



Historia Constitucional

E-ISSN: 1576-4729

historiaconstitucional@gmail.com

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España

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Historia Constitucional, núm. 11, septiembre-, 2010, pp. 321-338

Universidad de Oviedo

Oviedo, España

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# MATCHING CONSTITUTIONAL CULTURE AND PARCHMENT: POST-COLONIAL CONSTITUTIONAL ADOPTION IN MEXICO AND ARGENTINA

Nikolai G. Wenzel

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**Abstract:** This paper compares post-colonial constitutional choice in Mexico and Argentina. Both countries adopted internally imposed, non-evolutionary constitutions inspired by exogenous ideas. But Argentina's founders adopted a constitution that was radically mismatched to the underlying culture, resulting in constitutional failure and military coups. Mexico's founders, on the other hand, took great pains to adapt exogenous ideas to endogenous culture, leading to constitutional stability for Mexico.

**Key Words:** Constitutional adoption; Mexico founding; Argentina founding; Constitutional failure; Constitutional culture

## I. INTRODUCTION

A country's choice of a constitution will have profound implications for future stability and prosperity (see Scully 1988 and 1992).<sup>1</sup> History is littered with poor choices; some (e.g. post-World War Two France or post-Soviet Russia) led to constitutional adjustment; others (such as Argentina or the Philippines) led to constitutional failure, and its ensuing dictatorship and economic disaster.

Mexico and Argentina offer an illustrative comparison. Both countries adopted constitutions in a post-colonial setting, but after decades of turmoil, rather than immediately after their independence from Spain; both borrowed ideas and constitutional design from other countries. Both constitutions were endogenously imposed (non-evolutionary) documents inspired by exogenous ideas. The outcomes, however, were very different: although far from perfect, Mexico has enjoyed constitutional stability, whereas Argentina suffered 11 military coups and

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<sup>1</sup> Gerald W. Scully, "The Institutional Framework and Economic Development", *Journal of Political Economy*, Vol. 96, No. 3, Jun. 1988, pp. 652-662; Gerald W. Scully, *Constitutional Environments and Economic Growth*, Princeton University Press, Princeton, 1992.

six military dictatorships in the past century. Because of the similarities in the circumstances surrounding their founding, and the radically different outcomes, the contrasting cases of Mexico and Argentina offer useful lessons for constitutional transfer, constitutional stickiness and constitutional maintenance – and the implications of constitutional choice for political stability and economic growth. Most importantly, these two countries illustrate the importance of matching constitutional parchment to the underlying constitutional culture.

Section Two offers a brief methodological setting on constitutional culture, and the importance of matching formal institutions to informal culture. Section Three discusses Mexico's constitutional success. Section Four explains Argentina's failure, showing that the constitution was fundamentally alien to the underlying culture – and was thus rejected. The final section concludes.

## II. METHODOLOGICAL BACKGROUND

As the primary purpose of this paper is a comparative examination of Mexico and Argentina, I offer only the minimum methodological background necessary. The interested reader is invited to read Wenzel 2007 or forthcoming for details.<sup>2</sup>

### 2.1. Constitutional Culture

Instead of the more traditional contractual approach to constitutionalism within the discipline of constitutional political economy,<sup>3</sup> I employ Hardin's<sup>4</sup> basic view of a constitution as a coordinating mechanism among the "interests that matter" within a polity.<sup>5</sup> As a coordination mechanism, constitutionalism requires

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<sup>2</sup> Nikolai G. Wenzel, "Beyond Parchment, Beyond Formal Rules: Constitutional Culture and Constitutional Political Economy", *Ama-Gi, The Journal of the Hayek Society of the London School of Economics*, Volume 8, Issue 1, Summer Term 2007; Nikolai G. Wenzel, "From contract to mental model: constitutional culture as a fact of the social sciences", *Review of Austrian Economics*, forthcoming.

<sup>3</sup> See, e.g., James M. Buchanan, "The Domain of Constitutional Economics", *Constitutional Political Economy*, Vol. 1, No. 1, 1990; James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*, in *The Collected Works of James M. Buchanan*, Volume 7, Liberty Fund, Indianapolis, 2000 [1975]; or Geoffrey Brennan and James M. Buchanan, *The Reason of Rules: Constitutional Political Economy*, Cambridge University Press, Cambridge, 1985. For commentary and critique, see also Russell Hardin, "Constitutional Political Economy – Agreement on Rules", *British Journal of Political Science*, Vol. 18, No. 4 (Oct. 1988), pp. 513-530; Scott Gordon, "The New Contractarians", *The Journal of Political Economy*, Vol. 84, No.3 (Jun. 1976), pp. 573-590; or Stefan Voigt, "Positive Constitutional Economics: A Survey", *Public Choice* 90:11-53, 1997.

<sup>4</sup> Russell Hardin, *Liberalism, Constitutionalism and Democracy*, Oxford University Press, Oxford, 1999.

<sup>5</sup> See also F.A. Hayek, *The Constitution of Liberty*, University of Chicago Press, Chicago, 1960; F.A. Hayek, *Law, Legislation and Liberty*, University of Chicago Press, Chicago, 1979 [1973, 1976, 1979].

"relatively wide agreement on core issues,"<sup>6</sup> or, in the words of Knight, "society depends upon – we may almost say that it is – moral like-mindedness."<sup>7</sup>

Successful coordination around a constitution – for harmony, peace, order, and exchange – requires a polity's willingness to be bound,<sup>8</sup> with informal norms as the ultimate guardian of constitutionalism. Indeed, the solution to constitutional success lies not in the formal. It cannot: constitutions are ultimately mere parchment. While ordinary contracts rely on a combination of internal constraints and external enforcement mechanisms, a constitution, by definition, is the formal enforcement mechanism of last resort. There can be no outside appeal to any other formal institution beyond the constitution itself. Hence the importance of informal constraints in maintaining constitutional order. Hardin explains that "without support from relevant people, perhaps often in the grudging form of those unable to co-ordinate in refusing support,...rules would not be worth the paper on which they are recorded."<sup>9</sup> Similarly, Alexander Hamilton sensibly noted of the US Constitution that it was a "frail and worthless fabric" in the hands of the wrong people.

This informal constraint, this approach to constitutionalism, can be captured in the concept of constitutional culture. Existing attempts at defining constitutional culture offer a useful start.<sup>10</sup> But these approaches all share the same major shortcoming, as they limit the concept of constitutional culture to situations where the polity accepts constitutional constraints. Defining constitutional culture as a culture that accepts constitutionalism is simply too limiting; not only does it border on the tautological, but it does not shed light on constitutional failure (which is, after all, much more common than constitutional maintenance).

