

# Legal Education Reform: How the Academy at Chuquisaca Forged Argentina's Founding Elite

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## I. Introduction

This paper<sup>1</sup> tells the story of the creation of a system of legal training in Spanish America that lasted more than a century and taught the intricacies of both civil and canon law to the bureaucracy of the Bourbon Empire, the *criollo* elite that eventually led the war of independence and the founding generation of the Latin American republics that drafted their first constitutions. It will come as a surprise to non Latin-American law scholars (and I dare say to some Latin American scholars as well) that the Spanish Bourbons instituted a common law legal education in their domains that extended from the mid-18th century almost to the end of the 19th century. This system—based on the reading of statutes, case method and a period of apprenticeship—was aimed at nourishing the bureaucracy Spain needed to keep a huge territory under tight administrative control while managing widely differing conflicts. These Bourbon reforms planted the seeds of their own demise. I argue here that the kind of legal education fostered by the Bourbons gave a cadre of Latin American leaders the legal knowledge and the skills to challenge the royal order, as well as connections to key institutions and networks to launch a revolutionary process that eventually led Latin America to its independence from Spain.

This research is part of a project intended to support a larger claim: legal education reform happens in the aftermath of successful regime change. Bourbon legal education was changed only when the independent Latin American republics created new institutional regimes. Most of them opted for regimes with strong presidents and weak checks and balances. They also imported the tenants of legal codification from Continental Europe and its dogmatic, black letter legal education. This system lasted for more than a century and only now—as most Latin American countries try to leave behind

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1. This paper is a chapter excerpted and adapted from the author's doctoral dissertation on file at Yale Law School entitled "The Politics of Legal Education."

decades of authoritarianism and massive violations of human rights to build strong constitutional democracies—are discussions of adequate methods of legal education becoming relevant again.

In broad strokes, this paper takes a historical snapshot of legal training during a turning-point in Argentine history. It describes how politics and world events resulted in the creation of a specific academic ideology. What might have been a rather arid account of the development of a national university system contains threads of intrigue, church and state balance of powers, political subversion and—underlying all of these—a broad struggle for independence and autonomy from Spanish colonial rule.

Independence was achieved, in no small part, by the persuasive rhetorical and legal arguments of a fervent group of jurists with clear political ideals. Their notions and spirited activism were the products of the dynamic intellectual cadre where their legal training occurred and in which their skills were formed. This paper will focus on the careers of two of these distinguished lawyers, the historical context and system in which they were formed and briefly describe its collapse and the radical changes that resulted.

The legal training of Juan José Castelli and Mariano Moreno, founding fathers of Argentina, participants in the May Revolution and instigators of independence from Spain, provides a vivid depiction of the training, indeed the thinking, of members of this generation.

Their university careers will demonstrate the professional foundations that lawyers and judges received before the reform and also will introduce some fundamental elements of Argentine history that will explain the causes of subsequent changes in legal education in Argentina.

## **II. The Importance of the Profession: the Role of Lawyers in Argentina's Independence.**

The history of Argentina's independence begins with the Revolution of May, 1810, when—for the first time—a group of *criollos* (men born in South America) took charge of the country's destiny. This political body, known as the First Government Junta, was composed of nine members chosen without mediating orders from Spain, four of whom were lawyers. Of the others, two were military officers, two were businessmen and one was a priest. The number of lawyers is not surprising: the political forms that the revolution adopted and the justifications that promoted it typically were legal. Its creators and main spokesmen were prominent lawyers and, though *criollos*, they were also key members of the power structure of the time: the Viceroyalty of the Rio de la Plata. The political and economic intricacies of this institution had a strong impact on the members of the First Junta both on their professional practices and their public roles.

