

BETWEEN ORDER AND LIBERTY

Juan Bautista Alberdi and the Intellectual Origins of Argentine Constitutionalism¹

Jeremy Adelman

Princeton University

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This essay explores the intellectual foundations of Argentine constitutionalism from the 1830s to the 1850s. Focusing on the writings of Juan Bautista Alberdi and some of his critics, it argues that Argentine constitutionalism had liberal roots but invoked arguments that could neither bring unity to the state-building coalition nor resolve some basic tensions within the framework of national sovereignty.

INTRODUCTION

Juan Bautista Alberdi was devoted to the cause of shaping emerging republics with words. He became one of Latin America's most significant liberal *letrados* at a time in which the city of letters enjoyed a historically unprecedented significance. Best known as the fundamental texts of Argentine constitutionalism, which set out to imagine the legal foundations of state sovereignty in the wake of revolution and civil war, Alberdi's writings were also forays into historical analysis, and in some respects served as touchstones for how Argentines were coming to view their history as they struggled to make it.²

Resolving history and law was anything but easy. The tensions between the two consumed the framer of Argentine statehood, so much so that when he sat down near the end of his life to write his autobiography, the book doubled as a metaphoric biography of a nation at odds with itself—an account of the travails of a country and a man which only cohered when seen from a distance, from without. This is why exile (as he saw it) was so important to Alberdi, and why he considered calling his autobiography *The Life of an Absent One*. While mainly concerned

1. A longer version of this paper was written for a conference in honor of Charles Hale at the University of Iowa, March 3–4, 2006. I am grateful for Charlie Hale's years of support and encouragement to take the history of ideas seriously, to the participants at the conference for their thoughtful suggestions, and to LARR's anonymous reviewers.

2. Angel Rama, *The Lettered City* (Durham, NC: Duke University Press, 1999) 40–41.

with the intellectual makings of Argentine constitutionalism, this essay also has an ancillary theme: how the formation of territorialized states yielded new practices of extraterritorial expressions of patriotism—for which Argentina can boast a deep, if disturbing, heritage. In coping with the upheaval and displacement, Alberdi responded with exit, voice, and loyalty, to invoke the well-known coinage of Albert O. Hirschman, in his role as *letrado* of Argentine sovereignty.³

Juan Bautista Alberdi combined a liberal vision of statehood and historiography into a brand of constitutionalism. His generation fused legal and historical modes of reasoning, just as European and North American writers did in the 1830s, to create new ideological identities, inflected in part by the Romantic, counter-Enlightenment spirit of the age. It was not, as this essay will show, a stable amalgamation. Indeed, a principal task of this paper is to overturn the notion that Alberdi's ideas and prescriptions cohered into a "doctrine"—and thus that we should resist treating Argentine constitutionalism as resting on fundamentally stable foundations. To be clear: this does not mean that the framer(s) of Argentine sovereignty "failed"; rather, the liberal precepts brought to bear on the process of state-formation could not reconcile multiple sources of tension inscribed within the credo.⁴

The study of Latin American constitutionalism has been shaped overwhelmingly for the search for its inner logic. The most common approach involves the histories of constitutions that serve as catalogues narrated in the legal vocabulary they purport to explain. To patriotic lawyers who author constitutional histories, the task has been to write narratives as if Argentina (or other republics) had authentic traditions of its own, embodied in founding charters, which matured in whiggish fashion and culminated in some kind of national synthesis. The result is frequently to convey a false coherence of the ideals of the framers themselves.⁵ Another alternative is to reduce constitutionalism to instrumental exigencies. Rejecting the idealist storylines of accumulated patriotic consolidation, others argue that constitutionalism in Latin America was the

3. Juan Bautista Alberdi, *Autobiografía* (Buenos Aires: El Ateneo, 1927). Herein lies a case in which strategies of exit, voice, and loyalty are coiled into one figure, and are not mutually exclusive. See Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970). On exile, see Yossi Shain, *The Frontier of Loyalty: Political Exiles in the Age of the Nation-State* (Middletown, CT: Wesleyan University Press, 1989).

4. Paul Groussac, "El desarrollo constitucional y las Bases de Alberdi," in *Anales de la biblioteca*, t. II (Provincia de Río Negro: Instituto Superior de Servicio Social de General Roca, 1902). See Natalio Botana, *La tradición republicana* (Buenos Aires: Sudamericana, 1984), especially chapter 6; José Luis Romero, *A History of Argentine Political Thought* (Stanford: Stanford University Press, 1963), 133–159.

5. José Rafael López Rosas, *Historia constitucional argentina* (Buenos Aires: Ed. Astrea, 1986).

juridical expression of the interests of ruling classes more committed to preserving their ranks than to subjecting themselves to universal rules. Brian Loveman, for instance, has argued that the predominant feature of nineteenth-century state formation in Latin America has been elites' inscription of states of exception into the basic coda and operation of political systems. The difficulty, of course, is that this is not at all exceptional to Latin America. As Giorgio Agamben has argued, the ability to exempt rulers from the rules they uphold lies at the theoretical core of the modern sovereign's status.⁶

It helps to make some basic distinctions between constitutions and constitutionalism. In this essay, constitutionalism refers to a vision of sovereignty in which government affairs are conducted under the law. Constitutions function as a supreme law, restraining the state just as ordinary laws constrain individuals. *Constitutionalism* is more than that. Since governments enforce laws over citizens using ordinary laws, and since there is no reverse analogy (ordinary law does not equip citizens to enforce rules on states), constitutionalism envisions a theory of the conditions under which supreme laws operate. Who or what enforces the supreme law over enforcers? It was this dilemma that provoked James Madison to outline principles of constitutionalism in his *Federalist Papers*, and it vexed Alberdi, prompting him to pen the works that will be the subject of this paper.⁷

This is where liberalism, a much more studied subject, comes in. Alberdi sketched out some of the fundamental works of Argentine liberalism, making the case for a liberal politics, understood as an effort to justify political arrangements without relying on community standards or conventions. The challenge was to ground an individual-rights-oriented model of justice in a context in which it was hard to feel very confident about the durability of reasoned self-government. Liberals everywhere—not just in Latin America—grappled with some basic distinctions between citizens and noncitizens, active and passive subjects that were central to the kind of politics that would sustain a reasoned polity. What distinguished Alberdi was that the exclusionary features of his credo did not draw the boundaries of sovereignty around a state filled with citizens, to separate it from colonial possessions of rightless subjects, as “imperial liberalism” did. Alberdi's liberalism had to internalize exclusions within a national frame as a condition for its success; rightful and rightless citizens coexisted within the same political

6. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998); Brian Loveman, *The Constitution of Tyranny: Regimes of Exception in Spanish America* (Pittsburgh: University of Pittsburgh Press, 1993).