Constitutional culture includes the implicit and explicit, stated and unstated, conscious and subconscious, thoughts, feelings, beliefs, impressions and norms a group holds about the nature, scope and function of constitutional constraints. Different groups in society can have different constitutional cultures. In a linguistic simplification, I will refer to the predominant constitutional culture as the national constitutional culture, where appropriate. Thus, constitutional culture reflects the

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<sup>6</sup> Hardin, *Liberalism, Constitutionalism and Democracy*, *op. cit.*, p. 84.

<sup>7</sup> Frank Knight, "Ethics and Economic Reform I. *The Ethics of Liberalism*", *Econometrica*, New Series, Vol. 6, No. 21 (Feb. 1939), pp. 1-29.

<sup>8</sup> See Jon Elster, *Ulysses Unbound*, Cambridge University Press, Cambridge, 2000; or Russell Hardin, *Liberalism, Constitutionalism and Democracy*, *op. cit.*

<sup>9</sup> Russell Hardin, "Constitutional Political Economy – Agreement on Rules", *op.cit.*

<sup>10</sup> See, e.g. John Ferejohn, Jack N. Rakove, and Jonathan Riley, *Constitutional Culture and Democratic Rule*, Cambridge: Cambridge University Press, Cambridge (MA), 2001, especially pp. 10 and 14; Jason Mazzone, "The Creation of a Constitutional Culture", *Tulsa Law Review*, Vol. 40, 2005, p. 671; Lawrence Meir Friedman, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, 1975; Paul W. Kahn, *The Cultural Study of Law*, University of Chicago Press, Chicago, 1999; or Sanford Levinson, *Constitutional Faith*, Princeton University Press, Princeton, 1988; see also Charles E. Merriam, *The Written Constitution and the Unwritten Attitude*, RR Smith, New York, 1931.

most basic beliefs and attitudes about general organization, that is, not just the constitutional text itself, "but the entire network of attitudes, norms, behaviors and expectations among elites and publics that surround and support the written instrument."<sup>11</sup> For definitional and methodological details, see Wenzel 2007 and forthcoming.<sup>12</sup>

## 2.2. Matching the Formal and the Informal

Constitutional culture gains particular importance when we look at constitutional stickiness. Simply stated, a constitution must match the underlying constitutional culture. If it does not, the informal will reject the formal. Rejection can occur for a variety of reasons, ranging from the cultural to the philosophical. For example, a constitutional culture might reject constitutionalism entirely – perhaps because of opportunism or fatalism, or perhaps because constitutionalism is seen as an unfair thwarting of the popular will. Likewise, a constitutional culture might reject a specific constitution.

In sum, a constitution will fail if it is perceived as a foreign graft onto a constitutional culture that formally rejects it, whether because of cultural or philosophical incompatibility. If constitutional culture and the formal constitutional system are radically mismatched, the culture will reject the foreign transplant completely; the best is the enemy of the good, and the wise constitutional framer will not choose the best theoretical constitution. Rather, the wise constitutional framer will pay strict attention to the patient on whom the constitution is being grafted, to guard against transplant rejection and its ensuing health- and life-threatening complications. In a somewhat ironic conclusion, the ideal constitution is, to a large extent, the feasible constitution. Absent stickiness and robustness, a perfect constitution may as well stay under glass in a museum – or forgotten in a Federal Express depot (a friend in an unstable country has a can of food, and calls you for help opening it. Easy. You put a can-opener in a Federal Express package, which your friend receives within 48 hours. He enjoys his food. Why can't you simply drop a copy of the US Constitution into a Federal Express package, in like fashion? Why aren't constitutions like can-openers?)<sup>13</sup>

The following two cases studies illustrate.

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<sup>11</sup> Walter Dean Burnham, "*The Constitution – Capitalism and the Need for Rationalized Regulation*," in Robert A. Goldwin and William A. Schambra (eds.), *How Capitalistic is the Constitution?*, American Enterprise Institute, Washington DC, 1982, p. 82.

<sup>12</sup> Nikolai G. Wenzel, "Beyond Parchment, Beyond Formal Rules: Constitutional Culture and Constitutional Political Economy", op. cit.; Nikolai G. Wenzel, "From contract to mental model: constitutional culture as a fact of the social sciences", op. cit.

<sup>13</sup> I thank Peter Boettke for this simple, hard-hitting example.

### III. MEXICO: WESTERN INFLUENCES... CAUTIOUSLY

It may seem odd to use Mexico as a paragon of constitutional success. Indeed, Mexico is known for corruption rather than rule of law; for chronic economic instability and underdevelopment caused by unsound institutions; and for its contrast between Ivy League-educated élites and impoverished masses. In addition, Mexico has only recently emerged from almost a century of one-party rule, in what Vargas Llosa dubbed "the perfect dictatorship,"<sup>14</sup> able to maintain absolute and authoritarian power with an international veneer of democracy and constitutionalism, and minimal resort to traditional dictatorial methods.

Why, then, am I choosing Mexico as an example of constitutional stickiness? For all its shortcomings, Mexico has been remarkably stable in the 20th century, especially by Latin American standards. Since the conclusion of the 1910-1920s revolution, Mexico has enjoyed stability, constitutional maintenance and constitutional transitions, and high levels of democratic participation – if "Mexico-style." Contrary to all of its Latin American neighbors, Mexico has not suffered a military coup since its early 20<sup>th</sup> century revolution. So, perhaps by stricter standards, its constitution has not served the interests of rule of law, democracy and human rights quite as well as it could have. But the constitution has been remarkably stable and respected – enough so that Mexico warrants figuring as a case study of successful constitutional stickiness. I thus agree with McHugh's assessment that Mexico's constitutionalism "has been a testament to a legal and political persistence that has not always been entirely successful but...has, nonetheless, provided a basis for the continuing democratic evolution of this country."<sup>15</sup>

The stability and success of the 1917 constitution are especially remarkable if one considers Mexico's early post-colonial turmoil. Pre-revolutionary Mexican history can be roughly broken down into three periods: (i) 1821-1875, a period of political and institutional fumbling after independence, with no less than 800 armed revolts; (ii) the *Porfiriato* dictatorship between 1875 and 1910; and (iii) a protracted revolution *cum* civil war from 1910 through the 1920s.<sup>16</sup> Hardly an auspicious foundation for constitutional government.

Mexico was particularly hard hit in throwing off the Spanish colonial yoke

The Wars for Independence left Mexico in disorder and decay. Conditions were far worse in Mexico than Argentina or Brazil,

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<sup>14</sup> Mario Vargas Llosa, "Mexico: *The Perfect Dictatorship*", *New Perspectives Quarterly* 8, No. 1 (1991), pp. 23-24.

