supra* note 23, at A5.

87. Bate, *supra* note 15.

88. Nash, *supra* note 23, at A5.

89. See Buscaglia, *supra* note 85, at 18.

90. See Keith S. Rosenn, *The Success of Constitutionalism in the United States and Its Failure in Latin America: An Explanation*, 22 U. MIAMI INTER-AM L. REV. 1, 27 (1990); see generally D. VALADÉS, *LA DICTADURA CONSTITUCIONAL EN AMÉRICA LATINA* (1974).

91. See Nino, *supra* note 68, at 640. "Argentine hyper-presidentialism is partly the result of Argentine constitutional provisions designed by Juan Bautista Alberdi, the intellectual father of the Argentine Constitution." *Id.* The Constitution of 1853 is

power which the Menem-Alfonsín compromise is intended to ameliorate. To better understand the magnitude of this project, it is important to appreciate the constitutional origin and evolution of the current executive authority.

A. *History of a Centralist Constitution*

Present day executive dominance in Argentina, as in the rest of Latin America, directly results from the nation's Iberian heritage and centralist political culture.⁹² The 300-year-old dictatorial tradition that Latin American revolutionaries tried to overcome in the first half of the nineteenth century proved to be more resilient than the military forces of the Spanish Crown and the ruling Government of the Indies.⁹³ The leaders inability to transform political theory into reality was one reason for their failure.⁹⁴

While the military leaders of the independence movements in South America espoused the liberal, egalitarian ideals of the United States and France, their visions were overly idealistic.⁹⁵ Their dreams of Athenian democracies had the power to motivate populations in the years of revolt against the Crown, but they lacked the pragmatic appeal necessary for the post-revolu-

the document in force today in Argentina.

92. See Alejandro M. Garro, *Nine Years of Transition to Democracy in Argentina: Partial Failure or Qualified Success?*, 31 COLUM. J. TRANSNAT'L L. 1, 3 (1993). "A long-lasting colonial legacy of centralism and absolutism had nurtured a heavily authoritarian political culture." *Id.*; see also POLITICAL CULTURE AND DEMOCRACY IN DEVELOPING COUNTRIES 297 (Larry Diamond ed. 1993) (arguing that Latin American culture is inherently presidentialist).

93. See CLAUDIO VELIZ, *THE CENTRALIST TRADITION OF LATIN AMERICA* 11 (-1980) "The consolidation and institutionalization of the imperial hold was accompanied by the emergence of a centralist, civilian, bureaucratic, and legalistic style of politics from which neither the imperial Indies nor the independent republics of Latin America have ever departed with much conviction or success." *Id.*

94. See *id.* at 148.

95. *Id.* at 148-49. Some scholars question just how liberal these revolutionaries really were in discussion of the leaders' motives for declaring independence from Spain. See Rosenn, *supra* note 90, at 21. The leaders of the independence movements, loyal to the Iberian aristocracy, would not obey the mandates of a French commoner (Napoleon's brother Joseph) on the Spanish throne. *Id.* In this respect, independence from the Crown became a "conservative goal, a means of upholding traditional values and social codes." *Id.* In 1814, when Ferdinand VII returned to Spain, the Creole class of Latin America could not accept the King's sanctioning of the liberal Napoleonic Constitution. *Id.*

tionary period of reconstruction.⁹⁶

The new nations of Latin America needed structure and political certainty. Unlike the United States, where established provincial legislatures existed long before the Revolution, Latin America had no such pre-existing system.⁹⁷ The consequence of the Latin American revolutions was a political vacuum—a vacuum, first, created by the severing of Iberian ties and, subsequently, heightened by social unrest.⁹⁸ When faced with the problem of establishing order amidst upheavals, therefore, the Spanish bureaucrats and *letrados* (university trained civil servants) took effective control. These men resorted to recreating the “centralist arrangements they knew how to handle and for which no adequate substitute was found.”⁹⁹

Lack of a better known alternative, however, was not the sole reason for the formation of a centralist government in the early years of Latin American independence. Just as important was the desire of the post-independence local strongmen, the *caudillos*, to consolidate their own political, economic, and social hegemony.¹⁰⁰ In Argentina in particular, armed conflicts among the powerful *caudillos* over the expansion of their territories and personal power ravaged the countryside in the first half of the nineteenth century.¹⁰¹ Battles ensued between the “federalist” strongmen of the inland provinces, who desired a nation of semi-autonomous states, and the centralist-thinking “unitary” leaders of the littoral province of Buenos Aires. The “unitary” leaders ultimately won by mid-century.¹⁰² In order to

96. VELIZ, *supra* note 93, at 149.

97. *Id.* at 148.

98. *See id.* at 148-49.

99. *Id.* at 150. “Behind them [the military leaders] repairing the damage and reconstructing the familiar shapes and institutions came the Sancho Panzas of Latin America, the Creole bureaucrats and *letrados*, heirs to centuries of dominance in the Government of the Indies.” *Id.* at 149. Speaking of the constitutions adopted in the newly formed Latin American nations, Rosenn writes: “On the one hand, they reflect the liberal, democratic tradition consciously imported from France and the United States. On the other hand, they also reflect the authoritarian, corporatist, and elitist tradition inherited from Spain and Portugal.” Rosenn, *supra* note 90, at 24.

100. *See* Rosenn, *supra* note 90, at 21-22. The wars of independence did not result in true revolution because the means to wealth—namely land holdings and export facilities—never changed hands. As a consequence, the highly stratified social structure which existed prior to independence endured the change of government. *Id.*

101. *See generally* DAVID ROCK, ARGENTINA 1516-1982, at 79-80 (1985).