7. On the origins of constitutionalism, see Jeremy Adelman, *Sovereignty and Revolution in the Iberian Atlantic* (Princeton, NJ: Princeton University Press, 2006); Stephen M. Griffin, *American Constitutionalism: Theory to Politics* (Princeton: Princeton University Press, 1996).

community. To be sure, the exclusionary features of liberal societies are well known. But the place of liberalism's exclusions within its theoretical premises has not been as appreciated—least of all by liberals and neoliberals—because these exclusions are more often explained away as deviations from, not derivations of, liberal principles occasioned by the inertial effects of ancient (colonial, feudal, Hispanic—there is a long list) legacies. Alberdi too looked to the past to invoke these legacies to justify a system for citizens with incomplete citizenship—deploying a brand of historical reasoning to clear the ground for a particular model of sovereignty.⁸

After Revolution

Alberdi was part of a generational shift in social, political, and cultural outlook that spanned Iberian America, but appeared to have the most profound effects in the River Plate. Many of the French and German tracts associated with the Romantic movement, from Jules Michelet and Agustin Thierry's historiography of revolution, to Friedrich Karl von Savigny and Eugène Lerminier's juridical thinking, impressed young Argentine thinkers. Along with Juan María Gutiérrez and Esteban Echeverría, Alberdi soaked up Romantic tracts, and in the *Salón Literario* founded by another friend, Marcos Sastre, they created a local chapter of a trans-Atlantic counter-Enlightenment movement to invigorate patriotic sentiments by examining and extolling the local, spiritual origins of nationalism. The Young Argentine Generation, like the Young Italy or Young England movements, with their anti-utilitarian narrators like Walter Scott and Robert Southey, later rebaptised itself as the *Asociación de Mayo* to identify the new generation as heirs to the unfulfilled aspirations of the May 1810 Revolution, and explicitly set out to give "Argentina" its historical genesis as a way to imagine its future.⁹

The young *letrados* rejected the classical texts they were supposed to imbibe in law school and the rationalist Benthamite teachings which had been so influential on legislators of the 1820s. They partook of a more general rejection of the idea that all peoples shared a common trajectory based upon universal views of human nature—as purposive, rational, and requiring freedom from the fetters of bad government. In the hands

8. Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Political Thought* (Chicago: University of Chicago Press, 1999); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005); Ira Katznelson, *Liberalism's Crooked Circle* (Princeton: Princeton University Press, 1996).

9. Jeremy Adelman, *Republic of Capital: Buenos Aires and the Legal Transformation of the Atlantic World* (Stanford: Stanford University Press, 1999), chapter 7; Bernardo Canal Feijóo, *Constitución y revolución: Juan Bautista Alberdi* (Buenos Aires: Hyspamérica, 1986), t. I, 56–86; Jorge Myers, *Orden y virtud: El discurso republicano en el regimen rosista* (Quilmes: Universidad de Quilmes, 1995).

of Enlightenment thinkers, in Michelet's view, history was reduced to a "mechanical" account of cause and effect in the long march to an inevitable higher synthesis towards which all societies were destined to evolve. The past required a degree of philosophizing to render into a truly epic form—steeped in custom, religion, language, communal affairs, politics, and, of course, law. This historical turn, which liberated the particular, national, specificities to follow their own heroic courses, elevated the work of the narrator from a recitation of "facts" to a loftier prophetic role—with the prophet looking backward to point his readers forward. Disenchanted with the first generation of revolutionary lawmakers whose faiths only seemed to have brought ferment to postcolonial societies, Platine letrados found in the historicist turn an uplifting message enjoining them to study the past not to overturn it, but to follow its paths forward.¹⁰

Inspired by the Romantic turn, Alberdi explored the intersections of history and jurisprudence. During the heyday of the *Salón*, Alberdi labored away at a legal tract, one which could not be more at odds with the axiomatic style of the early University of Buenos Aires Law School. He penned his preface in January 1837, and launched it at the *Salón* in June of that year and later published as *Fragmento preliminar al estudio del derecho*. How important were Giambattista Vico and Johann Gottfried Herder, Michelet and Lerminier, to Alberdi's thoughts? The answer is that they were, but less in their specific terms than in intellectual key, as Alberdi sought to explore the role of "spiritual" origins, collective reason, and popular will in the making of the republic. The book occasioned a debate for it was a decisive break with so much of earlier (mainly Unitarian) legal thinking.¹¹

It is not hard to see why Unitarians were so upset. In the preface, Alberdi wasted little time in dispatching formalists who believed that laws could create institutions that would forge new social arrangements as just that, formalists. He began his work observing that what the country needed was not more "laws" but a different way to approach *the law*, through its underlying philosophical and moral bases. By reading Romantics, Alberdi wrote, "I ceased to conceive of the law as a collection of written

10. Lionel Gossman, "Jules Michelet and Romantic Historiography," in *Between History of Literature* (Cambridge: Harvard University Press, 1990), esp. pp. 152–165; Donald R. Kelley, *Historians and the Law in Postrevolutionary France* (Princeton: Princeton University Press, 1984), 101–112.

11. Angel Castellan, "Cuando una afirmación se convierte en interrogante: Vico en Alberdi?," in Fernando Devoto and Gianfranco Rosoli (eds.), *L'Italia Nella Società Argentina* (Rome: Centro Studi Emigrazione, 1988), 17–43; Santiago Baqué, *Influencia de Alberdi en la Organización Política del Estado argentino* (Buenos Aires: n.p., 1915), 30–57. Jorge Cabral Texo, "Noticia preliminar," in Alberdi, *Fragmento* (Buenos Aires: Instituto de Historia del Derecho in Buenos Aires, 1942), xv–lvi.

laws. I found that it was nothing less than the moral law of development, the harmony of social beings; the constitution itself of society, the obligatory order in which individualities unfold into what constitutes them. I conceived of law as a living phenomenon which was essential to study in the organic economy of the state." Laws were not made outside society in order to mold it—as Unitarians had sought to do in the 1820s. The mistake had been to presume that humanity could be made to fit an abstract plan derived from universal laws.¹²

The accent on harmony, social conditions of individual life, and organic metaphors of statehood did not mean implanting one static order where another equally static one resting on precepts about enlightened self-interest had failed. This was a recipe for a new kind of tyranny justified in empty universal promises. Law's meaning was not inscribed in sacred texts, nor in "abstract doctrines." Understanding law as a living and organic aspect of social life meant understanding the ways in which it "develops in perfect harmony with that of a general system of the other elements of social life." Insight into the operation of this different reason of state required a mixture of philosophy, to understand the "spirit of laws," and history, the particular expression of social life bound by linguistic, communal, and national conventions. Combined, philosophy and history provided the guides, a "science," a higher form of reason upon which to imagine the legal foundations of the nation. The intellectual road back to Giambattista Vico is not hard to find. Regarding politics, here is where the Unitarians had erred most in Alberdi's view. They had laws in mind, but knew nothing of the science of law, nor of the plenitude of forms which human kind takes. To Alberdi, the principles may be general and may not vary; but the forms are "national and must vary." "We must search and embrace principles, and make them assume the most adequate form, more individual, more appropriate. Thus, when we cease plagiarizing, we abdicate the impossible and return to the natural, to ours, to the most opportune." The move to a national, particular, *possible* variation on the theme of human betterment was crucial for Alberdi, for Unitarians had never understood the particularizing historic conditions in which they labored.¹³

Alberdi was not saying that the members of the revolutionary generation had failed. Rather, their triumphs were incomplete. They had liberated a continent; but they never discovered a philosophy to create a new order. Alberdi claimed that South Americans were still "spiritually" locked in an earlier age, governed by instincts, spontaneous, unable to control their passions—not yet "civilized." This was an "unconscious"

12. Juan Bautista Alberdi, *Fragmento preliminar al estudio del derecho* (Buenos Aires: Imprenta de la Libertad, 1837), 1–2.