*A. An Exhortation to Free Trade*

The Viceroyalty of the Río de la Plata was formed by what is now Argentina, Uruguay, Bolivia and Paraguay, a territory previously dependent on the Viceroyalty of Peru. It was created to stop the Portuguese, who were pushing west and south, to decentralize colonial administration, and to regulate growing smuggling activity in Buenos Aires. Smuggling had been on the rise because of the exclusive and mandatory trade monopoly imposed by Spain on both buying and selling. The trade route of this monopoly started in Spain, originally in the early 16th century from the Port of Seville and two centuries later from Cadiz. Merchandise crossed the Atlantic Ocean to the Caribbean. It was unloaded in Portobelo or Cartagena for land transport across the Andes to the Port of Lima, then re-crossed the mountains toward the South into Upper Peru (today Bolivia) and the cities of Jujuy, Salta, Tucumán, Santiago del Estero, Córdoba and Buenos Aires. The merchandise that arrived in Buenos Aires was low quality, old fashioned and expensive compared to the goods that British ships smuggled into the city through its open harbor facing the broad Río de la Plata and the ocean.

The 18th century political and administrative reforms and Spain's dynastic change instigated the breakdown of the Caribbean-Lima monopoly. As the Bourbon monarchy established its power in Spain, it changed the way it managed its colonies across the Atlantic. These measures (such as the creation of the Viceroyalty of the Río de la Plata in 1776) brought enormous change, weakening the trade monopoly. Two years later, Charles III dictated a regulation mandating free trade. This led to the growth of Buenos Aires, whose citizens soon itched for independence from Peru and, ultimately, from Spain.

Ten years later, the ascension of Charles IV to the Spanish crown led to a reversal of the Spanish Bourbons' liberal reforms. Concerns about repercussions of the Revolution of 1789 and the bloody fall of the monarchy in France further distanced the Spanish kings from the progressive movement of the 18th century. Hence, the colonies of the Río de la Plata entered the 19th century bitter about the frustrated promises of free trade and keenly aware of their subjection to the vacillating policies of a far-off master. The inconsistency of Spanish policies in the New World exacerbated the confrontation between two very distinct classes: the merchants who benefited from the Spanish monopoly (usually Spaniards) and the landowners who had enjoyed commercial openness under the Bourbon reforms (mostly *criollos*).

Moreover, for decades British commercial interests had been eyeing the opportunity for free trade with South America through the Port of Buenos Aires, as two unsuccessful British invasions of Buenos Aires in 1806 and 1807 demonstrated. These events were revelatory for the people of Buenos Aires in several ways.

First, they discovered that they could not rely on a foreign power to free them from Spain. In fact, there had been conversations between a group of

prominent members of Buenos Aires society and the British invaders about the possibility of independence from Spain and free trade with Britain's help. Hopes of a liberating British army partly explain Buenos Aires' complacency during the first invasion, which the British accomplished with about 1,600 men. Once the people of Buenos Aires realized that the British had sent a conquering army rather than a liberating one, they rallied and expelled it. Second, the large quantity of foreign goods traded freely (and cheaply) during the invasions reinforced anti-monopoly sentiment by giving Buenos Aires a glimpse of the potential of free trade. Finally, the two British military adventures in Buenos Aires demonstrated the power of a Buenos Aires army formed substantially by native soldiers, whom the Spanish had been loath to arm. Their performance instilled the inhabitants of the city with a sense of pride. In addition to the complications that the British invasions created in the Río de la Plata, the French invasion of Spain in 1808 once again weakened trade with the colonies in South America, wreaking further economic havoc.

This was the climate in Buenos Aires in 1809 when a young lawyer named Mariano Moreno wrote a petition to the viceroy called *Representación de los Hacendados* (Representation of the Landowners). The document sought and achieved a temporary repeal of the free trade prohibition and helped strengthen and increase the Buenos Aires treasury. Over time, it would lay the economic foundation for the revolution. The *Representación* was the creation of "a group of *porteño* landowners (*los hacendados*), and pro-British *criollo* merchants [who] called on Mariano Moreno to present their point of view"<sup>2</sup> to Viceroy Cisneros as a counterbalance to the protectionist arguments of the Spanish Consulate. Moreno, a "committed life-long friend of England,"<sup>3</sup> wasted no time, repeatedly telling Cisneros that free trade with the British would not only bring prosperity to the nation but that duties on British imports could fill the seriously depleted public purse. "He argue[d] that English goods already [were entering] the country, despite 'laws and reiterated prohibitions,' thus depriving the treasury of duties it would receive otherwise."<sup>4</sup> He also suggested that making this trade legal would not only enrich the government but also be consonant with the "'law of necessity' upon which all economy is based."<sup>5</sup> He further maintained that increased contact with Great Britain would expand Buenos Aires' agricultural income while giving its inhabitants access to inexpensive, high-quality British goods.<sup>6</sup>