<sup>15</sup> James T. McHugh, *Comparative Constitutional Traditions*, Peter Lang Publishing, New York, 2002, p. 175.

<sup>16</sup> Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: *How Deep the Foundations?*", in Daniel P. Franklin and Michael J. Baun, *Political Culture and Constitutionalism: A Comparative Approach*, M.E. Sharpe, Armonk (NY), 1995, p. 121.

because the actual fighting had been so much more widespread and protracted in Mexico. The economy was in shambles...

There were two institutional bases of power in Mexico after independence – the church and the military. [The military] dominated national politics. During the forty-year period from 1821 to 1860, Mexico had at least fifty separate presidencies, each lasting for an average of less than one year; thirty-five of these ill-starred regimes were led by army officers. The basic means of winning presidential office was through a military coup.<sup>17</sup>

In addition to this waltz of post-independence regimes, Mexico also underwent an unstable succession of constitutions – itself a reflection of underlying tensions and uncertainties in defining Mexico's national identity. Indeed, in addition to the difficulties of governing under the constant threat of a military take-over, Mexico also underwent a crisis of self-definition in the wake of the colonial regime. The two main intellectual-political factions dominating constitutional debates were the Conservatives (who favored social order, the Church and established economic interests) and the Liberals (who favored change, rule of law, constitutionalism, education, and a greater opening of politics).

Added tension came from the periodic coups, leading Wiarda<sup>18</sup> to describe the period between 1821 and 1910 as one of dictatorships with sporadic democracies. On a constitutional level, Mexico saw an 1824 federalist constitution designed to abolish the absolutism of the Spanish colonial legacy,<sup>19</sup> rooted in European and Spanish traditions, but also influenced by the US.<sup>20</sup> That constitution was replaced by the 1836 centralist constitution, a conservative plan to impose order on competing regional *caudillos*. That constitution lasted until 1854, with the beginning of the liberal *Reforma* (reform), leading to an 1857 federalist constitution designed to stem the centralization of power<sup>21</sup> – itself followed by a conservative backlash and civil war.

With the brief interruption of European-puppet Emperor Maximilian and a French invasion, the liberal order lasted until 1876, when strongman Porfirio Diaz revolted and occupied Mexico City. Diaz was to dominate Mexico for the next 34 years, in a period known as the *Porfiriato*. Overturning liberal reforms (but without

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<sup>17</sup> Thomas E. Skidmore and Peter H. Smith, *Modern Latin America*, Fifth Edition, Oxford University Press, New York, 2001, pp. 217-220.

<sup>18</sup> Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?", *op. cit.*, p. 121.

<sup>19</sup> Juan Marcos Gutierrez-Gonzalez, "Mexican Federalism in the Democratic Transition", in Raoul Blindenbacher and Abigail Ostien (eds.), *Dialogues on Constitutional Origins, Structure and Change in Federal Countries*, McGill-Queen's University Press, Montreal, 2005, p. 27.

<sup>20</sup> 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 George Athan Billias (ed.), *American Constitutionalism Abroad: Selected Essay in Comparative Constitutional History*, Greenwood Press, 1990, p. 52.

<sup>21</sup> James T. McHugh, *Comparative Constitutional Traditions*, *op. cit.*, p. 27.

ever formally amending the 1857 federalist/liberal constitution), Diaz suspended civil liberties and constitutional rights, strengthened landowner power over the impoverished peons, and encouraged foreign investment, leading to a period of economic growth. That growth, however, was unstable, as it involved increasing inequality between the rich cronies and the poor masses; Wiarda<sup>22</sup> estimates that 80% of the Mexican population was economically or politically unintegrated at the beginning of the 20<sup>th</sup> century.

A powder keg of impoverished masses, regional *caudillos* vying for power against the *porfiriato* centralization, a marginalized indigenous population, and general dissatisfaction with the lack of civil liberties and rule of law, led to the Mexican revolution. In fact, the armed conflict and institutional conflagration that took place between 1910 and the mid 1920s are perhaps better thought of as a protracted civil war, with multiple actors and power players, rather than a discrete revolution with a clearly defined opposition fighting against the establishment. The upshot of the revolution is, first, the Mexican constitution of 1917 and, second, the ensuing stability that has lasted until today.

That post-revolutionary stability falls into three periods: (i) an initial period of post-revolutionary consolidation that lasted until the late 1920s establishment of the PRI (the party of the institutionalized revolution) as the sole force in Mexican politics, a corporatist umbrella of regional and socioeconomic interests; (ii) the 1920s through 1980s stability, under the PRI's domination; and (iii) the opening of political power from the late 1980s through the present, as the PRI eventually lost its monopolistic grip on Mexican politics, and Mexico ushered in a new era, the history of which is still being written.

What was different about the Mexican constitution of 1917? Why did it stick, and how was Mexico able to enjoy a century of constitutional maintenance after so many civil wars, dictatorships, military coups, and constitutional instability? In simple summary, after a century of constitutions that did not match the country's underlying constitutional culture, the formal Mexican constitution of 1917 matched the country's informal constitutional culture. Wiarda<sup>23</sup> explains that the earlier, nineteenth-century Mexican constitutions had been largely imitations of the U.S. Constitution, with the French Declaration of the Rights of Man appended. Many articles of these Mexican Constitutions were simply translations of the U.S. Constitution. They set forth such principles as separation of powers, independent courts and legislatures, long lists of civil and political rights, subservience of the armed forces to civilian authority, separation of church and state, federalism, and equal rights for indigenous peoples... But these principles usually bore little resemblance to the way Mexico was actually governed. It is not that these

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<sup>22</sup> Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?", *op. cit.*, p. 126.

<sup>23</sup> Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?", *op. cit.*, p. 123.



constitutional principles were complete myths or "laughable," as some have claimed. Rather, they represented idealistic principles and future goals, for which most thinking Mexicans recognized the social, economic, and organizational foundations had not yet been firmly laid...

The problem was not just that the nineteenth-century Constitutions represented future aspirations, however, but that in many areas they had no bases in Mexican realities. Separation of powers was a noble principle, but Mexico had always been governed – under the Aztecs as under the Spanish – in a unified, integralist, top-down manner. Federalism worked in the United States, but Mexico had always been a centralized system. Democracy and egalitarianism were magnificent values, but Mexico was organized on a hierarchical basis, based on rank orders and the assumed inequality among persons, and with the social gradations reinforced by racial criteria... It would also have been nice if the armed forces were subordinate to civilian authority; but in Mexico in the past century there often was no civilian authority, chaos and banditry were endemic in the countryside, what Alexis de Tocqueville called the "web of associability" was exceedingly weak, and the military (itself disorganized and fragmented) was frequently obliged to step into power to forestall national breakdown or to restore order when breakdown has already occurred.