13. Alberdi, *Fragmento*, 8–10.

nation, still bereft of a “theory and formula of its own life, the laws of its own development.” It fell to the Young Generation to follow the political rupture with Spain with a moral upheaval. The next phase of struggle was therefore an idealist one, in contrast to the physical one that preceded it. Having followed “exotic” and imported models, “our patria has lost more blood in constitutional trials than we ever did in the struggle for our emancipation [from Spain].” Our fathers gave us our material independence: to us “falls the duty of conquering our own form of civilization, the conquest of an American genius.” They broke the “material chains” that bound America to Europe; but the “chains on the intelligence still live.” Alberdi’s fighting words turned Karl Marx’s “Theses on Feuerbach” on their head: if our letrado fathers had changed the world without understanding it, our task is to interpret it.¹⁴

The rhetorical use of failed father images in Alberdi’s logic marked a shift, provoking Unitarian outrage while giving sons a founding text. *Fragmento* was not an extended philosophical essay. Nor was it a documented narrative about the past. It aimed to mobilize the imaginations of his generation to continue the revolution which was *inacabada* (unfinished), using suggested models for civil, penal, and especially constitutional law. But working from the ruins of the revolution meant understanding the very people who were supposed to be emancipated, their mores, traditions and values—their *geist* as revealed through their historical experience. In *Fragmento* we find preliminary efforts to write a history of the revolution itself, not in narrative form, but an interpretive one. The actions of royalists and rebels conformed to a more general struggle between superstition and reason. But it could not be written in heroic prose (in contrast, for instance, to European or North American Romantics) because it was unfinished. For Alberdi, emplotting a history of the revolution served to lay the foundations for how his generation belonged to history in order to move it forward. The full development of his alternative evolutionary schema made of a different sequence of historical stages had to await Alberdi’s subsequent writings; but some of the foundational premises for how to approach constitutionalism were in place in the late 1830s, forged by a need to replace revolutionaries’ drive for enlightened ends with historicized means.¹⁵

Despite Alberdi’s avoidance of any mention of the increasingly despotic governor (which was one of the reasons that exiled Unitarians

14. Alberdi, *Fragmento*, 11–12 and 14 (quote); Karl Marx, *Theses on Feuerbach* (1845), in Karl Marx and Friedrich Engels, *Selected Works* (Moscow: Progress Publishers, 1968), 30.

15. I borrow this particular formulation from a brilliant unpublished work. See Elías José Palti, “El Pensamiento de Alberdi,” (Buenos Aires: Tesis de Licenciatura, UBA, 1989), 23. See also Raúl A. Orgaz, *Alberdi y el historicismo* (Córdoba: Imprenta Argentina, 1937), esp. pp. 84–89; Oben A. Ghirardi, *El primer Alberdi: La filosofía de su tiempo* (Buenos Aires: Ed. Astrea, 1989), esp. p. 59.

charged Alberdi of betraying the good fight), he found himself in trouble with local authorities. It was less the book than the symbolic importance of the *Salón* and gatherings at the *Librería Argentina* on *Reconquista Street* that smacked of potential insubordination. Governor Juan Manuel de Rosas clamped down on what little existed of *porteño* civil society; the book stocks of the *Librería* were forcibly auctioned. Alberdi fled Buenos Aires in mid-November 1838; Echeverría accompanied him to the pier to send him off, promising to join him later in Montevideo. When Alberdi's vessel was a mile offshore, with the skyline of the city receding, Alberdi tore off the obligatory red *rosista* arm band and threw it in the water. It would take over forty years before he returned to Buenos Aires—paradoxically at the invitation of the governing council of the university's law school for Alberdi to give his one and only public address.¹⁶

DISCOVERING THE POSSIBLE

In Alberdi's autobiography, he suggested that his flight marked a new phase in his development, the end of his private life as a "mere student." Exit enabled Alberdi's voice to develop without the constraints of local partisanship; for this reason he always felt that being absent allowed his patriotism to mature, his loyalty to deepen, and his vocation for words to be pure by being so removed from politics. It was a personal position that shaped his vision of constitutionalism.

In some senses, the Montevideo years marked the apogee of Romanticism in the River Plate. Echeverría went to work on *Dogma Socialista*, José Marmol wrote his epic novel about exile, *Amalia* (which opens with several students fleeing from Buenos Aires to join Unitarians in whom they have little confidence), and Alberdi put his pen to work in *El Nacional* and his *Concurso literario*. But these were also disenchanting years, and dampened Alberdi's earlier intellectual voluntarism. In December 1838, his friend Juan María Gutiérrez wrote to inform him that Alberdi's patron, the man to whom he had dedicated *Fragmento*, Alejandro Heredia (Governor of Tucumán), had been assassinated, which pushed him to join forces with the Unitarians gathered against Rosas. Full scale war erupted in early 1839. It ended in disaster. Rosas emerged more powerful than ever. Alberdi learned that one of his oldest friends, Marcos Avellaneda, was executed, his head planted on a pike in the middle of the central square of Tucumán. In April 1843, with Gutiérrez, Alberdi set sail for Europe, where he traveled before relocating to Chile.¹⁷

16. Alberdi, *Autobiografía*, 71; Jorge Mayer, *Alberdi y su tiempo* (Buenos Aires: Academia Nacional de Derecho Y Ciencias Sociales, 1973), vol. 1, 191–214.

17. Alberdi to Martiniano Chilavert, Oct. 1841, in *Las cartas rosistas de Alberdi* (Buenos Aires: Ed. Politeia, 1970), 28; Mayer, *Alberdi y su tiempo*, vol. 1, 347–381; Palti, "El pensamiento," 78–81.

Following the dispiriting years in Montevideo and his peregrinations, Alberdi felt compelled to take stock of the double failure of revolutionaries and their heirs. He yearned to transcend the enmities that civil wars rejuvenated, between federalist caudillos and enlightened Unitarians, between the provinces and cities, between fathers and sons. The example of Portales' Chile loomed large in his rethinking, as is well known. In contrast to the chaos of Buenos Aires, he mused, Chile "has the most liberal and stable order" of South America. It was not by accident that Argentine exiles, including Alberdi's eventual harshest critic, Domingo Faustino Sarmiento, found Chile a haven.¹⁸

The trip through Europe, which included his inaugural ride on a railway (which left a lasting impression), the discovery that not all Italians were followers of Mazzini, and a pilgrimage to visit the aging Liberator, San Martín, in his own exile, altered Alberdi's appreciation for the Old World. It contributed to his reconsideration of the place of Europe in American history. Whereas his Romantic inspirations led Alberdi to reject legal borrowing and the influence of the Enlightenment in favor of an organic and national idyll, he grew increasingly aware of the difficulties of realizing liberty from within. In a widely circulated article published in *El Mercurio* in August 1845, Alberdi argued that it was patriotic to depend on Europe, to make Europe part of American history. He warned that anti-Europeanism "is a disease in our countries, blind to the sources of their prosperity." What is more, it is an old heritage, bequeathed by the Spanish conquistadors themselves, who prevented their colonies from being open to the beneficent effects of foreign influences. When the 1810 revolution erupted, its firebrands lumped Spain *into* Europe to reinforce the fundamental break between the New and Old worlds, between the past and the future. These false dichotomies brought the young country low. In effect, citizens could only have a country with order and liberty, the "principles of civilization," by acknowledging that they came from Europe. Land was America; civility, Europe. What was necessary was to recombine the two as a condition for deliverance from the state of nature in the River Plate. In other words, civilized America is "Europe within America."¹⁹

The writings of the mid-1840s appeared to mark a decisive end to Alberdi's conviction that each country was bound by its own particular national course through struggles of its making, as if circling back to some universal principles. But the break should not be over-drawn. Alberdi had seen enough of the struggles in the River Plate to know that Europe could never impose itself on America without making things much

18. Alberdi, "Si y no acerca de la controversia ultramontana ó transandina," (1844), in *Obras completas*, t. III (Buenos Aires: Imp. La Tribuna Nacional, 1886–87), 71.