Aside from its historic importance, the Moreno document won praise for its rhetorical deftness: "How carefully Moreno claims that Argentina's consumerist classes deserve the best. And how subtly he affirms that Argentine

2. Nicolas Shumway, *The Invention of Argentina* 32 (Univ. of California Press, 2d ed. 1993).

3. According to his brother, Manuel Moreno. *Id.*

4. *Id.*

5. *Id.* (citing Mariano Moreno, *Escritos de Mariano Moreno* 105-09 (Ed. De Norberto Piñero Buenos Aires Biblioteca del Ateneo 1896)).

6. *Id.*

furniture is not as good as its English counterpart simply because Argentine workers lack commitment. Advertisers and union busters could not have said it better.”<sup>7</sup> Moreno simultaneously advocated the interests of both the British and the Argentines, characterizing them as two sides of the same coin. Indeed, the importance of his plea and his skills as a lawyer did not go unnoticed by the British. In effect, the *British Review and London Critical Journal*<sup>8</sup> affirmed:

The discussion of this important issue gave occasion to the celebrated memorial of Dr. Mariano Moreno, and for its merit we would have wanted to have it as the content of a separate journal; but we must be content with giving a general idea of this production, . . . after [his] having successfully refuted the lesser arguments made by the opposition . . .

While Moreno seemed to advocate for the mutual benefit of all the parties, not all the parties were represented in the *Representación*. Through his implicit dismissal of the capabilities of workers in the interior and the preeminence of Buenos Aires, Moreno solidified the nature of and reinforced the level of tension and resentment between the port and the rest of the territory. The relevance of the document to the future development of Argentina cannot be overemphasized. As Shumway illustrates:

The *Representación* can be read in at least two quite different ways. In one sense, it constitutes an unremarkable retelling of the economic wisdom of Smith, Quesnay and, of course, Gaspar Melchor de Jovellanos, whom Moreno quotes with delight since he was at the time president of the governing board in Cádiz and thereby the consulate’s superior. In this sense, the *Representación* is neither original nor particularly Argentine. In another sense, however, the *Representación* reveals attitudes indicative of Argentina’s tragic flaw: Buenos Aires’ turn toward Europe and her virtual disinterest in the economic needs of the interior. From the *Representación* onward, duties on imports and exports would go to Buenos Aires; interior artisans would languish; and, when the interior rightly protested these measures, Buenos Aires would answer with guns. In this sense, the *Representación* marks the beginning of a policy to enrich Buenos Aires at the expense of the interior while denying the interior the means of its own growth and progress. As Juan Bautista Alberdi, one of Argentina’s most distinguished thinkers . . . wrote: “Moreno represents the spirit of the May revolution in the exact sense that Buenos Aires understands and builds on that revolution: the destruction and denial . . . of all sovereign authority from both within and without; domination of Buenos Aires over all the nation, first in the name of Ferdinand VII, and later in the name of Argentina; [and] isolation of the port [of Buenos Aires] from the rest of the provinces in order to retain provincial earnings.” This policy provoked sixty years of wars in which thousands would die. It also created a deep and abiding resentment that persists even yet.<sup>9</sup>

7. *Id.* at 33.

8. *British Review and London Critical Journal*, III, Sept. 1811; Manuel Moreno, *Vida y memorias del Doctor Don Mariano Moreno* 18 (Ed. La Cultura Popular 1937).

9. Shumway, *supra* note 2, at 33–34 (citing Alberdi, Juan Bautista, *Grandes y Pequeños Hombres*

As this quote from Shumway reveals, the May revolution (and the Moreno intervention) was two-fold: it contained an economic element—the oppression of the closed market—and a political one as well, the status of Buenos Aires, vis-à-vis Spain, the British and Argentina as a whole. These two prongs were inextricably connected and the revenue from the port of Buenos Aires and its political importance became a single axis upon which revolutionary interests revolved.