McHugh<sup>24</sup> echoes this tension between constitutional ideal and political reality, as does Kolesar's<sup>25</sup> explanation that Mexican constitutions before 1917 had roots in foreign ideas, not Mexican traditions.

Contrary to earlier Mexican constitutions, the 1917 document reflected not just power-shifting, but a profound and conscious attempt to change Mexican society and institutions. McHugh<sup>26</sup> explains the tensions – revolutionary, liberal, conservative – in the Mexican constitution of 1917, showing how it reflects various undercurrents in Mexican political (and thus constitutional) culture: "The use of a constitutional system to shape a comprehensive social-political order offers an overview of [Mexico's] conservative influence. Much of the constitution, itself, consciously reflects liberal-democratic principles, consistent with most other Western societies. Yet the actual implementation of its provisions has often revealed a strong conservative influence." Thus did Mexico adopt a strong executive, single-party rule and a weak judiciary, which deferred to the executive, in what McHugh<sup>27</sup> calls a "certain deference to traditional institutions." The constitutional tensions abound, but they are a reflection of Mexico's mixed traditions: a strong executive is bound by strict term limits<sup>28</sup>; constitutional rights

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<sup>24</sup> James T. McHugh, *Comparative Constitutional Traditions*, op. cit., pp. 26-27.

<sup>25</sup> Robert J. Kolesar, "North American Constitutionalism and Spanish America: A Special Lock Ordered by Catalogue, Which Arrived with the Wrong Instructions and No Keys?", op. cit., p. 52.

<sup>26</sup> James T. McHugh, *Comparative Constitutional Traditions*, op. cit., p. 187.

<sup>27</sup> Ibid

<sup>28</sup> Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?" op. cit., p. 124.

are intertwined with constitutional duties<sup>29</sup>; negative, natural rights are intertwined with "positive rights"<sup>30</sup>; individual rights figure side by side with a constitutional enshrinement of Mexico's indigenous communal land ownership (the *ejido* <sup>31</sup>); federalism is tempered by a public finance and mercantilist structure that gives preponderance to the central government over the states and municipalities<sup>32</sup>; democracy is dampened by *de facto* one-party rule (at least from the 1920s until the 1980s).

In general, Mexico's constitutional roots are mixed; we thus see an emphasis on both liberty and social stability,<sup>33</sup> in a blend of indigenous and foreign constitutional influences.<sup>34</sup> In sum, the Mexican constitution was the "first to incorporate, at least partially, Mexican realities into the basic law of the land".<sup>35</sup>

To be sure, the Mexican constitutional system is not perfect. The country is still held back by endemic corruption. For most of the 20<sup>th</sup> century, power was monopolized by a corrupt, dirigiste, corporatist, "authoritarianism-light" single party. And Mexico still has immense strides to make in human rights, economic freedom and development, and respect for rule of law. Still, the constitution has stuck for almost a century, in a country and region not known for constitutional stability. The military is under firm civilian control and the country is remarkably stable, both exceptions in a region marred by instability, civil war and *caudillismo*. Much remains to be done, as Mexico continues its struggling (but successful) path towards democracy, rule of law, and economic growth.

For our purposes, Mexico serves as a useful example. "If the basic concept of liberal constitutionalism is a Western one, then Mexico [has] shown that it is possible to adapt such ideas and institutions to the needs of non-Western countries."<sup>36</sup> More importantly, in terms of constitutional adoption and stickiness a...factor that distinguishes Mexico...from many other Third World countries is that [its] attempts to build constitutional regimes have occurred either independently of, or at great distance from, the experience of colonialism. Rather than inheriting

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<sup>29</sup> James T. McHugh, *Comparative Constitutional Traditions*, op. cit., p. 187.

<sup>30</sup> James T. McHugh, *Comparative Constitutional Traditions*, op. cit., p. 182, and Albert P. Blaustein, *Constitutions of the World*, Fred B. Rothman & Co, 1992, pp. 56-57.

<sup>31</sup> James T. McHugh, *Comparative Constitutional Traditions*, op. cit., p. 183, and H. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?", op. cit., p. 124.

<sup>32</sup> Juan Marcos Gutierrez-Gonzalez, "Mexican Federalism in the Democratic Transition", op. cit., p. 28; Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?", op. cit., p. 124; and James T. McHugh, *Comparative Constitutional Traditions*, op. cit., p. 186.

<sup>33</sup> James T. McHugh, *Comparative Constitutional Traditions*, op. cit., p. 181.

<sup>34</sup> Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?", op. cit., p. 124, and Albert P. Blaustein, *Constitutions of the World*, op. cit., pp. 56-57.

<sup>35</sup> Howard J. Wiarda, "Constitutionalism and Political Culture in Mexico: How Deep the Foundations?", op. cit., p. 123.

<sup>36</sup> Daniel P. Franklin, D. and Michael J. Baun, *Political Culture and Constitutionalism: A Comparative Approach*, M.E. Sharpe, Armonk (NY), 1995, p. 117.

governmental institutions and structures from colonial powers, [Mexico] developed politically more or less on [its] own, even if [it] borrowed or appropriated heavily from foreign models. Nevertheless, the phenomenon of "imposition" – at least in the sense of top-down imposition of governmental institutions and principles by national modernizing elites – is relevant to the experience of [Mexico]. In this manner, then, it is perhaps useful to regard Mexico... as [an example] of "elite-imposed" or "authoritarian" constitutionalism, even if this seems a contradictory concept.<sup>37</sup>

Mexico offers a representative case study of a non-evolutionary, internally imposed constitution. That constitution was successful because it drew from endogenous traditions and culture. Mexico certainly did not adopt the "best" ideas and institutions; communal ownership, the power of the presidency, and the state's role in the national economy all continue to thwart Mexico's economic development. But Mexico has enjoyed constitutional maintenance, and the best is the enemy of the good – as exemplified by the next example, Argentina's, of another internally imposed, non-evolutionary constitution. The major difference, though, is that Argentina's founders neglected the underlying constitutional culture – and paid the price in the form of constitutional failure.

#### **IV. ARGENTINA: FROM MADISONIAN IDEAL TO MILITARY DICTATORSHIP**

There is much to learn from Argentina's sad string of constitutional suspensions. The study is that much more interesting because Argentina's formal constitution matches the US constitution almost verbatim. Both established federal systems with tripartite divisions of powers competing with the central government, and a "charter of negative rights"<sup>38</sup> through which the people granted enumerated and limited powers to the central government. Both established a Madison-style institution of constitutional review. Yet, for all these similarities in the formal system, the US constitution has exhibited relatively strong robustness, whereas Argentina offers a textbook study of constitutional failure. If the formal systems were the same, the differences in outcome must be traced to the informal, underlying constitutional culture. In sum, Argentina's constitutional culture, infused with Spanish authoritarian-centralized political tradition, rejected the foreign graft of American-style constitutionalism.