102. *See id.* at 118-20. The supremacy of the Unitarian movement came with the fall of Federalist dictator Juan Manuel de Rosas and his followers, which did not

join a nation torn by decades of civil strife, these new leaders supported a strong president living in the city of Buenos Aires and—as a concession to the federalists—directly limited in power. That limitation largely rested upon the prohibition against self-succession.¹⁰³

B. Presidential Power Under the Argentine Constitution

Both the political theories and governmental realities of the post-independence era were integrated into Argentina's Constitution. As a result, the Argentine Constitution, while based largely upon the United States Constitution, has strikingly different provisions on presidential power.¹⁰⁴

Constitutionally-mandated privileges give the Argentine President broad powers over and independence from the other two branches of government.¹⁰⁵ For instance, the President may appoint members of the Cabinet without Senate advice or consent, and may remove administrative officers from their posts.¹⁰⁶ Notably, this latter power includes dismissal of special prosecutors appointed to investigate corruption charges against the government.¹⁰⁷

Further, the Argentine President can use the veto power to cut individual provisions from a bill, virtually re-writing legislation.¹⁰⁸ The President can also interfere with the Congress-

occur until the early 1860's. *See id.* By that time, "the country ceased to be a segmented imbroglio of *caudillo* chieftainships, and it gradually surmounted its interregional conflicts to form a nation state that gained undisputed authority throughout the republic." *Id.* at 118.

103. *See id.* at 124. "Admittedly, the powers of the executive branch could have been more carefully constrained in the 1853 Constitution of Argentina, but it is clear that the framers of that document intended to put a strong presidency in place." Garro, *supra* note 92, at 93 (citing Harry Kantor, *Efforts Made by Various Latin American Countries to Limit the Power of the President*, in *PRESIDENTIAL POWER IN LATIN AMERICAN POLITICS* 21 (Thomas V. Di Bacco ed., 1977)).

104. *See* Rosenn, *supra* note 90, at 24, 27.

105. *See* Garro, *supra* note 92, at 85-86.

106. ARG. CONST. art. 86, § 10.

107. *See* Verbitsky, *supra* note 29, at A23. During the course of his term, Menem removed the Attorney General, several government prosecutors, and officers of the court of government accounts. Nino, *supra* note 68, at 641. Critics questioned the motivation for the President's actions, accusing Menem with trying to cover-up corruption charges. *See* Verbitsky, *supra* note 29, at A23.

108. ARG. CONST. art. 72 (providing for a bill to be vetoed in whole or in part by the president).

sional process that approves budgets and investments.¹⁰⁹

The most significant of the President's superlegislative powers are those to declare a state of siege and to execute decrees. In a state of siege, the President may suspend basic human rights, including freedom of speech and freedom of the press.¹¹⁰ The power to execute *decretos reglamentarios* (regulating decrees) allows the President to implement and enforce the laws of Congress in any manner the President deems appropriate.¹¹¹

IV. INCREASING THE POWER OF THE PRESIDENT

Most opponents of Menem's original reform package—one which did not contain specific provisions redirecting presidential authority to the other branches of government—fear a further concentration of presidential power.¹¹² In fact, some fierce critics have characterized Menem's desire to be re-elected under his original reform package as a "quest for absolute power."¹¹³ While this concern may exaggerate the situation, there is no doubt that the measures Menem wants to implement would increase his own strength by allowing him four to six more years to solidify his personal hold over the government and the population.¹¹⁴

A. *Hyper-Presidentialism*

President Menem is the current heir to a deep institutional problem in Argentina, which legal historian and political advisor Carlos Nino labeled "hyper-presidentialism."¹¹⁵ In this condi-

109. ARG. CONST. art. 86, § 13.

110. See Nino, *supra* note 68, at 640 n.24. Cf. ARG. CONST. art. 86, § 19.

111. ARG. CONST. art. 86, § 2. It is this latter power that the former President Juan Perón used so often to circumvent the will of Congress between 1946 and 1955. See Roth, *supra* note 14, at xli. Menem has apparently inherited the habit from his party's founder.

112. See Nash, *supra* note 17, at A5.

113. Verbitsky, *supra* note 29, at A23.

114. A second term would mean that Menem would remain in office longer than any twentieth century Argentine leader, including Juan Perón. Perón served nine years in office between 1946 and 1955, when a military coup forced him to leave the country. Perón returned to Argentina and the presidency in 1973, but died in office several months later. See generally ROCK, *supra* note 101, at 360-66.

115. See Nino, *supra* note 68, at 640-41 (discussing Menem's enlargement of

tion, a balance of power among the different branches of the government is almost nonexistent.¹¹⁶ Even local governmental sovereignty from the President is minimal.¹¹⁷ The executive branch is, in effect, the government on both a federal and national level.

1. Federal Dominance

Democracy cannot develop adequately under a powerful executive branch without the counter-balance of a popularly elected congress, capable of formulating laws, and an independent judiciary, able to interpret and apply them.¹¹⁸ To guard against executive dominance, Argentina needs a system of government founded upon the checks and balances that a tri-partite system of government imposes.¹¹⁹ In order for these checks and balances to work, Argentina needs politicians who respect this division of power among the branches.¹²⁰

During the first four years of his term, President Menem has successfully avoided many of the presidential limitations which the Argentine Framers adopted. Menem's court packing plan was a highly controversial example. In 1990, Menem increased the number of Justices to nine by adding four new Justices with strong loyalties to the President.¹²¹ According to one reporter, Menem "sneaked this measure through the Congress one night by using busboys and clerks to fill the seats for a

power). "Apart from the case of Mexico, the current system in Argentina is possibly the most extreme form of presidentialism in the world, placing it in line with semi-authoritarian systems." *Id.* at 643.