19. Alberdi, "Acción de la Europa en América," *El Mercurio*, 10–11 agosto, 1845, in *Obras completas*, t. III, 80.

worse, all the more so as the extended Anglo-French blockade of 1845 had also failed to budge Rosas. Moreover, Alberdi was growing fatigued with the relentless feuding. Revalorizing the significance of Europe did not signify a search for new idealist roots. On the contrary, Alberdi was more fervently looking for practical solutions, solutions which would also solve his own personal troubles. Writing to an old friend in Montevideo he confessed: "I am still here in mid-air (in Valparaiso), with my feet still without roots, prepared to step aboard the next ship...wasting my time dreaming about returning to countries that I can never renounce. I am as patriotic as an old Spaniard: the place of my birth, the great and beautiful Argentine land, is like a sacred thing to me."²⁰

While Alberdi had moved on from his Romantic roots, he continued to see the past as the forge of conditions with which any legislator—a true emancipator—had to contend. In May 1847, not long after the French and British warships withdrew from the River Plate, Alberdi composed a sharply realist tract, "La República Argentina 37 años despues de su Revolución Argentina," returning to what was by then a signature of his style—looking back in order to think about the future, a maturing sense of history as eschatology. In taking stock of post-1810 events in Argentina, he could not help but conclude that, for all the instability there was a basic strength and durability to what European powers could not dislodge. Rosas' power was supreme. Rather than repudiate him, why not see him as the vision of South America's political future? "Rosas is not a mere tyrant in my eyes. If in his hand there is a bloody steel sword, I also see on his head Belgrano's laurels. I am not so blinded by any love of party to fail to recognize what Rosas is." Under Rosas, a new synthesis of sovereignty was emerging. In this new rendition on recent history, civil wars were not endlessly fissiparous cycles of brutish struggles in a state of nature. Out of war came "the definitive organization of the Argentine Republic which has prospered through its wars, receiving important services even from her adversaries. This is the centralization of national power. Rivadavia proclaimed it as an idea: Rosas realized it." In this retrospective, Alberdi teased out some basic continuities in the country's post-colonial traumas which could not be admitted earlier.²¹

This history revealed underlying features of the country's political culture which had to be acknowledged as conditions for its development. For Rosas' oppressive rule, his ability to rule by gaining obedience could not be gainsaid. "Within the country, Rosas has taught subjects to obey, both his enemies and his followers." By taming political passions he had brought stability and enabled the "plebeian masses" to come to

20. Alberdi to Patricio Ramos, 13 enero, 1846, Alberdi Papers, Los Talas.

21. Alberdi, "La República Argentina 37 años despues de su Revolución de Mayo," (25 Mayo, 1847), in *Obras colectas*, t. III., 219–242.

power, and by taking power “they have softened their fiery roughness in an atmosphere of culture which others abandoned to them.” What is more, Rosas succeeded in reversing the sequence which Unitarians confused. For in the wake of revolution, naïve men of letters proclaimed liberties aplenty. “In this fashion, those first days were full of liberty; now we would content ourselves with only a few liberties. In those first triumphal days a much less sonorous word than *liberty* was forgotten, but which represents the counterweight upon which liberty rests: *order*.” By understanding the peoples’ adapted needs and ways, Rosas was the handmaiden for a new alignment. His triumphs gave, according to Alberdi, letrados a new task. Alberdi returned to an earlier motif, to see history as still unresolved, to situate his generation and class in its course to bridge the past and the future. Just as his writings of the 1830s portrayed the revolution as *inacabada*, so too Rosas’ work was unfinished because it relied on the power of a personality to ensure obedience and not law to secure order. Here again, Alberdi argued that the law had to be the effect of underlying social change, and not the cause. He still rejected the constitutionalist spirit of the 1820s. The difference now was that this spirit, signified in the legal word, was immanent in the system that Rosas had created but which needed encoding. “Although the charter or written constitution is not a law or a pact, it still establishes it and keeps in invariable. The word is a necessity for order and harmony. It guarantees the stability of all important contracts by putting it in writing.” The constitution would not bring peace, it would merely consolidate it. It was up to lettered liberals to be the instruments of that higher system, to find a place in history and cease trying to mold it.²²

By the late 1840s, Alberdi had turned away from his concern to plumb the “spiritual” essence of a nation seeking to create history its own way; rather, Argentina was folded back into a more universal course, charted by Europe’s gradually developing model of reasoned self-government and commerce. South America’s plight was having been held back for so long, and then traumatically thrust into a revolutionary maelstrom. Spain had locked her colonies in a by-gone era, and so had inhibited her dominions from acquiring the means and mores to make history themselves; 1810 then demolished the old regime and led to the proliferation of liberties among a people bereft of abilities to reason. To Alberdi, the European course of history was turned on its head, and all previous efforts to use the law to create its substance had gotten the necessary sequence entirely backward. Any charter for the republic needed to dispense with the fiction that it had to defend existing liberties. Rather, it had to consolidate an order so that these liberties could come into being in the first place. Alberdi felt that lettered men were still too infatuated with the idea of being authors of

22. *Ibid*, 237.

a great rupture, making history themselves through magnificent acts of enlightened "*voluntad*." In 1850, writing to a young law student, Alberdi offered some advice about how best to understand the historical constraints and opportunities for juridical minds. We need to stop trying to reject our heritage, but understand it in order to transcend it: Spanish institutions and customs are more resilient than the triumphs of revolutionaries, "this we ignore and dismiss too often to advocate our new institutions, carried by revolutionary winds, winds which blow against the ancient and robust walls of Spain without being able to destroy them. Let us stop combating the Spanish *raza* because we are part of it."²³ Alberdi's revalorizing of the past prompted Gutiérrez to respond from Lima: "I am ashamed when I recall our fathers' declarations against Spanish despotism." But he was no less concerned that the Young Generation was running the risk of waging an equally futile struggle against a deeper, naturalized order unfolding in Buenos Aires.²⁴

Discovering possible futures meant curbing excessive voluntarism of the past. These writings were important foundations for a tradition of pragmatic thinking that would run into twentieth century socialist currents, especially as elaborated by Marx's translator into Spanish, Juan B. Justo. It was not just coincidental that Justo saw himself as Alberdi's intellectual descendant at a time in which Alberdi was overshadowed by the heroes of the Centenary (San Martín, Belgrano) and their apostles (Mitre).²⁵

THE CONSTITUTIONAL HOUR

The amalgam of resignation, pragmatism, and despair was soon shaken. In early 1849, Gutiérrez proposed that they take a trip together to Europe, and eventually return to Buenos Aires.²⁶ Not long afterwards, rumors and then news started to circulate that one of Rosas' old allies, the Governor of Entre Ríos, Justo José de Urquiza, was rallying forces to overthrow the Buenos Aires governor. While in Lima preparing to sail for Guayaquil to visit Gutiérrez's brother, they got word that confirmed the outcome of the Battle of Caseros on February 3, 1852: Urquiza had triumphed over

23. Alberdi, "Carta sobre los estudios convenientes para formar un abogado con arreglo á las necesidades de la sociedad actual en Sud-América," (1850), in *Obras completas*, t. III, 351.

24. Gutiérrez to Alberdi, 12 enero, 1848, and undated letter numbered 4748, Alberdi Papers.

25. Jorge E. Dotti, *Las vetas del texto: Una lectura filosófica de Alberdi, los positivistas, Juan B. Justo* (Buenos Aires: Puntosur, 1990), 24–27; Adelman, "Socialism and Democracy in Argentina in the Age of the Second International," *Hispanic American Historical Review* 72:2 (May, 1992), 211–238.

26. Gutiérrez to Félix Frías, April 28, 1849, in Jorge M. Mayer and Ernesto A. Martínez, *Cartas inéditas de Juan Bautista Alberdi a Juan María Gutiérrez y a Félix Frías* (Buenos Aires: Ed. Luz del Día, 1953), 246.