At first, things worked. The constitution of 1853/1860 led to an initial honeymoon of prosperity. But a mere 50 years after its ratification, laws were passed in clear violation of the economic and political liberties enshrined in the constitution. In 1930 came the first of seven successful and 11 total attempted

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<sup>37</sup> Ibid

<sup>38</sup> Stephen Gardbaum, "The New Commonwealth Model of Constitutionalism", *American Journal of Comparative Law*, Vol. 49, No. 4, Fall 2001.

military coups in the 20<sup>th</sup> century. Since 1983, the constitution has gained robustness, surviving military coup attempts – but it has not protected private property from expropriations under civilian government and rampant corruption. All this is a far cry from the founding vision or the constitutional text.

At the beginning of the 19<sup>th</sup> century, Argentina was still a poor backwater of the Spanish colonial empire. In 1810, the province of Buenos Aires proclaimed a half-hearted independence; the subsequent half-decade was marked by instability and bloodshed. Ribas<sup>39</sup> attributes this anarchy to the lack of vision, structure or guiding principle in the 1810 proclamation of independence; some had called for a constitutional monarchy, others for a republic, and the status of Buenos Aires and its relationship with the other provinces was up in the air. In 1816, the combined provinces formally declared their independence from Spain. However, the declaration still lacked a political vision for the new country and offered no definition for national institutional organization.<sup>40</sup> Chaos reigned for the next thirteen years, as described in its horrible detail by Sarmiento.<sup>41</sup> Regional *caudillos* vied for power, and routinely marched their armies into neighboring provinces. In 1819 and 1827, Buenos Aires attempted to impose constitutions on the other provinces, but they were rejected or ignored by local *caudillos*. Out of this chaos emerged a stronger *caudillo*, Juan Manuel Rosas, who forced his way into control of the Province of Buenos Aires, a position he used for almost a quarter-century of authoritarian reign over the country (1829 to 1852). Interestingly, though, Shumway<sup>42</sup> explains that the Rosas dictatorship began "not by force or coup, but by the consent of the legislature and the acquiescence of a society exhausted by war and anarchy." Likewise, Sarmiento<sup>43</sup> explains how Rosas enjoyed massive popular support as *Restorador de las Leyes* (the restorer of the laws); even if his ham-fisted methods routinely violated rule of law, they certainly re-established order.

It was against the backdrop of Rosas's order-through-power that dissenting voices began to grow, leading ultimately to the overthrow of Rosas, and, after more turmoil and fighting, the Argentine constitution of 1853/1860. In the next half century, Argentina grew into the eighth richest country in the world.<sup>44</sup> However, seeds of future discontent were already being sown underneath the country's rapid

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<sup>39</sup> Armando P. Ribas, *Argentina, 1810-1880: Un Milagro de la Historia*, VerEdict, Buenos Aires, 2000, p. 44.

<sup>40</sup> Armando P. Ribas, *Argentina, 1810-1880: Un Milagro de la Historia*, VerEdict, Buenos Aires, 2000, p. 46.

<sup>41</sup> Domingo F. Sarmiento, *Facundo, O Civilización y Barbarie en las Pampas Argentinas*, Emecé Editores, S.A., Buenos Aires, 1999 [1845].

<sup>42</sup> Nicolas Shumway, *The Invention of Argentina*, The University of California Press, Berkeley and Los Angeles, 1991, p. 118.

<sup>43</sup> Domingo F. Sarmiento, *Facundo, O Civilización y Barbarie en las Pampas Argentinas*, op. cit., pp. 252-258.

<sup>44</sup> See Armando P. Ribas, *Argentina, 1810-1880: Un Milagro de la Historia*, op. cit., and Jonathan M. Miller, "The Authority of a Foreign Talisman: A Study of U.S. Constitutional Practice as Authority in Nineteenth Century Argentina and the Argentine Elite's Leap of Faith", *American University Law Journal*, Volume 46, Book 5, June 1997.

economic growth. "Major revolts occurred in 1874, 1880, 1890, 1891 and 1905."<sup>45</sup> The ruling oligarchy maintained power through force and electoral fraud; the opposition, boosted by the universal suffrage law of 1912, finally broke the oligarchy's hold on power in 1916, leading to fourteen years of populist rule. In 1930, the military intervened in the first of 11 coups throughout the 20<sup>th</sup> century. Only half a century later, in 1983, did civilian rule return for good to Argentina. However, Argentina has continued to be plagued by poor governance, a volatile economy, and weak rule of law.

In constitutional terms, what happened at the founding? How did such an auspicious beginning go wrong?

Argentina's founding father and constitutional drafter, Juan Bautista Alberdi, examines Argentina's problems and proposes solutions in his 1852 *Bases y Puntos de Partida para la Organización Política de la República Argentina*.<sup>46</sup> According to Alberdi, the problem was rather simple in 1852 Argentina: tyranny and lack of economic development. A strong presidency and US-inspired checks and balances were to remedy the former, in order to overcome the latter. Alberdi emphasizes how many of Argentina's difficulties can be traced to constitutional choice, and explains how there were two constitutional phases in Latin America.<sup>47</sup> The first, immediately following independence, was backward-looking and sought to clean up the shortcomings of earlier systems, rather than addressing fundamental problems and questions of identity. Furthermore, the earlier driving goal<sup>48</sup> was independence from Europe and the Spanish crown, not economic development. In this, the second phase of constitutionalism<sup>49</sup>, there was no longer a need for independence, but for economic development through a new and improved set of institutions. Alberdi's central mission for the constitution was thus to foment economic growth for Argentina.<sup>50</sup>

The Argentine constitution of 1853/1860 established a federal system under an entrenched constitution, with united provinces and a federal government to accommodate provincial interests while preventing local tyranny and national chaos. The federal government operated within a framework of enumerated powers, divided among an executive, a legislative and a judiciary. Contrary to its US inspiration, the Argentine constitution featured a much stronger president, one

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<sup>45</sup> Jonathan M. Miller, "The Authority of a Foreign Talisman: A Study of U.S. Constitutional Practice as Authority in Nineteenth Century Argentina and the Argentina Elite's Leap of Faith", *op. cit.*

<sup>46</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, Academia Nacional de Derecho y Ciencias Sociales de Córdoba, Córdoba, 2002[1852].