### *B. European Schemes and Colonial Conspiracies*

Beyond Moreno's *Representación* on behalf of the landowners, a second battle played out in criminal court, establishing the political basis of the revolution in terms of loyalties and allegiances in Buenos Aires. In the case, called *La Causa Reservada*, another future founding father, lawyer Juan Jose Castelli, played a leading role. Castelli defended the British physician James Paroissien against charges of treason.

The complicated events began at the time of the first British invasion of Buenos Aires. After the invasion, a group of *criollos* plotting against Spain steadfastly resolved to achieve an independent future for the South American colonies. The group was composed of Castelli; the Rodríguez Peña brothers, Saturnino and Nicolás (the former had been Castelli's classmate at the universities of Córdoba and Chuquisaca); Hipólito Vieytes and Manuel Belgrano (Castelli's cousin and a lawyer who had earned a law degree in Salamanca, Spain). Belgrano, who had been a sympathetic witness of the French Revolution, became a leading figure in Buenos Aires, a prominent member of the intellectual elite and a public official in the *Consulado*, the treasury of the viceroyalty, where he was responsible for many of its most progressive economic and educational measures.

On June 27, 1806, the British invaded Buenos Aires and the *criollo* armies threw them out on August 15. General William Carr Beresford, commander of the English troops, was captured and brought to Luján, where he met Saturnino Rodríguez Peña. Rodríguez Peña was both a soldier and secretary to Santiago de Liniers, the Viceroy of the Río de la Plata, who repeatedly sent Santurino to Luján with messages for Beresford. During those meetings, Beresford convinced Rodríguez Peña that if freed, he would try to persuade brigadier general Sir Samuel Auchmuty and the commanders in Montevideo to help the *criollos* become emancipated from the Spanish crown.<sup>10</sup> Of the conspirator group, Saturnino Rodríguez Peña was the only revolutionary who actively sided with the invaders. Believing the British to be the best hope for gaining freedom from Spain, he even offered to take their part. Rodríguez Peña and "a dark character" managed to escape "together with Beresford and a few months later served as emissaries for the English government in

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del Plata 93 (Granier Hermanos 1912)).

10. See Klaus Gallo De la invasión al reconocimiento. Gran Bretaña y el Río de la Plata, 1806-1826 113 (A-Z Editora 1994).



the Portuguese court in Río de Janeiro.”<sup>11</sup> Thus, when the balance of power shifted, Rodríguez Peña found himself perfectly placed—both geographically and politically—to further the revolutionary cause.

The colonial landscape began to shift when Napoleon’s advances complicated the European situation. His encroachment modified political equilibria and strained the family ties that formerly bound the monarchs of the Iberian Peninsula. The Portuguese royal family—in Río thanks to the advice of Great Britain—included a Spanish princess, the Bourbon Infanta Carlota Joaquina, first-born daughter of Charles IV, sister of Fernando VII and wife of D. Joao, regent prince of the Portuguese Empire. Doña Carlota was a controversial political figure; she refused to let her personal political projects be dictated by her husband’s ambitions. The princess was vying for control of the Spanish throne with her brother (who was eventually taken prisoner by Napoleon) and plotted with English Admiral Sir William Sydney Smith<sup>12</sup> to create a new empire, or minimally a new annexed territory, joining New World Spanish and Portuguese colonies under a single capital in the Río de la Plata. While Smith saw possibilities for reinforcing the Anglo-Lusitanian alliance and expanding markets for British goods, Doña Carlota envisioned herself empress or, at the least, queen regent.

Thus when Rodríguez Peña arrived in Río, he found that his interests coincided with those of the Infanta and he became the link to the revolutionaries in Buenos Aires. The invasion of Spain by Napoleon’s troops and the ensuing alliance between Britain and Spain produced a turn of events that brought matters to a head. In September of the turbulent year of 1808, seeking to ensure the *porteño* group’s support for the Carlotist project, Rodríguez Peña entrusted a stack of letters to a young English doctor, James Paroissien, for covert distribution in Buenos Aires. Paroissien traveled to Montevideo where he was denounced as a traitor. Historians offer different explanations of why this occurred. Paroissien was imprisoned for treason after authorities read the letters that he had kept in a false-bottomed container. Castelli was both a witness and Paroissien’s defense attorney.

11. *Id.* at 114.