116. *Id.* at 641 ("Hyper-presidentialism . . . results from the practice of successive executives who enlarge their powers at the expense of a resigned Congress, and with the blessing of the Supreme Court.").

117. *See id.*

118. *Id.* at 642; *see also* Garro, *supra* note 92, at 86 (citing Robert J. Kolesar, *North American Constitutionalism and Spanish America: "A Special Lock Ordered by Catalogue, Which Arrived With the Wrong Instructions and No Keys?"*, in *AMERICAN CONSTITUTIONALISM ABROAD* 41, 52-55 (George A. Billias ed., 1989)). As Garro notes, this problem is not only found in Argentina, but rather, is endemic to all of Latin America. *Id.*

119. *See* Rosenn, *supra* note 90, at 11-12. The structure of a federalist system and the balance of powers between the states and the central government, as in the United States, is also a major component an effective democracy. *Id.* at 11.

120. *Id.* at 4 (noting, "[p]erhaps the best evidence of the success of constitutionalism in the United States is that constitutional precepts are widely respected and obeyed").

121. *See* Verbitsky, *supra* note 29, at A23.

'quorum.'"¹²² Menem successfully circumvented the legislature's check on the President's nominating authority, and concurrently secured for himself the obedience of the judiciary.¹²³

The situation on the Supreme Court has since changed. Three Justices resigned in late November and early December of 1993.¹²⁴ The Justices resigned after Alfonsín demanded a realignment of the Court before he and the Radicals would back Menem's re-election package.¹²⁵ These events represented a strong exercise of power on the part of Alfonsín to force his will. However, the power that Menem wielded over the judiciary was no less than absolute. In short, Menem demonstrated his ability to create new positions on the Court and to force resignations of presumably independent Justices holding life-tenured positions.¹²⁶

Menem has also demonstrated enormous presidential power with his liberal use of executive declarations. While these decrees are designed to implement and enforce the laws of Congress, the Supreme Court has upheld the President's authority to legislate through "decrees of necessity and urgency."¹²⁷ The problem is that the President defines what constitutes "necessity and urgency."¹²⁸ In the first two years of his term, Menem issued over one-hundred such decrees—a substantial number compared with his predecessor's eight decrees in five and one-

122. *Id.*

123. See Garro, *supra* note 92, at 101; see also Patricios, *supra* note 33, at 544 (commenting on the correlation between the goals of the President and the Supreme Court since Menem took office).

124. See Andrés Wolberg-Stok, *Two More Argentine Supreme Court Members Step Down*, REUTERS, Dec. 3, 1993, available in LEXIS, NSAMER Library, ALLNSA File.

125. *Id.*; see also *Alfonsín Makes Unexpected U-Turn*, *supra* note 80. Two of these resignations came only hours before the Radical Party convened in La Pampa Province to vote on the Menem-Alfonsín pact. See Wolberg-Stok, *supra*, note 124.

126. See *Alfonsín Makes Unexpected U-Turn*, *supra* note 80, (reporting that it was Menem who put pressure on the justices to resign). For an argument that the use of presidential power over a supreme court is justified after a shift of government regimes, see Owen M. Fiss, *The Limits of Judicial Independence*, U. MIAMI INTER-AM. L. REV. 57, 67-70 (1993) (arguing, however, that Menem's interference with the Court occurred after a regular shift in administrations, not regimes).

127. See Cura Grassi, *División de poderes y la emergencia*, REVISTA JURÍDICA ARGENTINA—LA LEY [L.L.], Jan. 15, 1992; I.J.M. Cullen, *Asunción de facultades legislativas por el presidente (Decretos de necesidad y urgencia)*, [1992-A] L.L. 839; Caratini, *Reflexiones sobre el caso "Peralta"*, L.L., Sept. 29, 1992.

128. See Garro, *supra* note 92, at 82-83.

half years.¹²⁹

Menem has proven his willingness to circumvent the democratic processes of his government and the constitutional limitations imposed upon the power of the presidency.¹³⁰ He is a master at increasing his own power at the expense of the other government branches. During his first four years in office, President Menem cunningly, but effectively, neutralized the other two branches by packing the Supreme Court and overriding Congress with executive decrees.¹³¹ The Radicals' proposed amendments to reform the Constitution will, if properly utilized, realign the balance of power in the federal government by taking some of this presidential authority out of the *Casa Rosada* and placing it into Congress and the judiciary.¹³²

2. National Dominance

Argentine presidents have traditionally demonstrated their authority over the provincial governments through the process of federal intervention. The Argentine Constitution states that, "[t]he federal government may intervene in the territory of the provinces in order to *guarantee a republican form of government . . .*"¹³³ Therefore, when Congress is not in session and the Argentine President believes that a province's government is in danger, or if the provincial leader invites the President to take action, the President may replace the local authorities with *interventores* (trustees) to return the region to "constitutional order."¹³⁴

Over the years, Presidents have broadly interpreted Article 6—especially the phrase "to guarantee a republican form of government"—to consolidate their own power and that of the

129. See Nino, *supra* note 68, at 641. Finance Minister Domingo Cavallo defended the use of executive decrees by stating that the President implemented them in almost all cases to "eliminate regulations, restrictions, preferential treatment, bad taxes and other distortions created by decree-laws" of the military governments. *Menem "Disciple" Quits*, *supra* note 37.