<sup>47</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, *op. cit.*, p. 13

<sup>48</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, *op. cit.*, p. 14

<sup>49</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, *op. cit.*, p. 38

<sup>50</sup> See also Juan Bautista Alberdi, *Sistema Económico y Rentístico de la Confederación Argentina*, según su Constitución de 1853, from *Obras Escogidas de Juan Bautista Alberdi*, Editorial Luz del Día, Buenos Aires, Tomo IV, 1954 [1855].

who could "assume the powers of a king the instant that anarchy disobeys him as republican president."<sup>51</sup> Likewise, the Argentine document granted an explicitly activist economic role to the federal government.<sup>52</sup>

At first, the constitution appeared to stick. Power transfers, if based on fraudulent elections, were respected. Civil disorder was kept to a minimum. Regional *caudillos* were checked by the national government. The Buenos Aires question appeared to be settled. And, most importantly, after a half-century of stagnation, Argentina's economy boomed, as the country attracted foreign capital and immigration. By the dawn of the 20<sup>th</sup> century, Argentina seemed solidly ensconced in the ranks of the world's rich countries and the world's constitutional democracies. However, 1930 to 1983 was a period of coups and turmoil.

Again, what happened? First, a philosophical disconnect. Although the Argentine constitutional culture was influenced by Rousseau and the Continental tradition, the 1853/1860 constitution was based on the Scottish Enlightenment.<sup>53</sup> The incompatibility between the two led to rejection. Argentine constitutional culture was (and is) predominantly Rousseauian. The 1810 independence from Spain was inspired by Rousseau, who had been translated into Spanish and spread throughout Argentina in the early 19<sup>th</sup> century.<sup>54</sup> The Argentine founders, generally, were heavily influenced by French thinking.<sup>55</sup> Alberdi<sup>56</sup> points to Rousseau as the inspiration for the Argentine revolution of 1810/1816 and asks rhetorically "what is our great revolution, in terms of ideas, if not a phase of the French revolution?"<sup>57</sup> Alberdi himself was heavily inspired by Rousseau.<sup>58</sup> Although he read some Locke while at university,<sup>59</sup> Alberdi had first discovered and

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<sup>51</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, op. cit., pp. 124-125.

<sup>52</sup> There are other differences (such as the enumeration of rights within the Argentine constitution, versus the US bill of rights, or Argentina's constitutional enshrinement of Catholicism as the official state religion, side by side with religious freedom). But these are technicalities and not relevant here.

<sup>53</sup> For details on the two enlightenments, see F.A. Hayek, *Individualism and Economic Order*, University of Chicago Press, Chicago, 1948; F.A. Hayek, *The Counter-Revolution of Science: Studies in the Abuse of Reason*, Liberty Fund, Indianapolis, 1979[1952]; Peter J. Boettke, "Which Enlightenment and Whose Liberalism: Hayek's Research Program for Understanding the Liberal Society", in Peter J. Boettke (ed.), *The Legacy of F. A. Hayek: Politics, Philosophy, and Economics*, Edward Elgar, Aldershot, U.K, 2000; or Gertrude Himmelfarb, *The Road to Modernity: The British, French and American Enlightenments*, Knopf, New York, 2004.

<sup>54</sup> See Armando P. Ribas, *Argentina, 1810-1880: Un Milagro de la Historia*, op. cit., p. 48.

<sup>55</sup> See Nicolas Shumway, *The Invention of Argentina*, op. cit., and D. Sarmiento, *Facundo, O Civilización y Barbarie en las Pampas Argentinas*, op. cit.

<sup>56</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, op. cit., p.76.

<sup>57</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, op. cit., p. 50.

<sup>58</sup> José Ignacio García Hamilton, *Vida de un Ausente. La novelesca biografía del talentoso seductor Juan Bautista Alberdi*, Editorial Sudamericana, Buenos Aires, 1998, pp. 17 and 22.

<sup>59</sup> José Ignacio García Hamilton, *Vida de un Ausente. La novelesca biografía del talentoso seductor Juan Bautista Alberdi*, op. cit., p. 43.

fallen in love with Rousseau.<sup>60</sup> During his first trip to Europe, Alberdi travelled to Geneva to pay homage to Rousseau;<sup>61</sup> while there, he expressed the dream that "hopefully, some day my ideas might have...an influence similar to that which Rousseau's had on humanity."<sup>62</sup> And, while he did acknowledge the Americas' intellectual debt to England for political institutions and technology, he praised France for the gift of rationalism. Although Argentina had a tradition of French thinking, Alberdi was lured by the success of the US constitution, and thus proposed a Madison-style constitution, *i.e.* a document heavily influenced by the Scottish Enlightenment.<sup>63</sup> The clash was fundamental, and the constitution was ultimately an ideological aberration in Argentina's intellectual history. Argentina has a majoritarian tradition, which clashes with institutional dispersion of powers – and the very notion of constitutionalism.

The differences between the Scottish and Continental tradition can be summarized simply in the following table; the consequences for constitutionalism are obvious.

#### THE TWO ENLIGHTENMENTS

Scottish Tradition	Rousseau/Continental Tradition
spontaneous order	legal positivism
individual liberty	community
constitutionalism	majoritarianism
subsidiarity	universalism
government as necessary but dangerous	government as fulfillment of popular will
bottom-up	top-down

In addition to philosophical incompatibility, the Argentine founding was burdened by a cultural mismatch. Constitutionalism, generally, is a gamble and a rarity. Indeed, the historical norm has been one of poorly limited government (see Gordon 1999).<sup>64</sup> In addition to the general difficulty of taming the less admirable proclivities of those in power, Argentina also faced some specific difficulties. It lacked indigenous customs at the founding, having existed as a viceroyalty for only 34 years before independence, then having struggled, vision- and rudder-less for

<sup>60</sup> José Ignacio García Hamilton, *Vida de un Ausente. La novelesca biografía del talentoso seductor Juan Bautista Alberdi*, *op. cit.*, p. 37.

<sup>61</sup> José Ignacio García Hamilton, *Vida de un Ausente. La novelesca biografía del talentoso seductor Juan Bautista Alberdi*, *op. cit.*, p. 110.

<sup>62</sup> José Ignacio García Hamilton, *Vida de un Ausente. La novelesca biografía del talentoso seductor Juan Bautista Alberdi*, *op. cit.*, p. 86, translation my own.

<sup>63</sup> See, e.g., Bernard Bailyn, *The Ideological Origins of the American Revolution*, The Belknap Press of Harvard University Press, Cambridge (MA), 1992, as well as Douglass Adair, "The Tenth Federalist Revisited," and "That Politics May be Reduced to a Science. David Hume, James Madison and the Tenth Federalist", in Trevor Colbourn (ed.), *Fame and the Founding Fathers. Essays by Douglass Adair*, Liberty Fund, Indianapolis, 1998.