12. “The Infanta, who arrived in Rio de Janeiro with her royal husband, effectually offer[ed] a solution to the crisis that the collapse of a central power provoked. From Río de Janeiro, protected from the French threat by the ocean and the British navy, she [was able to] offer a legitimate investiture to those who need[ed] to manage the Indies in the name of Spain. The advantages that she offer[ed] as a symbol of empty sovereignty over the Juntas that arose in the metropolis [resulted] not only from the precariousness of their military situation, but also from the questionable [motives] for acting in the name of the captive king.” When the unity of the Spanish territories was seen as a matter of loyalty to the sovereign and not a matter of law, this argument began “to be used [...] to deny the right of some European Spaniards who had received their investiture from the people of the peninsula to govern the Indies.” Tulio Halperín Donghi, *Revolución y guerra. Formación de una elite dirigente en la Argentina criolla 148-150* (Siglo XXI Ediciones 1995).

*C. Defending a Traitor, Killing a Corpse*

It is important to highlight Castelli's predicament: "[h]e [was] one of the recipients of the confidential letters; he [was] an intimate friend of Saturnino and . . . a classmate of his in Cordoba and in Charcas and, according to the witnesses in the trial, he [was] also an intimate friend of Nicolás; thus 'when he [would come] from his farm to the city, he [would always leave] his saddle in his [Nicolás'] soap shop.'"<sup>13</sup> Friend, political collaborator and lawyer of the accused, Castelli described Paroissien's defense in writing between the end of 1809 and the beginning of 1810. The piece is an astounding legal document, mainly because of Castelli's delicate situation: he not only had to defend his client but himself, his group and the political project. He needed to formulate an argument that would address different issues while being carefully crafted within the limits of Spanish and Latin American law.

He reasoned that sovereign power belongs to the people, who hand it over to the king. Thus, the relationship is established between the people and the royal person. Given that the king was in danger, trying to help a relative of his to power was a way of protecting this relationship. Those who attempted to make the people of the colonies dependent on an assembly in Spain, rather than the king or his family, were betraying this connection and hence usurping the sovereignty of the people. To defend the bond between the people and the crown could not be considered criminal. To think otherwise would be like deeming the killing of a corpse a homicide.

According to Castelli's biography, his plea for the defense is worth mentioning as a notable legal and political work. On the legal level, he argued that there was not sufficient relationship between the crime and the charge for a conviction. Absent the charge, there was no crime. Castelli elucidated four points of argument: (1) *"The opinion of doctor Peña about the independence of America.* If previously he had favored the republican independence of America and the dismemberment of those dominions, now he had changed [both] idea and plan. No blame should be laid on Paroissien for the ideas that Peña previously sustained. (2) *The opinion of doctor Peña about the fate of America in the hypothetical case that he speaks of (currently).*" Peña did not support independence through democratic, aristocratic or popular republican measures that would subvert the territories' constitution, nor through adhesion to Bonaparte designs on the Bourbon throne, nor through unseating the ruling house and coronation of another royal family. "He only recommends Carlota Joaquina as regent, not as queen and as 'legitimate heir of the queen, Doña Isabel,' as he expressly condemns any other party or title as criminal. (3) *Complicity of Paroissien with the opinions of Peña.* . . . does not exist. Paroissien has conducted himself perfectly, openly and without pretense, without affectation, without fraud. He operated with sincerity and frankness. He turned in the papers himself. (4) *Discovering the crime in the opinions of Peña, in his papers that are reputed by the body of the crime, and the criminal, proving the complicity of Paroissien.*" The probative law must be provided and the infraction proved:

13. Julio Cesar Chaves, *El adalid de Mayo* 101 (Ediciones Leviatán 1957).



If Spain is occupied and the kings are captive, a legitimate national government does not exist and to opine in favor of a regency does not constitute an offense. *To look for the offense here is the same as pretending to discover homicide in a natural death.* This masterful climax closes the legal part of his plea. In its political part, the document maintains that a legal government does not exist because the regency that Fernando VII had left in his absence had been annulled *mero jure et ipso*. The nation constituted first the government of juntas and, afterwards, the Supreme Central Junta, with neither the king's agreement nor the express will of the people. The junta lacks jurisdiction over South America and pretends to exercise authority over it, without *power, title and authority*. *The peoples of America have the same rights to representation in the sovereignty as Seville. They are neither more nor less than the public's rights as an integral part of the nation.* It is certain that there are legitimate authorities on the continent but their power stems from the king and they cannot, in any case, represent sovereignty itself.