130. See Stotzky, *supra* note 4, at 124.

131. Garro, *supra* note 92, at 101.

132. See generally *Main Points*, *supra* note 67.

133. ARG CONST. art 6, translated by Garro, *supra* note 92, at 87 n.285 (emphasis added).

134. See Garro, *supra* note 92, at 87-88.

federal government.¹³⁵ Menem has maintained this tradition. In the first four years in office, he has replaced six provincial governments with trusteeships.¹³⁶

Critics of the Menem administration have warned that the President's use of federal intervention is dangerous. Political and legal historian Alejandro Garro wrote that the ideas of pluralism and separation of power inherent in democratic institutions "have been and continue to be seriously threatened in Argentina by the abuse of the power of federal intervention in the provinces."¹³⁷ The President's ability to intervene so freely in the otherwise autonomous functioning of the states undermines the fundamental purpose of a federalist system: decentralization.¹³⁸

Alfonsín has tried to secure an agreement from Menem to keep the power of federal intervention solely in the hands of the Congress.¹³⁹ Whether this is a promise Menem will respect, or one that the Constitutional Convention will adopt remains uncertain. However, it is a crucial step towards ameliorating a present imbalance of federal control over the provinces.

B. Disrespect for the Rule of Law

Menem's past actions raise the question of whether he and his advisors respect the rule of law. Corruption charges and physical attacks on the press comprise only the more obvious abuses of presidential power. Menem's determination to rule by executive decree, instead of through legislative procedures, and to impinge on provincial sovereignty demonstrates the President's propensity for exploiting the weaknesses in the Argentine political system.¹⁴⁰

135. *Id.* at 87 n.285.

136. *Id.* at 89 (citing as an example: LEGISLACIÓN ARGENTINA, No. 460, Aug. 1992, at 5 (decreasing the federal intervention of the judicial branch of the Province of Corrientes)). Garro notes that Corrientes is the only province in which the Peronist Party has never won. *Id.* at 89 n.291.

137. *Id.* at 87.

138. *Id.*; see also DANIEL PONEMAN, ARGENTINA: DEMOCRACY ON TRIAL 15 (1987) (stating that the right of intervention "combined with a centralized tax system . . . has impeded the diffusion of economic and political power to the provinces").

139. See Honore, *supra* note 18, at A25.

140. The idea that the rule of law should guide a nation exposes a profound ideological separation. On one side are those "instrumentalists" who feel that the law incorporates the rules by which leaders can achieve particular ends. On the other

Respect for the rule of law serves three essential purposes in a democratic system: (i) to provide a state of order, (ii) to assure a government by law rather than by force or power, and (iii) to impose substantive restrictions on the legislative power of political leaders.¹⁴¹ Respect for legal authorities forces leaders to abide by principles of regularity and restraint.¹⁴² That is, they apply and enforce the same procedural and substantive laws for all parties, including themselves and their governments. When leaders fail to observe an objective standard of accountability for their actions—which the legal authority of a constitution should provide—their rule can easily become arbitrary and abusive.¹⁴³

The standard to which Menem holds himself accountable is apparently based upon a subjective conception of the limitation to his presidential authority. Menem legitimizes his methods by pointing to his results.¹⁴⁴

Supporters of the Menem administration would argue that there has been no abuse of power and that Menem has acted only in the best interests of the nation.¹⁴⁵ This argument is

side are the "substantivists" who believe that law has as its primary objective the realization of a social contract based on liberty and justice. Margaret J. Radin, *Reconsidering the Rule of Law*, 69 B.U. L. REV. 781, 192 (1989).

141. David Feldman, *Democracy, The Rule of Law & Judicial Review*, 19 FED. L. REV. 1, 11 (1990) (Austl.).

142. Stotzky, *supra* note 4, at 108 n.13.

The rule of law is a major foundation of democratic political systems. It is a call to political justice and has remained, over the centuries, a vibrant ideal of democratic society. The central core of this principle embodies the enduring values of regularity and restraint—of treating like cases alike and inhibiting the arbitrary actions of government officials.

Id.

143. Symposium, *Transition to Democracy and the Rule of Law*, 5 AM. U. J. INT'L L. & POL'Y 965, 1019 (1990). This has often been the problem in Latin America during military rule. The seemingly lack of accountability of military governments to the rule of law has led to many reported human rights violations in Argentina and other Latin American nations. *Id.* Other civilian presidents, such as Fujimori of Peru, have used the military for seemingly autocratic purposes. See Podesta, *supra* note 1. Amid cries of dictatorial measures, Fujimori shut down the Peruvian Congress in April 1992, as he called a state of national emergency. *Id.*

144. See *No me molesta gobernar por decreto*, LA NACIÓN, July 8, 1992, at 7 (Arg.) (interview with President Menem). "President Menem is bound to rely, to a greater extent than his predecessor, on his personal charisma in the implementation of undemocratic patterns of presidential hegemony used to push through policies by executive decree." Garro, *supra* note 92, at 98.

145. See *Menem "Disciple" Quits*, *supra* note 37. Minister Cavallo stated that nearly all Menem's executive decrees were implemented to "eliminate regulations,

supported by the remarkable economic transformation which Menem and his Finance Minister, Domingo Cavallo, have created in Argentina over the past two years. Credit must be given for these economic accomplishments. However, one must be careful not to view accomplishments from an "ends-justifying" perspective.¹⁴⁶ "[S]uch economic transformation cannot and should not be achieved at the cost of altering the balance of powers guaranteed by the Constitution, the main purpose of which is not to promote economic efficiency but to preclude the exercise of arbitrary power."¹⁴⁷

Permitting Menem to amend the Constitution to allow for his own re-election does not necessarily mean that his abuse of power will continue, nor does it necessarily mean that Menem will be re-elected. What it does mean is that future Presidents will face a situation where their personal desire to win a second term could compel them to utilize their extreme power over the federal and provincial governments to advance their interests. Menem has not only demonstrated the existing latitude of this power. He has also succeeded in implementing and broadening it.