Rosas, who fled. One of Urquiza's slogans was to hold a constitutional convention. Exhilaration shot through exile circles. The friends agreed that this was a pivotal moment. They spent several long days gathering their thoughts, taking notes, and began to plot out a blueprint for the republic. Gutiérrez agreed to return to Buenos Aires, to join the Urquiza coalition. Alberdi set sail for Chile with the understanding that he would assemble their thoughts about a foundational charter and would send it to him immediately. Alberdi wrote furiously, and then had the printing house of *El Mercurio* issue a run of the 183-page booklet.²⁷ In late May, 1852, Alberdi wrapped copies of the tract and sent them to his friends who were congregating in Buenos Aires. Alberdi also sent a copy to Urquiza with a cover note: "I have spent many nights writing this book" in the belief the republic deserves a constitution, "but it is essential that the constitution rests on powerful bases . . . ; history, the precedents of the country, normal events, are the granite upon which all durable constitutions rest." Accordingly, this one was drafted not to break with the past, but to build on it. Urquiza responded immediately: "Your thoughtful book is, in my judgment, an essential means of cooperation. It could not have been written at a more opportune time." He immediately ordered that a Buenos Aires edition be printed and widely disseminated. A month later, a constitutional convention began to deliberate in Santa Fe.²⁸

Perhaps the best-known liberal manifesto of nineteenth-century Latin America, the little book entitled *Bases y puntos de partida para la organización política de la República Argentina*, went through several quick, increasingly embellished editions, and was revised and reprinted, so it is difficult to tell which of the editions shaped the proceedings of the constitutional deliberations. It is in *Bases* that we find the oft-cited but misunderstood injunction that to "govern is to populate." There were other important tracts, like Sarmiento's *Argirópolis*, Mariano Fragueiro's essays, and Bartolomé Mitre's articles in *Los Debates* in March through May of 1852, all of which circulated widely. But none had the combination of a vision of constitutionalism combined with a practical guide to its inscription, replete with an article-by-article outline. In the meantime, Urquiza begged Alberdi to join his administration; he declined, arguing that he could serve the country more effectively with the autonomy of absence, and that his legal influence would be better served by not having any party affiliations.²⁹

27. Alberdi to Gutiérrez, 8 julio, 1852, in Mayer and Martínez, *Cartas inéditas*, 54–55; Alberdi to Frías, 9 abril, 1852, in *Ibid.*, 255. Gutiérrez called the tract "very important for our association and for the diffusion of the best ideas of the century." Gutiérrez to Alberdi, undated letter No. 4750, Alberdi Papers.

28. Alberdi to Urquiza, 30 Mayo, 1852; Urquiza to Alberdi, 22 julio, 1852, in Ramón J. Cárcano, *Urquiza y Alberdi. Intimidaciones de una política* (Buenos Aires: La Facultad, 1938), 3–7.

29. Mayer, *Alberdi y su tiempo*, t. I, 550–557. Alberdi, *Bases y puntos de partida para la organización política de la República Argentina* (Buenos Aires: Plus Ultra, 4th ed., 1981).

Political opportunities rekindled Alberdi's view of history as a movement toward a new communion of antagonistic provinces, of fathers and sons, and of America with Europe, reviving bonds that were shattered in the course of revolution. The book opened by saying that Argentina was part of Europe's grander history: "America was discovered, conquered and populated by the civilized races of Europe, from the same impulses that uplifted the primitive peoples of Egypt to be attracted to Greece, who would pass their influence on to the Italian Peninsula . . . from whence the Roman world would use the virility of its blood to spread the light of Christianity." What followed was an effort to restore Argentina's place in this providential narrative from which it had diverted as a colony of Spain, and then spun away after the calamity of 1810. Indeed, Argentina had a role to play in a grander, universal, equipoise. Like so many Romantics who grew disenchanted with post-1830 revolutions, Alberdi worried that the European cradle of civilization was threatened by the menace of socialism, "a sign of the fundamental disequilibrium of things." The very surplus populations that swelled the unruly propertyless masses of Europe are the same "populations which are so vitally needed here;" Argentina could rescue Europe from its dangers by taking in immigrants, and in so doing recombine more civilized Europeans with the ample spaces afforded by new frontiers. The fates of the New and Old Worlds were therefore combined; Argentina's constitution should be calibrated to that end. "We are faced, then, with the needs of a law to reclaim for civilization the land which we keep deserted to its backwardness."³⁰

If Argentina could play a fated role in a civilizational epic, history also presented lawmakers with precedents to learn from. The Battle of Caseros, to Alberdi, could be likened to the Revolution of 1810, a chance to get back into the fold of universal history. For this to work, lawmakers had to avoid repeating old mistakes, for the efforts to use the law to create new orders on the heels of independence had committed two fatal errors. The first was to define Argentina's future in opposition to all things European; the second was to declare equality and liberty for all. Appropriate perhaps for the thirteen colonies, the inheritors of a different set of colonial legacies, South American subjects were not prepared for citizenship. Indeed, in contrast the Romantic historians who had composed their epics about peoples as national plotlines, Alberdi's new history not only eschewed national teleologies, he argued that there was no real "people." Argentina, like the rest of Spanish America in 1852, was "simply a tacit and implicit association"—kept that way, as a series of chapters went on to describe in disparaging detail, by colonial and post-colonial laws and customs. The people had to be brought into being through education, enjoyment of property rights, and being mingled with

30. This is from the preface of the first edition. Cited in Alberdi, *Bases*, 17–19.

European newcomers who could tutor Argentines in the ways of civility and reason. To be a people meant to be European, to fold oneself back into a universal community, to be "Europe in America." Accomplishing this required reversing what revolutionaries had done. Their first constitutions had lofty political aspirations for a non-existent people, hoping that newfound political liberties would yield economic fruits. The legal chronology, for Alberdi, had to be reversed: "political ends were the great ends of that time; today we must preoccupy ourselves especially with economic ends."³¹

This phrase appears so clear at first blush. Against the backcloth of *Bases'* larger message, however, the phrase concealed as much as it revealed. Alberdi's portrait of how to realize a more virtuous public still bore some Romantic traits, even if his narrative ceased to eulogize the Argentine folk and a basic material logic eclipsed spiritual fervors. The first was the consistency of his image of sons undoing the damage done by their fathers. The second was that the republic was still an immanent one based on a fictive fraternity of fellow citizens endowed with rights they could not exercise, either for lack of will or because the hand of a predatory state still weighed on their individuality. His references to "economic ends" have led some to conclude that Alberdi was an economic liberal and a political conservative. Natalio Botana's work is a suggestive example of how Alberdi's "possibilism" combined these two divergent strains into a creative synthesis, until it started to wear thin around 1910, only to yield to a slow crisis of legitimacy.³²

Another view would be to treat his understanding of the economic field as part of a more generalized social theory that treated material activity in moral terms, not as subject to discrete laws or positivist categories. To be sure, Atlantic trade and migration would restore old fraternal bonds between New and Old worlds. But there was more than that. Like any reader of Adam Smith, Alberdi had a view of wealth as generated by labor applied to property and accumulated through savings and investment—the key elements of a virtuous, other-regarding individualism.³³ To this Smithian republicanism Alberdi was adding an underlying evolutionary pattern of the history he sought to invoke. The point of accenting the role of economic forces was to create property-owning possessive individualists who would leave behind the state of nature and embrace the ways of civil society and the virtues they needed to live by and prosper in the *civitas*. In effect, the pithy line

31. Alberdi, *Bases*, 123.

32. Natalio Botana, *La tradición republicana: Alberdi, Sarmiento y las ideas políticas de su tiempo* (Buenos Aires: Sudamericana, 1984); Baqué, *La influencia de Alberdi en la organización política*, 95–109.