<sup>64</sup> See Scott Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today*, Harvard University Press, Cambridge (MA), 1999.

19 years before succumbing to a 23-year dictatorship. Argentina lacked local legal customs, a local tradition of self-government, and a tradition of constitutionalism. Garcia Hamilton<sup>65</sup> explains that Argentina's constitutional culture in the 19<sup>th</sup> century stemmed directly from Spanish colonial antecedents, none of which were propitious cultural soil for constitutional seeds – especially political absolutism, mercantilism, disregard for the law, and militarism. The country was thus already at a disadvantage, as it had not enjoyed the slow forging of institutional custom on the anvil of time. By contrast, the US at the founding had a tradition of local self-government that did not exist in Argentina. Paper could not change reality, in spite of Alberdi's best intentions and efforts. Argentina was burdened, in a diffuse sense, by the atavism of Spanish colonial, to which constitutionalism (generally) was foreign. In addition, the specific 1853/1860 constitution of limited government was wholly alien to the legacy of Spanish colonialism. In a cultural parallel to the philosophical disconnect described above, the 1853/1860 constitution did not jibe with the constitutional culture. The parchment established a relatively limited government. This spelled disaster, as the constitutional culture would not abide by limited government; it rejected the formal parchment, which was too limiting. The two were so fundamentally disconnected that rupture ensued. The people wanted powerful, intrusive government – and that is exactly what they got. We are left with Alexander Hamilton's warning that, in the wrong hands, a constitution is "frail and worthless fabric."

It is important, then, to look beyond the narrative of a successful founding that has formed around Argentina history. Indeed, it is a stretch to claim that the Argentine constitution was really a classical liberal document (*pace* Ribas<sup>66</sup>). The US influence was strong and explicit, but the 1853/1860 constitution was ultimately more *dirigiste* than its American counterpart. To be sure, liberty was prominently featured, but (a) it was economic, rather than political or civic; and (b) the document reflected an emphasis on freedom as a means rather than freedom *qua* freedom. As explained above, Alberdi<sup>67</sup> complains that the early Argentine constitutions emphasized independence, rather than economic development. To him, rights were instrumental rather than a reflection of natural law. Alberdi<sup>68</sup> says it all when he concludes of the constitution that "its mission... is essentially economic" (for an even more unabashedly instrumental approach, see his economic follow-up piece to his earlier constitutional work).<sup>69</sup> After economics, "peace and interior order are the other great ends that the Argentine constitution

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<sup>65</sup> José Ignacio García Hamilton, "Historical Reflections on the Splendor and Decline of Argentina," *Cato Journal*, Vol. 25, No. 3 (Fall 2005).

<sup>66</sup> Armando P. Ribas, *Argentina, 1810-1880: Un Milagro de la Historia*, *op. cit.*

<sup>67</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la Republica Argentina*, *op. cit.*, p. 18.

<sup>68</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la Republica Argentina*, *op. cit.*, p. 166.

<sup>69</sup> Juan Bautista Alberdi, *Sistema Económico y Rentístico de la Confederación Argentina*, según su Constitución de 1853, *op. cit.*



must have."<sup>70</sup> Alberdi's vision was one in which industry would lead to order, which would in turn lead to liberty;<sup>71</sup> contrast this with the US founding vision, where respect for natural rights would lead to flourishing.<sup>72</sup> Alberdi and the Argentine founding fall more neatly into an instrumental approach than into an uncompromising defense of liberty.

The practical implications are visible in the cold *Realpolitik* that drove the constitutional process. The American founding was driven by ideology and a healthy distrust of government. The Argentine process of 1853/1860, on the other hand, was driven by purely instrumental forces – a troubling fact for a constitution that is so explicitly grounded in the philosophical vision of liberty and limited government of the Scottish Enlightenment. The US founders were all too aware of the dangers of state power, and sought a balance between the rights of individual states and the perceived necessity of a central power; they were committed to federalism as a system of checks and balances. Federalism also played an important role in the Argentine founding – no surprise, in light of the central conflict between Buenos Aires and regional interests. The 1853/60 constitution was accepted by the interior provinces only because it was federalist (constitutions prior to 1853 had established centralized/unitarian national governments, and the 1853 federal constitution was initially rejected by Buenos Aires because it did not give enough power to that province; it was accepted only after the 1860 federalist amendments). But Argentine federalism was different. Although the founding élites of 1853 were mostly federalist, Argentina as a whole never embraced such a belief. Local *caudillos*, regional interests, and the *porteño* leadership embraced only a pragmatic federalism, designed to protect their own power from competitors. There were thus two federalisms in 1853: first, among intellectual élites, an ideological federalism;<sup>73</sup> second, a pragmatic and practical federalism to serve the constitutional focal point of economic stability. In sum, a philosophical federalism was sown upon a soil of pragmatic federalism and never blossomed.

The political economic order of the post-constitutional era (the so-called "conservative order") was decidedly not liberal. Concessions to freedom were

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<sup>70</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, *op. cit.*, p. 90, translation my own.

<sup>71</sup> Juan Bautista Alberdi, *Bases y Puntos de Partida para la Organización Política de la República Argentina*, *op. cit.*, p. 49.

<sup>72</sup> See Bernard Bailyn, *The Ideological Origins of the American Revolution*, *op. cit.*, as well as Douglass Adair, "The Tenth Federalist Revisited," and "That Politics May be Reduced to a Science. David Hume, James Madison and the Tenth Federalist," *op. cit.*

<sup>73</sup> Federalism was, however, not universally shared, even among the élites. Domingo Sarmiento, chief opponent to Alberdi, future president, and staunch Unitarian, was one such example. For him, there was an irreconcilable dichotomy between the civilization of Europe and Buenos Aires, and the barbarism of the interior; federalism would have given too much leeway to the latter. For success, the country was to adopt a uniform vision of "progress," including unitarianism. See Domingo F. Sarmiento, *Facundo, O Civilización y Barbarie en las Pampas Argentinas*, *op. cit.*, pp. 44 and 48-49, as well as Nicolas Shumway, *The Invention of Argentina*, *op. cit.*, pp. 6, 134, 143 and generally.

calculated and not principled, as the ruling oligarchs shrewdly applied the personal guarantees necessary to attract immigration and capital, while using the state to foment economic growth. The freedoms not necessary or conducive to growth were not emphasized at the founding, and were quickly neglected. From 1853/1860 to the populist take-over of 1916, the constitution was driven and manipulated by the oligarchy. Economic growth for the country was really economic prosperity for the élite.<sup>74</sup> The system was economically liberal, but not in a civil or political sense, e.g. no universal suffrage. There was economic liberty, but no respect for individual rights. As long as they could stay in power, and as long as the money kept rolling in, the oligarchs maintained the veneer of a liberal order. But as soon as they started to lose power through electoral reform and the subsequent middle class erosion of their power base, and the economy faltered, the proverbial iron fist broke out of the velvet glove, and the military formally broke the constitutional order in 1930.