Moreover, if the Radicals do not participate in drafting the new Constitution, and if they do not demand that limitations be placed on the President's authority, the broad powers that Menem has historically used will continue to threaten Argentina's democracy. Should the coalition break down, Menem might be able to force the Constitutional Assembly to pass his re-election amendment alone by including certain "pork barrel" provisions to please the fringe groups. Such a superficial alteration of the Constitution would mark a further deterioration of congressional and judicial checks on the executive branch's power. Additionally, it would demonstrate to future leaders—civilian or military, in Argentina and abroad—that they could alter the federal constitution to serve the personal agenda of the President.

restrictions, preferential treatment, bad taxes, and other distortions created by decree-laws" of the past military regimes. *Id.*

146. Garro, *supra* note 92, at 83.

147. *Id.*

V. EXCLUSIONARY POLITICS

Redistribution of governmental power is essential for the future of democracy in Argentina. Just as important, however, is the political process by which such reform is achieved.¹⁴⁸ Many of Menem's alleged constitutional abuses have been procedural abuses. In the past, Menem has enacted laws benefitting the nation, especially its economy; but he has done so by circumventing formal democratic process.¹⁴⁹ Evading proper procedure to exclude the opposition from possibly blocking the Peronists' agenda has been both Menem's purpose and result.¹⁵⁰

In Argentina, the process of amending or reforming the federal Constitution has historically resulted in the exclusion of opposition groups.¹⁵¹ This possibly is due to the perceived importance of the Constitution as a legitimizing instrument and, therefore, as a vehicle for maintaining power.¹⁵² The conflicts resulting from the political exclusion during these precarious times of change divide society and impede political discourse.¹⁵³

148. See Podesta, *supra* note 1 (stating that Menem's present desire to use constitutional means to remain in power "marks a sharp turn away from Latin America's history of coups d'etat and rule by force").

149. See Garro, *supra* note 92, at 83. "In a country where programs for the control of inflation and deregulation of the economy are so urgently expected to succeed, hardly anybody cares whether those programs were devised by means which were constitutionally shaky." *Id.*

150. See Menem "Disciple Quits," *supra* note 37 (justifying national interests); *No me molesta gobernar por decreto*, *supra* note 144 (discussing the purpose and importance of decrees).

151. See Nino, *supra* note 68, at 639. One reason for this ubiquitous precedent of exclusion is that many constitutional changes have occurred after coups d'etat. See Rosenn, *supra* note 90, at 8. Between 1930 and 1990, there have been 139 extra-constitutional changes of government in Latin American; approximately seven in each nation. *Id.*

152. Constitutions provide the foundation for ordinary laws as they root those laws in the formal objectives and values of a society. A.S. Caldera, *The Rule of Law in the Nicaraguan Revolution*, 12 LOY. L.A. INT'L & COMP. L.J. 345 (1990). Where many Latin American leaders have failed was by assuming that their rise to power gave these leaders the right to impose such objectives and values on society.

153. See Buscaglia, *supra* note 85, at 18 (reporting that Menem believes he can realize his re-election initiative without producing the dangerous polarization which has frequently resulted in Argentine constitutional conventions).

A. *Historical Precedents of Exclusion in Argentina*

Argentine leaders have often excluded their opponents from political participation during the process of drafting or reforming the federal Constitution. The Unitarian-created Constitution of 1826, for example, excluded the Federalist leaders from participation.¹⁵⁴ Provisions in the new charter—including a nine-year presidential term and placement of the national capital in Buenos Aires—seriously affronted the Federalists *caudillos* of the interior provinces.¹⁵⁵ The Federalist revolted only six months after Bernardino Rivadavia, the Unitarian founder of that document, began his term. They demanded that Rivadavia resign and forced his successor to nullify the Constitution.¹⁵⁶ Some of the most violent and contentious fighting between these two factions occurred in the following years, over the structure that the government was to take, culminating in the quasi-dictatorship of the Federalist Juan Manuel de Rosas.¹⁵⁷

In 1949, Juan Perón drastically amended the Constitution of 1853 through the use of executive decrees.¹⁵⁸ Perón's Constitution allowed for his own re-election to the presidency by means of direct election. It included provisions that increased the power of the executive office over the provinces and federal government.¹⁵⁹ The new charter also gave the President wide discretion in declaring a "state of internal war," and in expropriating private property.¹⁶⁰ Perón unsuccessfully attempted to use these self-declared powers against his adversaries to scare and subdue them.¹⁶¹

154. See ROCK, *supra* note 101, at 101 (describing how the Federalists resisted the Unitarian constitution, which contained provisions for a nine-year presidential term and for the president to have the power to appoint and dismiss provincial governors).

155. *Id.*

156. *Id.* at 103.

157. *Id.* at 103-04. Exclusion from the formation of government in this period had profound economic ramifications. The Unitary leaders generally represented the mercantile interests of Buenos Aires, while the Federalists were associated with the powerful cattle groups. *Id.* At stake were limited funds and much needed military support. *Id.* at 102.

158. *Id.* at 288; see also Nino, *supra* note 68, at 639; Carlos Nino, *Transition to Democracy, Corporatism and Constitutional Reform in Latin America*, 44 U. MIAMI L. REV. 129, 162 (1989).