33. J. G. A. Pocock, "Authority and Property: The Question of Liberal Origins," in *Virtue, Commerce, and History* (Cambridge: Cambridge University Press, 1985), 51–71.

about economic ends subduing political ones obscures Alberdi's more fundamental aspiration, which was to see virtuous subjects flourish as a condition of their citizenship, whereupon real political liberties could then be shared. Free rivers would promote trade, and with trade would follow taming of "egotistic" passions; indeed freedom to trade was, for Alberdi, "the most absolute form of liberty" and would condition the enjoyment of all others. Credit would promote investment, "which must be the spoiled child of American legislation." The creation and defense of private property was, in the end, the primary function of the new state. The colonial regime had created property in order to reap taxes, and not treated taxation as a means to create property. Independence did nothing to change this; "we have continued to be republics created for the treasury."³⁴

In this fashion, Alberdi's rhetorical flourishes were spared for his economic and social prescriptions because they were the bedrock of his system. Indeed, his draft of the preamble for the constitution elevated the increase of population, the stimulation of transportation, the promotion of free trade, and the spread of education as primary goals; in effect the charter had to create individual liberties that did not yet exist, not to defend preconstituted liberties violated by arbitrary rulers. Very explicitly, Alberdi was rejecting the spirit of U.S. constitutionalism as a precedent-guide. In North America, colonists enjoyed liberties that Parliament despoiled; in South America, colonists had been held in a primitive state and knew nothing of liberties. The United States' revolution sought to defend what existed; South America's was to create something that did not. The differences could be seen in the image of proliferating bodies filling in the natural wastelands: "North America, due to the liberalism of its colonial system, always attracted people to the land in large quantities. . . . For us, the inheritors of an essentially exclusive system, we now need a powerful political system to foment this external impulse," to fill the desert and make it a garden of liberty. These were two starkly different models of revolution for Alberdi: one to immunize rights against authority, the other to construct an authority capable of creating rights. It is misleading, as Bernard Bailyn has recently done, building on a long tradition of misconstrual, to treat Argentine constitutionalism as a stepchild of American republicanism.³⁵

Alberdi provided an extended preface on the do's and don'ts of an appropriate constitutionalism. About political rights, specifically about politics, he had little to say. In part this was because he emphasized what

34. Ibid, 108, 126, and 285; Oscar Terán, *Alberdi póstumo* (Buenos Aires: Puntosur, 1988), 39. On the domesticating powers of trade, see Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before its Triumph* (Princeton: Princeton University Press, 1977).

35. Alberdi, *Bases*, 28–29. See Bernard Bailyn, *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York: Knopf, 2003), 145–147.

he called the “economic” foundations of self-improving individualism, and deferred the elaboration of political rights to a time in which they could more appropriately be enjoyed. Still, some of his “politics” shines through. Two aspects are worth mentioning. One is about the structure of sovereignty. After a short disquisition on the pernicious wars between federalists and Unitarians, between a model of sovereignty which located the primacy of membership in compacting provinces and a model which treated a singular nation agreeing to delegate authority to subnational levels of state, Alberdi insisted on a mixed system, a shared model of sovereignty (which he traced back, incorrectly, to Mariano Moreno), a “Unitarian federalism” exemplified by the Treaty of San Nicolás, which had reunited the warring provinces after Caseros. How exactly this alchemy would come about had to await the outcome of two concurrent levels of constitutional deliberations, at the national and the provincial levels, though he did later acknowledge that it would be natural to expect that Argentina would be more centralized than the United States because it had to build on, and not dismantle, the Viceregal centralist tradition of Spanish rule. Besides, the United States was born (or, rather were born in the plural) as a state composed of compacting sovereign entities; Argentina’s course was the opposite. But this was still fairly vague in *Bases*. Alberdi was clearer about a second dimension of politics: electoral life that governed the choice of public representatives. If “economic” rights were absolute, so long as Argentine subjects were still learning to be virtuous, “political” rights were conditional. He did not advocate curbing direct rights, as these were “possessions of the masses,” but he championed methods of constraints through double and triple tiers of indirect representation, “which is the best means to purify universal suffrage without reducing it or suppressing it, and to prepare the masses for the future exercise of direct suffrage.” Electoral systems existed in all republican arrangements and were necessary cornerstones. What had to be built into the Argentine constitution were mediating mechanisms to function until citizens were prepared to enjoy their natural rights. Writing privately to Gutiérrez as he was revising *Bases*, Alberdi warned his friend that it was political liberties that had destroyed the Revolution: “while the law invites the *populacho* to vote, the *populacho* will elect children who say nice things because they represent them. Reform determined in the sense of order is the first that must be imposed.”³⁶

Bases was a work of conceptual synthesis, combining many of the ideas that Alberdi had been formulating while in exile into a prescriptive document written to change the course of history—or more correctly to relocate Argentina into a universal historical progression. This was a time for a new kind of hero, the legislator, backed by a pragmatic prophet showing

36. Alberdi, *Bases*, 151–154 and 160; Alberdi to Gutiérrez, 15 agosto, 1852, in Mayer and Martínez, *Cartas*, 55.

the way to deliverance from a state of nature. Yet there was, in spite of all the emphasis on the inevitable uplift from commerce and production, still a political problem. For just as the 1810 revolution for liberty was a moment for legislative will, Alberdi's redemption of order in 1852 was no less vulnerable to the passions of men in command of state powers. From exile, beyond the state, Alberdi could fashion himself the selfless prophet of a new order standing outside history as a providential figure. But even "the possible republic"—leaving aside all idealist aspirations—had to be revealed and promulgated by legislators who could not so easily stand outside the fray. What if legislators did not agree with the prophet's necessitarian style? What if, as Alberdi's detractors would soon say, choosing a blueprint required some sense that legislators represented a people's will, a people who, in Alberdi's stated view, were not yet prepared for politics? Nothing I have found in Alberdi's published or private papers suggests that he ever contemplated this possibility. He certainly was not prepared for the confrontation that ensued once the deliberative process of making a charter got under way.

REVENGE OF THE PASSIONS

The drafters went to work, with *Bases* in their hands, in late 1852 and early 1853, to plot the new charter. The two dominant members were the young lawyer José Benjamin Gorostiaga, and the Minister of Government Juan María Gutiérrez. On April 18, 1853 they issued their code to a Convention, which rushed to promulgate it in time to commemorate the revolution of May 25, 1810—and thereby realize Urquiza's claim that overthrowing Rosas was analogous to toppling the Viceroy. The Constitution of 1853 laid the bases for Unitarian federalism and a unitary executive, free from checks and balances—quite a contrast to Madison's model, outlined in the *Federalist* Paper No. 51, of making sovereignty divisible through a compound republic.

The author of *Bases* got embroiled in a feud that erupted just as his book was being read. Political leaders in Buenos Aires did not like aspects of Urquiza's style and measures; they also reacted defensively when it was clear that Buenos Aires would have to join the other provinces as equals in the convention. There were some personal squabbles too, which aggregated into an increasingly bitter dispute between national forces, led by Urquiza in Santa Fe, and *porteños* led by the crusading Bartolomé Mitre, culminating in Buenos Aires' secession from the fledgling union on September 11, 1852, just as Gutiérrez was imploring Alberdi to add appendices to *Bases* with a blueprint national constitution. This temporary secession became more and more permanent.³⁷

37. Adelman, *Republic of Capital*, 198–208 for more detail.

The war between states elicited a contest between letrados, and ushered in a new phase in Alberdi's thinking. The news of Buenos Aires' secession depressed him; Alberdi feared a return to old federalist wars. He also felt that this meant he could not return to Buenos Aires, where the passions were burning hot, and therefore would impede his ability to serve the nation as a detached philosopher-jurist. Writing to a friend in Buenos Aires, he noted sadly "that I would prefer to return to my country, but Buenos Aires, the child of my sympathies and predilections, is on the wrong road, in my view, in which it will not have the tranquility it needs for its own liberty and progress." He added a long poem, written in despair, which closed with a morbid stanza:

Moriré: Y en mi tumba sensible
 Quien vendrá triste polvo á esperar?
 Quien vendrá en este asilo terrible,
 Mi desdicha y mi muerte á gemir?
 Nadie si: que silencio y olvido,
 Estrangero mi vida pasé;
 Y el mundo á la nada apacible,
 Con mi llanto infeliz bajaré
 Estrangero etc.³⁸

Anguish inflected his writings just when Alberdi thought he had served his nation in the most noble of letrado ways: issuing a vision of statehood made of words that would serve as a vessel in which to fill a new nation. But his loyalty remained undiminished. Indeed, his decision to stay outside the fray as "an absent one," the (albeit despondent) *estrangero*, was a conscious position to better defend his constitutionalist project against the passions of partisanship—and politics. The result was a nasty exchange with Sarmiento which yielded to the first textual interpretations of Argentine constitutionalism and rival visions of its meanings.