In sum, Argentina's founders –philosophical, political and military – were not Scots preoccupied with creating institutions to curb humanity's more destructive passions, and to secure freedom and the blessings of liberty– even though they selected a document inspired by the Scottish Enlightenment.<sup>75</sup>

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<sup>74</sup> In terms of economic theory, what was perceived as  $\Delta Y$  for the country was really  $\Delta y$  for the élite.

<sup>75</sup> A number of competing explanations exist (see Jonathan M. Miller, "The Authority of a Foreign Talisman: A Study of U.S. Constitutional Practice as Authority in Nineteenth Century Argentina and the Argentina Elite's Leap of Faith," *op. cit.*, Armando P. Ribas, *Argentina, 1810-1880: Un Milagro de la Historia*, *op. cit.*, Guillermo Yeatts, "Argentina, la California que no fue," [www.atlas.org.ar](http://www.atlas.org.ar), 2003, José Ignacio García Hamilton, "Historical Reflections on the Splendor and Decline of Argentina," *op. cit.*, and José Ignacio García Hamilton, *Por Que Crecen los Países?* Editorial Sudamericana, Buenos Aires, 2006. I discuss these in a separate paper, in deference to space considerations here. Perhaps the strongest is the claim that the constitution of 1853/1860 was not just a passive player in Argentina's spectacular post-constitutional growth, but that the institutions catapulted Argentina to the rank of eighth richest country in the world at the dawn of the 20<sup>th</sup> century. In an eloquent paean to Scottish thinking, Armando P. Ribas (*Argentina, 1810-1880: Un Milagro de la Historia*, *op. cit.*) argues that the Argentine miracle was a direct and inevitable consequence of sound philosophy: a national vision, respect for property rights, limited government, and a sound institutional environment. At first glance, Alberdi's gamble worked. Argentina had stagnated under the wrong constitutions for half a century of turmoil; then, with the adoption of a constitution specifically designed to encourage growth, the economy boomed. I do not disagree that the post-1853/1860 institutional environment favored economic growth. But, as explained above, the ruling oligarchs viewed institutions instrumentally, without ever being committed to real liberty; this emphasis on pragmatism over philosophy was one of the causes of later trouble, as the country was devoted to growth, rather than constitutionalism, a subtle but important difference. To be sure, Argentina followed the earlier English recipe for growth (see Douglas North and Barry Weingast, "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England," *Journal of Economic History*, 49:803-32, 1989): rights led to economic and legal security, which led to commerce. But the security was thin: from the 1880s to the early 1900s, there was economic growth, but there was no respect for institutions. The post-constitutional oligarchic order was mercantilist; successful, yes, but more reminiscent of Colbert than Adam Smith. After a 50-year honeymoon, the veneer peeled off the constitutional order; lack of devotion to constitutional values, on the part of both oligarchs and populists, led to constitutional failure and almost a century of political and economic morass.

## V. CONCLUSION

These two case studies illustrate the importance of matching parchment to culture.

If anything, the Argentine founders were Smithian men of systems, as described in Adam Smith's *The Theory of Moral Sentiments*:<sup>76</sup>

The man of system...is apt to be very wise in his own conceit, and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all its parts, without any regard either to the great interests, or to the strong opposition which may oppose it: he seems to imagine that he can arrange the different members of a great society, with as much ease as the hand arranges the different pieces upon a chess board: he does not consider that the pieces upon the chess board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess board of human society, every single piece has as principle of motion of its own, altogether different from that which the legislature might choose to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be, at all times, in the highest degree of disorder.

The Mexican constitutional founders, on the other hand, recognized the importance of adapting outside ideas to endogenous culture, even if this meant compromise on absolutes and ideals.

Mexico and Argentina offer but two examples, if illustrative. I look forward to further research and further case studies.

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<sup>76</sup> Adam Smith, *The Theory of Moral Sentiments*, Regnery Publishing, Inc., Washington (DC), VI.II.2, 1997[1759], pp. 59-60.

This Constitution shall rule even when its observance is interrupted by acts of force against the institutional order and the democratic system. These acts shall be irreparably null. Their authors shall be punished with the penalty foreseen in Section 29, disqualified in perpetuity from holding public offices and excluded from the benefits of pardon and commutation of sentences.Â This Constitution guarantees the full exercise of political rights, in accordance with the principle of popular sovereignty and with the laws derived therefrom. Suffrage shall be universal, equal, secret and compulsory. The constitutions and laws of the States shall recognize and regulate these rights in the municipalities, with the purpose of strengthening indigenous peoplesâ€™ participation and political representation, in accordance with their traditions and regulations. VIII. Have full access to State jurisdiction. In order to protect this right, in all trials and proceedings that involve natives, individually or collectively, their customs and cultural practices must be taken into account, respecting the provisions established in this Constitution. Indigenous people have, at all times, the right to be assi Constitution, and to do so in secret; and (b) to stand for public office and, if elected, to hold office. Citizenship. 20. No citizen may be deprived of citizenship.Â (4) Subsection (3) does not preclude state subsidies for independent educational institutions. Language and culture. 30. Everyone has the right to use the language and to participate in the cultural life of their. choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights. (Communication at the Ibero-American Constitutional Conference, Merida, Mexico, April 15-17, 2009). Gagik Harutyunyan â€“ President of the Constitutional Court of the Republic of Armenia.Â Naturally, in the post-war period not only the constitutional courts of those countries were granted such powers, but also the citizens received the right to seek protection of their rights before up to and including the constitutional court. The fourth phase of constitutional justice coincides with qualitatively new processes of democratization, the period of emergence of a great number of newly independent states.Â One of the specific features of American constitutional culture is that in the interpretation of the Constitution essential role is reserved to legal power. Since its promulgation of the 1853 Constitution, Argentina had experienced strong economic growth and institutional modernization, which had propelled it into the ranks of the 10 wealthiest countries in the world by 1913. In the aftermath of the war, Argentinaâ€™s income per capita fell from a level approximating that of Switzerland to its current middle-income country status.Â Several transmission channels have been proposed to link Argentinaâ€™s institutional framework to its growth and development outcomes in the 20th century. Prados de la Escosura and Sanz-Villarroya (2009) suggest that weak contract enforcement and insecure property rights played key roles in Argentinaâ€™s economic decline in the 20th century.