159. See ROCK, *supra* note 101, at 336.

160. *Id.*

161. See GARY W. WYNIA, *THE POLITICS OF LATIN AMERICAN DEVELOPMENT* 254-

The military opposition of 1949, with the support of liberal-democrats, rural and industrial entrepreneurs, and the Catholic Church responded to Perón's actions by overthrowing him in 1955. The opposition annulled the Peronist Constitution and excluded the Peronists from participating in the Constitutional Convention.¹⁶² The custom of dealing with political opponents by silencing them helped create a culture of anti-governmental movements which plagued Argentina in the decades that followed.¹⁶³

B. "Zero-Sum" Politics

The use of exclusionary measures throughout Argentina's history is largely due to the population's cultural perception of political norms.¹⁶⁴ Argentine leaders traditionally view politics as a "zero-sum" game,¹⁶⁵ whereby a benefit to one group signifies an automatic detriment to all others.¹⁶⁶ Distaste for compromise is particularly relevant to the present question of constitutional change. Menem's opponents, and even many of his supporters, urge that, "[a] constitution . . . must be the result of broad consensus; it must be seen as a constitution for all Argentines, not as the constitution for a particular party."¹⁶⁷ In a society which perceives one party's gain as the other party's loss, finding mutually advantageous solutions is not often considered. "Power-sharing is not part of this concept and consensus is achieved, not by compromise between competing groups, but by the elimination of competition."¹⁶⁸ Failure to negotiate within the political institutional structure forces opposition groups

55 (1990).

162. See ROCK, *supra* note 101, at 336. The Constitution that the military leaders adopted was the original 1853 charter.

163. See generally *id.* at 346-66 (discussing the popular uprisings of the 1966-76 era in Argentina).

164. See SUSAN CALVERT & PETER CALVERT, ARGENTINA: POLITICAL CULTURE AND INSTABILITY 149 (1989). This phenomenon is true for all Latin American nations. See *id.* at 150.

165. *Id.* at 149.

166. This harsh attitude arises from many elements, including: (i) the importance of machismo as a male character trait; (ii) the role of personalism in political followings; and (iii) the unwillingness to compromise with opponents. *Id.* (noting that "Argentina is a society that considers compromise a questionable trait of human character").

167. Nino, *supra* note 68, at 639.

168. CALVERT & CALVERT, *supra* note 164, at 149.

outside the structure. Such foreclosure occurred in 1826 when Rivadavia refused to compromise with the Federalist leaders, in 1949 when Perón expelled his opponents from government, and in many other instances throughout Argentina's history.¹⁶⁹ The possibility that the present situation could result in the same condition remains real.

C. *Threat of Suppression of Debate*

The Peronists and the Radicals entered into negotiations supporting widely different agendas for the reformation of the federal Constitution. Most of Menem's party supported a minimalist stance on the issue of constitutional reform.¹⁷⁰ The Radicals, on the other hand, have traditionally promoted a complete revision of the existing Constitution, including transforming the Argentine presidential system into a mixed parliamentary system.¹⁷¹

Ideological differences are not harmful; they may even stimulate democracy as long as political discussion remains open. However, until mid-November 1993, Menem's re-election drive had the opposite, deleterious effect of reducing debate over constitutional reform.¹⁷² Some fault must be placed upon the Radicals for initially refusing to negotiate with a re-election-minded President. Yet, at no time did Menem suggest that he was willing to curb his political ambitions for the sake of political and social cohesion.¹⁷³

The Radicals feel that Menem should learn from the position Alfonsín and his advisors took during their term in office. At that time, the Alfonsín administration also hinted at the

169. The 1970s, in particular, saw many anti-government extremist groups use protests and violence as political weapons. The *Montoneros* was one such group. See ROCK, *supra* note 101, at 353-55.

170. See Garro, *supra* note 92, at 638 (noting that the central constitutional issue for Menem is re-election).

171. REFORMA CONSTITUCIONAL: SEGUNDO DICTAMEN DEL CONSEJO PARA LA CONSOLIDACIÓN DE LA DEMOCRACIA 11-13 (1987). Former President Alfonsín formed the Council for the Consolidation of Democracy in 1983 upon assuming office. The main responsibility of this organization was to propose solutions to the problem of legitimizing democracy in an Argentina badly scarred by almost forty years of military rule, civil strife, and economic and moral decay. See Garro, *supra* note 92, at 93 n.301.

172. See Nino, *supra* note 68, at 638.

173. *Id.* at 638-39.

possibility of re-election, although Alfonsín himself publicly rejected such intentions.¹⁷⁴ In the end, Alfonsín's Council for the Consolidation of Democracy tactfully excluded all mention of re-election in its public reports, furthering political debate and avoiding political confrontations on the issue. As Carlos Nino, the Coordinator of the Council, wrote, "avoiding the issue of modification of the prohibition on re-election permitted the debate to focus upon issues of great institutional importance."¹⁷⁵

By overcoming their opposition to Menem's re-election proposal and finally negotiating with the Peronists, the Radicals have taken a monumental step forward to break Argentina's tradition of political noncooperation.¹⁷⁶ Menem also deserves praise for opening negotiations with his long-time rivals. As Argentina prepares for a new national charter, President Menem must allow the Radicals to continue playing a large role in this fragile process. Conversely, Alfonsín's party must use this occasion to foster an attitude of compromise and cooperation.¹⁷⁷ At stake is a crucial opportunity to increase the population's confidence in its leaders and government.