Tensions between Sarmiento and Alberdi had been brewing; Sarmiento's own political text, *Argirópolis* (which opened with a paean to Alberdi), was overshadowed by *Bases*. Alberdi had never taken a shine to Sarmiento since their first meeting in 1844, and Sarmiento probably surmised that his admiration for Alberdi was not mutual. Writing to Frías, Alberdi described Sarmiento as "having between his two eyes the organ of his *yo*." Even before Buenos Aires seceded, they had affiliated with different constitutional clubs. But there was more involved than rivalry and jealousy. They came to the fore after Sarmiento authored an open letter to Urquiza, known as the Carta de Yungay, in which he repudiated the Ejército Grande and aligned with Buenos Aires, accusing Urquiza of reviving all the caudillista practices of Rosas. From there it was all downhill. Alberdi responded with his own open letters, *Cartas sobre*

38. Alberdi to Rafael Corvalan, December 2, 1852, Alberdi Papers.

la Prensa y la Política Militante, more often known as the *Cartas Quilótanas*, and Sarmiento responded with another round of ink-spilling, know as *Las Ciento y Una*. The debate was one of the great epistolary wars of the century.³⁹

The essence of Sarmiento's critiques focused on Urquiza's decision to proceed with his plans to unify the republic without Buenos Aires while shutting down porteños' recently opened printing presses. This was not just an autocratic trampling on "public opinion," but violated the sovereignty of provinces which had united a year earlier to overthrow a previous tyrant. Sarmiento capped his blast with a set of "Comentarios" in which he denounced Alberdi's charter: "It is not so much the text of political constitutions which arranges public powers as much as the rights which have been previously won." To Sarmiento, some countries wrote texts to create rights. This was "the European" tradition, which he felt Alberdi championed. But in Anglo-America it was the other way around. Sarmiento urged Argentines to follow the example of the United States. In a swipe against Alberdi, he argued: "We are told that our people are not in the condition of using such perfect institutions. If we have to judge by certain acts in the Argentine Republic, we could be told that these peoples are only prepared to strangle, steal, harass, devastate and destroy. But there is another order of events which shows that these peoples are second to no other American when it comes to the capacity to understand the institutional game." Give people a bad order and they will behave badly; give them a more perfect system and they will live up to it. For Sarmiento, a rights-bearing nation was the source of statehood, not vice versa. In the battle between the Confederation and the State of Buenos Aires (which would soon write a constitution of its own), Sarmiento's words only polarized the struggle for sovereignty.⁴⁰

This formulation could not have enraged Alberdi more, extolling the ideal republic over the possible one. Alberdi accused Sarmiento and others of using the press and the name of "public opinion" to repeat the same idealistic refrains of the 1820s, whose consequences had left the republic in ruins. The events of 1852, and Urquiza's efforts, aimed to redeem the Revolution of 1810 by giving it a new course. But what was worse, Sarmiento reached back to use the press in the same way that Marat and Danton had, using patriotic and sincere motives to destroy the revolution that created them. "I am not in favor," Alberdi fulminated, "of a system for writers who have nothing to do all day if they have nothing to attack." Sarmiento and others failed to realize that 1852

39. Mariano E. de Sarratea to Alberdi, August 20, 1852, Alberdi Papers; Alberdi to Frías, July 15, 1852, in Mayer and Martínez, *Cartas*, 257; Canal Feijóo, *Constitución y revolución*, t. II, 200–211.

40. Domingo Faustino Sarmiento, *Comentarios de la Constitución de la Confederación Argentina* (Santiago, 1853), iv.

had been a rupture analogous to 1810's, and thus time to relinquish bad habits. Gone was a "*dictadura omnimoda*;" there was no more need of a press dedicated to destroying public authority. The penchant for using "a pen as a sword" was one that Sarmiento refused to give up, using a personal crusade to destroy the nation by excoriating its leader, confusing as ever persons with institutions; for Alberdi, it would be better to use the pen as a "torch" lighting the way forward. If Sarmiento were so committed to creating his ideal world, he would have to destroy all signs of the one he had in the name of "perfect liberty." "This principle means going to the logical conclusion that we would have to suppress the entire Argentine Hispanic colonial nation, incapable of becoming a republic, to be supplanted in one sweep by an Anglo-republican Argentine nation, the only one that could be exempt of caudillismos." Why not accept the practical tools of "imperfect liberty" to fight "tyrants?"⁴¹

It was Sarmiento's reliance on the North American model that most inspired Alberdi's ire. He returned again to the idea of a nation as a historical construction not resting on primordial rights. The United States had these rights due to a historical experience of English constitutionalism after 1688; Spain created her own progeny. As a result, the United States could conceive itself as a unity out of sovereign parts; Argentina began as a unity whose revolution shattered into fragments. There was a basic order that had to be restored for the republic to join the progress of nations.⁴²

The flap with Sarmiento prompted Alberdi to begin a major tract on history and constitutionalism. But before he could complete this study, matters of state intruded. Urquiza had been pleading to Alberdi to join his government. Alberdi politely declined; to Frías he explained that working from Chile enabled him "to work, as I have all my life, in absolute personal disinterest." To his old friend, Gutiérrez, who was laboring to translate *Bases* into a charter, he explained, "To give real authority to my word, I think I will always remain distant from power, and I hope I shall always have the strength to remain outside the country, far from the petty passions which obscure the light of impartial intelligence."⁴³ In the end, Alberdi agreed to serve the state, but not national power. The government of Mendoza enlisted Alberdi's help in drafting a provincial constitution published in July 1853 as *Elementos de derecho*

41. "Primera Carta Quillotana," January 1853, in *Obras colectas*, 12–18; Alberdi to Frías, December 13, 1852, in Mayer and Martínez, *Cartas*, 267.

42. "Estudios sobre la Constitución Argentina de 1853 en que se establece su mente alterada por comentarios hostiles," (Valparaiso, 1853), in *Obras Escogidas*, t. III (Buenos Aires: Ed. Luz del Día, 1953), 40–43; Alberdi to Frías, December 13, 1852, in Mayer and Martínez, *Cartas*, 268. Elements appear briefly in "Examen de la Constitución Provincial de Buenos Aires," (Valparaiso, 1854), in *Obras Escogidas*, t. III, 285–328.