VI. BUILDING INSTITUTIONAL LEGITIMACY

Whether Menem's bid to reform the Constitution is fueled by personal ambition or by a solemn desire to allow the Argentine people greater freedom of political expression is highly debatable.¹⁷⁸ More certain is the observation that Argentina

174. See Garro, *supra* note 92, at 92.

175. See Nino, *supra* note 68, at 638.

176. For example, it would have been easy to follow the route that the Peronists took in 1955, when the military excluded that group from government participation. The Peronists essentially withdrew altogether from the political process by implementing a strategy of passive resistance; the Peronist representatives cast all blank ballots. See ROCK, *supra* note 101, at 336.

177. See Cavarozzi, *supra* note 3, at 48 (noting the importance of seeking "positive resolution[s] of conflicts and negotiations . . ." between the Radicals and the Peronists).

178. *Menem to Press Ahead with Constitutional Reform*, REUTERS, Aug. 27, 1993, available in LEXIS, NSAMER Library, ARGEN File. Menem has characterized his proposed constitutional amendment as allowing the population to vote for whomever they desire without the restraint of eliminating the incumbent president from their choice. He said, "[t]he Constitution must be reformed with the consensus of the people, not the [political] parties." *Id.*; see also *Argentine Senators Blocking Menem's Reform Drive*, REUTERS, Sept. 8, 1993, available in LEXIS, NSAMER Library,

stands to gain from the Menem-Alfonsín compromise.¹⁷⁹

Compromise is essential to create political cohesion in democratic systems.¹⁸⁰ Through negotiations and concessions, Argentine leaders have a chance to usher in a new, "reformed" government created by a constitutional revision representing the vast majority of the Argentine population. Unfortunately, Argentina's history and Menem's record do not demonstrate a propensity for reaching ends that have been legitimized by political compromise.¹⁸¹

A. *Lack of Political Legitimacy in Argentina*

Legitimacy is arguably the single most important factor to the existence of any democracy. Yet, it is the factor most commonly absent in Latin American nations.¹⁸² Much of this problem is rooted not in the malfunctioning of the political institutions themselves. Rather, it is rooted in the leader's continuous circumvention of constitutional processes. The population, as a result, has developed a profound mistrust of the rule of law's effectiveness, and a suspicion of their leaders.¹⁸³

This lack of legitimacy led to crisis in 1973, when Juan Perón returned to power and placed his second wife, Isabel, in

ARGEN File.

179. See Cavarozzi, *supra* note 3, at 46-48. See generally JUAN J. LINZ, *THE BREAKDOWN OF DEMOCRATIC REGIMES CRISIS, BREAKDOWN, & REEQUILIBRATION* 66 (1978).

180. See LINZ, *supra* note 179, at 75.

181. See Cavarozzi, *supra* note 3, at 47.

182. LINZ, *supra* note 179, at 18. Linz defines a legitimate government as one considered by the political leaders and the general populace as the "least evil of the forms of government" at that time and place. "Ultimately, democratic legitimacy is based on the belief that for that particular country at that particular historical juncture no other type of regime could assure a more successful pursuit of collective goals." *Id.*

183. See Stotzky, *supra* note 4, at 108 (referring to A. HUTCHINSON & P. MONAHAN, *THE RULE OF LAW: IDEAL OR IDEALOGY* (1987)). "In general, Latin Americans have not internalized the importance and legitimacy of a constitutional system based upon the rule of law." *Id.* Some analysts have noted that the strength of the *Frente Grande* and *Modin* parties' showing in the recent elections for the Constitutional Assembly demonstrated the public's concern that the present government address issues of corruption within the Administration. See Peter Bate, *Menem's Armor Dented in Argentine Charter Vote*, REUTERS Apr. 14, 1994, available in LEXIS, NSAMER Library, ALLNSA File. The *Frente Grande*, which garnered 13% of the vote in that election, ran expressly on an anti-corruption platform. *Id.*

the vice-presidency.¹⁸⁴ When Perón died, Isabel succeeded him amid violent outcries of nepotism and incompetence. Argentina might have avoided the turmoil accompanying and following Isabel's two-year rule had "Perón . . . been more concerned with building institutional integrity and continuity rather than with personally selecting his successor."¹⁸⁵

A more recent legitimacy crisis erupted in the early 1980s. Military leaders at that time, faced with impending economic collapse and intra-government dissention, turned to foreign affairs to try to raise public morale and confidence.¹⁸⁶ The ensuing defeat in the Falklands War proved to be the military's most costly failure.¹⁸⁷ The generals realized that even the force of arms could not restore the people's belief that military rule was legitimate.¹⁸⁸

History supports the proposition that reforming constitutions in Latin America is only one of the steps necessary to consolidate democracy.¹⁸⁹ Equally, the people and leaders must make a moral and intellectual commitment to democratic ideals and self-sacrifice.¹⁹⁰ A population must believe that problems can be solved by resorting to legal practices, and supporters must have the conviction to stand up to non-believers. The coalition between President Menem and Radical leader Alfonsín may signify a shift to such a commitment.

B. The Role of Coalitions in Building Legitimacy

The formation of political coalitions strengthens institutional legitimacy in two ways. First, through political compromise and cooperation, leaders are able to legislate through the proper democratic procedures. In this way, coalitions usually ensure effective majority rule and realization of common objectives, rather than resulting in political gridlock or imposition of a strong minority.

The people's belief in the legitimacy of their government is

184. Stotzky, *supra* note 4, at 116-17.

185. *Id.* at 117.

186. See ROCK, *supra* note 101, at 374.

187. *Id.* at 376.

188. *Id.* at 374-76.

189. See, e.g., Stotzky, *supra* note 4, at 119-20.

190. *Id.*

based largely upon their leaders' efficacy.¹⁹¹ Leaders who are unable to find solutions to national problems, or are simply unable to implement those solutions, lose the faith of the population.¹⁹² When people perceive an administration's inability to solve problems as an outgrowth of a dysfunctional government, or when the problems become too severe to overlook, people lose faith in the system.¹⁹³ It is then that the threat of civil strife is highest.¹⁹⁴ President Menem was effective as a leader in stabilizing the economy by circumventing Congress, the Supreme Court, and the provincial governments. In this respect, his policies have served to strengthen the nation. He must now, however, lead by working within a constitutional-democratic framework.¹⁹⁵

Second, coalition-building acts as a uniting force which prevents ideological polarization and radicalization.¹⁹⁶ Open lines of political discourse maintain this force as parties discuss issues to reach workable solutions.¹⁹⁷ When Menem abused his executive powers, his opponents took the semi-extreme measure of temporarily shutting down the process of political discussion. The real danger occurs when autocratic abuses by the President push opposition groups into centrifugal competition¹⁹⁸ with the incumbent party. Groups at the fringes of political activity see no possibility of working within the system to effect change, and

191. See LINZ, *supra* note 179, at 20-23.

192. *Id.*

193. *Id.*

194. Recent uprisings in Mexico, for example, can be viewed as a rebellion against what the poorer agricultural communities of the southern provinces consider a dysfunctional government, unable and unwilling to deal with issues of poverty and political disenfranchisement. See Victor Perera, *Can Mexico's Ruling Political Party Save the State, and Itself, From Balkanization?*, L.A. TIMES, Mar. 27, 1994, at M1; Tim Golden, *Mexico's Fine Line*, N.Y. TIMES, Mar. 4, 1994, at A2.

195. See Garro, *supra* note 92, at 84. "Argentina's transition to a genuine democracy will continue to be impeded unless the executive is able to work out a political arrangement with the legislative branch in search of broad-based support for policy initiatives." *Id.* at 83-84.

196. *Id.* at 24.

197. See CALVERT & CALVERT, *supra* note 164, at 150-51; Cavarozzi, *supra* note 3, at 48.

198. See LINZ, *supra* note 179, at 27. By "centrifugal competition," Linz refers to the radicalization of ideas to incorporate certain segments of society they feel will give them support over the government. See *id.* The rise of the left and extreme right fringe parties in the recent Constitutional elections may signify the beginning of such competition. See generally Nash, *supra* note 82, at A5.

resort to working against the government.¹⁹⁹ Democracy, if it can exist at all at this stage, is severely weakened.

The Menem-Alfonsín coalition could have the positive effect of bringing Argentina's two most important parties to agreement on not only a common understanding of the other's objectives, but also on a common path for reaching those objectives.²⁰⁰ The Radicals have already proven that they are willing to sacrifice certain interests to maintain and improve the integrity of the political system. Menem must also sacrifice when it comes time to relinquish some of his presidential authority.²⁰¹

VII. CONCLUSION

Argentina needs constitutional reform to repair government institutions which have deteriorated over the one-hundred-forty-year life of the present charter. In short, the executive branch must be re-aligned in relation to the legislature, the judiciary, and the provinces. The reform must place checks and balances upon the President so that future leaders have a clear concept of the limitations on their power. Restoring institutions to a condition where they promote democratic consolidation, however, is only one element to this monumental project.

Argentine leaders and leaders throughout Latin America have traditionally struggled with the fundamental principles of democracy. The results, at times, have been disastrous. Although the age of *caudillos* has long since passed, the attitudes adopted and developed in the early years of independence continue to plague Argentina. Such perceptions of power are incompatible with democracy in the twentieth century. The act of reforming political institutions can only produce nominal

199. *Id.*

200. See Cavarozzi, *supra* note 3, at 47-48. In writing about the Alfonsín Administration, Cavarozzi noted, "[t]he governing party . . . will have to learn to recognize the legitimacy of the opposition's criticisms, in order to avoid automatically attributing to them an eagerness to destroy democracy." *Id.* at 48.

201. Relinquishing power will also entail Menem addressing the charges of corruption within his government. Only by doing so will Menem assuage the concerns of the *Frente Grande* and other members of the public that did not support Menem or the Radicals in the Constitutional elections. See *Results from Constituent Assembly Elections*, *supra* note 47. According to Mariano Grondona, a respected political commentator in Argentina, "[t]he vote for the Broad Front is a protest vote, a vote of anger" *Id.*

change where politicians do not respect the rules placed upon them. Only when the leaders have embraced the principles of democracy, will the people follow.

From an economic perspective, President Menem has transformed Argentina over the past four years. The country's continued prosperity, however, depends heavily on its political stability.²⁰² Menem must now solidify the democratic foundation on which Argentina's foreign trade and domestic economy can flourish. The Constitutional Convention, to be held in the summer of 1994, will present an important opportunity for Argentina to solidify that democratic foundation.

Menem may obtain his re-election amendment, but only at the price of relinquishing some of his presidential power. Should he not do so, the progress of democratic transformation in Argentina will suffer. For a country with so much potential to become a great economic power and political leader in Latin America, such a result would be tragic. In contrast, achieving a more democratic political system in Argentina by means of legal constitutional reform will provide all of Latin America and other developing regions with an example of reform and a reason for hope.

Not only have Menem and Alfonsín commenced the process of institutional reform. They have demonstrated a change in political attitudes. Argentine leaders must use this opportunity to demonstrate that true, stable democracy is possible in Latin America.

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202. "[T]he government's commitment to a stable currency and a reduced role for the State in the economy is not enough to keep a transition to democracy right on track." Garro, *supra* note 92, at 84.

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