43. Alberdi to Frías, September 14, 1852 and Alberdi to Gutiérrez, September 19, 1852, in Mayer and Martínez, *Cartas*, 58 and 260.

público provincial (later expanded and renamed *Derecho público provincial argentino* so it could serve other provinces as well); Alberdi sent Urquiza a personal copy as a token of his loyalty to the constitutional cause.⁴⁴ At a distance—and as Alberdi defined his role, only at a distance—could he use his pen as a torch, thereby establish an understanding of provincial statehood to function as an alternative role-model, to contrast with the letrados of Buenos Aires who were tearing the republic up in the name of conceiving it in perfect form. Indeed, Mendoza could be a cosmopolitan counterpoint to Buenos Aires' provincialism. The issue was how to get Argentina's model of sovereignty aligned with its basic "character," how to have a cosmopolitan provincial order eclipse porteño claims about the inalienable rights of provincial self-determination. Until now, he wrote in *Derecho público*, provincial legal systems "have barely existed, they have been instinctive" and as such they have "become a powerful obstacle to the creation of a common government." The provincial question was, he observed, the national question.⁴⁵

It needs to be clear: Alberdi was not making the case for a Madisonian-style compound republic, resolving the tensions of sovereignty that had once been subsumed under the authority of a monarchy into a divisible structure. Alberdi always feared the power of centrifuge in a federation; he was all too aware that Madison's own solution was leading the United States into an increasingly intractable crisis of its own. Provincial jurisdictions, because they brought state power closer to citizens, were "the natural foundations of a new public law." But they were also "the most precarious, the most dangerous"—as the precedents since 1820 showed, as the Viceroyalty gave way to feuding provinces ruled by autocratic governors, converting the nation into "a scene like the European peoples of the eleventh century."⁴⁶

Like vulnerable, unformed citizens, provinces needed a custodial power to look out for the vital interests of the nation until the "natural foundations" could occupy their primary place in the constitutional system. The powers delegated to the federal government were vital for Alberdi—commerce, tariffs, the post office, internal security and transportation, the very instruments of progress that would uplift citizens through wealth-generating activity. "In this fashion, political economy and economic policy are called upon to our continent, civilized in name but rustic in reality, free in words but slaves in fact; in this fashion, I repeat, the economy is called upon to give us liberty, morality, an intelligent culture, through immigration, so that labor and material forces can stamp out the brutalizing action of the desert." He was categorical about the necessary sequence of events:

44. Mayer, *Alberdi y su tiempo*, t. I, 591–593.

45. Alberdi, *Derecho público provincial argentino* (Buenos Aires: Cultura Argentina, 1917), 24 and 52.

46. Alberdi, *Derecho público*, 81–89.

an ordered national state was the condition for the existence of provinces who could then delegate powers to the unitary state. Provinces were the best guardians of public law, but their existence depended on the power of the center. In South America, states should not be likened to land or territory, he insisted. Land is divisible; sovereignty is not.⁴⁷

As the heyday of constitution-making in Argentina reached a fever pitch, Alberdi could not obscure his gathering pessimism. In the winter of 1852, when he and Gutiérrez parted ways, he channeled his euphoria into a pragmatic fervor. Two years later, after many blueprints and constitutionalist tracts rolled off *El Mercurio's* printing presses, Alberdi was solemn. Writing to President Urquiza after having accepted a position as Minister Plenipotentiary to the governments of Europe, he admitted that powerful inertial forces were at work that prevented the country from uniting. These took the form of an unremitting resistance. "This resistance," he observed, "is the child of an error deeply rooted in our institutions, which Buenos Aires owes to *señor* Rivadavia and to habits owed to Rosas: institutions and habits which are so old that they are a symbol of pride..." Here was a history that worked at odds with the nation, but a past that was no less authentic to the country than the ordered synthesis which it had destroyed. Argentina, lamented Alberdi, had competing pasts and countervailing narrative structures. Accordingly, the republic faced divergent paths—each as plausible as the other. It was impossible to rely on predestination or providence as guides, only politics. This made Alberdi gloomy, for it was politics that put the fate of the republic into hands of the wrong sort of *letrado*, the *letrado* who used the power of the word to stoke political passions not tame them. He concluded on a note that foretold great difficulties for his first—and last—public service to Argentina: "Our politics should see this resistance as a *chronic disease* of the country, an inheritance of its past sins. Attenuating it and alleviating it by various means, moving ahead in spite of it, in search of a common welfare, will not come from the hand of Providence, which has been monopolized by the principal economic interests and by the errors of political men of another time, now imitated by those who do not yet understand them."⁴⁸ A few months later, Alberdi set sail for Panama en route to Washington and from there to Europe to take up what would be another career as an "absent one."

CONCLUSION

This essay does not complete the account of Alberdi's writings. In many respects, his most brilliant works were composed while he was in Europe, leaning on his aestheticized distance to witness the French occupation of

47. Alberdi, *Derecho público*, 54–55 and 106.

48. Alberdi to Urquiza, October, 1854, in Carcano, *Urquiza*, 32–33.

Mexico, the war against Paraguay, the American Civil War, and closer up the Paris Commune and the second industrial revolution. He elevated his absence to a virtue, a distinctive feature of his personal loyalty and public engagement, a theme he then made central to his own self-narrative.

If there is an inner link between his writings in the 1830s, when the Revolution was still immediate, and the 1850s, when emancipation gave way to construction, it was Alberdi's recurring effort to find a place in time to frame a legal space for a nominal republic. The meanings of the past may have changed. The significance of the revolution evolved from an incomplete emancipation to a tragic rupture. But it never made sense to Alberdi to think about the legal life of public affairs and constitutionalism outside of history. Yet, he was not the historian of the revolution; that became the task of his rival, Mitre, who obscured his own political aspirations in his epic biographies of Belgrano and San Martín (Alberdi would later review these works and snidely reveal how Mitre disguised himself in the storylines of his subjects). Still, Alberdi professed a "historical style" of legal thinking and made it a cornerstone for conceptualizing Argentine law not as an abstract force which operated to uphold basic verities, but as a developmental one. It had to conform to a landscape created by history in order to change it; it had to adapt to the character of a historically-constituted people in order to bring them into civilization.

This complicated intersection of history and law posed some basic problems. All Alberdi's efforts to settle the past, to create an analytical framework for the republic's temporality, were as unsettled as the republic itself. Alberdi looked to the past to divine the structures that would order the unruly present. History was necessity; his texts sought to persuade his readers how much the overwhelming evidence of the past pointed to few choices if the engaged letrados were to prevent history from repeating itself. Stylistically, his history was far removed from the epic genre which hinged on heroes faced with a plentitude of dramatic choices. But it also suggests why the Revolution of 1810 was such a signature moment in his work—it was the opportunity par excellence for men to choose *the* right thing and did not. From this, leaders were supposed to learn lessons, Alberdi's lessons. The dilemma was only latent while he and his letrado friends and community of readers were forced to live outside the country's borders: they could imagine themselves heirs of a cause betrayed by their forbearers; they could invoke history to depict themselves as the revolution's successors. But in 1852, as letrados rushed to play a central role in lawmaking, the politics of turning a vision of sovereignty into a charter broke free of historical necessities. Alberdi resolved the difficulty by being the "absent one," blurring the lines between exit, voice and loyalty to inscribe texts whose authority depended on distance from politics.

The intellectual foundations of Argentine constitutionalism were distinctive in the ways in which its *letrados* wrestled with the challenge of how to integrate the republic into broader currents of nineteenth-century liberalism. It is increasingly clear that liberalism's theoretical core rested on exclusionary fundamentals.⁴⁹ Alberdi adapted Atlantic liberalism to a local context precisely because its universal reach thrived off the capacities that it identified in human nature. Capacities were universal. Conditions were not. Conditions had to be actualized as a precursor to inclusion—and in Argentina they needed a lot of groundwork. The result was a constitutionalist tradition, with liberal roots, that advocated the premise of citizens without full citizenship, for order to precede liberty. To justify the exclusionary strategies of Alberdi's liberalism, he invoked the past as evidence of their necessity. Logically sealed, and promulgated with a relentlessly realist style, Alberdi had to leave so much out of his constitutionalism for it to work. He treated deliberative "politics" as intrusions on possible futures and violations of history's lessons because it threatened to (and did) expose the exclusionary features of his thinking. If there is a constitutionalist tradition in Argentina, and Alberdi the closest cognate the republic has to a "founder," then it rests on unstable intellectual foundations. The tension between order and liberty did not resolve itself in Argentina's founding charter. Judging by the history that ensued, the tension is what persists.

49. See Mehta, *Liberalism and Empire*; Pitts, *A Turn to Empire*.