In synthesis: since the king is captive and there is no regency, a legal government does not exist. A government formed in Spain does not have jurisdiction in America absent the king and his representatives, since this would establish servitude over his subjects. In conclusion, America is *eo ipso* independent from Spain, when the royal link that unites them is broken by the king's interdiction. The South American colonies have an equal right with Spain to form a government.

Castelli was the first to proclaim these clear, simple and unarguable truths. Thus he opened the revolutionary process and won the legal [battle of] Ayacucho.<sup>14</sup>

In this way, Castelli managed to elude the personal, political and legal snarl in which circumstances had placed him. An experienced lawyer's creativity and a revolutionary's passion were melded in this defense, just as they were in Moreno's *Representación*. Together they paved the way for Argentina's independence.

In 1810, members of the group emerged as leaders of the movement that would ultimately produce the May 25 revolution. After the plot to enthrone Carlota failed, they openly demanded a *criollo* government. Castelli expounded his theory (what historians would later call "the mask of Fernando VII") on May 22 in a public assembly and won the votes of the people present. He was later called "the speaker of the revolution" and, together with Belgrano, Moreno, and others, became a member of the first South American government without Spaniards, the *Primera Junta*.

As we have seen from these two examples, the legal writings of these two lawyers were the backbone of the Argentine road to independence from Spain. How were Castelli and Moreno trained? What kind of legal education allowed them to practice their profession and engage themselves in the international politics of their day in such sophisticated ways?

14. Ayacucho was the last battle in the War of Independence of South America against the Spanish. Chaves, *supra* note 13, at 103-05.

### III. The Importance of Legal Education: Formation of two Argentine Lawyers

#### *A. Humble Beginnings*

From there, came the most talented, the most decided and the most energetic revolutionaries of the largest territorial portion of South America.<sup>15</sup>

Because of the random destinies of their immigrant fathers, both Castelli (1764–1812) and Moreno (1779–1811) were born in Argentine territory. Moreno's father was a Spaniard who sailed to South America with a royal permit to exercise the relatively humble profession of accountant. Castelli's father was an Italian from Venice who made his living as an apothecary.

A curious fact linked Moreno and Castelli before they met—their fathers were both shipwreck survivors. In 1767, Moreno's father was on a ship headed for Lima that sank in the channels near Cape Horn off Tierra del Fuego. Moreno described what happened: the ship “was broken into pieces and the crew had to survive for several months until they could build a little boat from the remains, in which the survivors, among whom was my father, returned to Montevideo. From that time, he swore off of all sea voyages and diligently found a fixed establishment on land.”<sup>16</sup> Ángel Castelli Salomón, Juan José's father, left Cadiz in 1742 and “the boat sank during the voyage, but don Ángel, we don't know how, saved his life.”<sup>17</sup> Contrary to the Spanish tradition of traveling to America to seek riches or honor and return to Spain, neither Moreno nor Castelli's father ever considered going home.

Castelli and Moreno were both educated in the flimsy and humble primary schools of Buenos Aires, which reproduced the long-standing Spanish educational schema.<sup>18</sup> In them, they received meager instruction in Christian doctrine, reading and writing and the four arithmetic operations.<sup>19</sup> When Moreno was 12 and Castelli was 13, each entered the Royal College of San Carlos to finish his secondary education. This college followed the 17th

15. Agustín Pestalardo, *Historia de la Enseñanza de las Ciencias Jurídicas y Sociales en la Universidad de Buenos Aires* 15 (Imprenta “Alsina” 1914).

16. Moreno, *supra* note 8, at 24–25.

17. Chaves, *supra* note 13, at 24 (citing José Arturo Scotto, *Origen y antigüedad de las familias argentinas*: Terrero, en *El Diario*, Buenos Aires).

18. “In America, the first schools of education are free: they are paid for by the municipal bodies of the respective cities, and when they [a]re not, the tuition paid for each young person [i]s so low that every father c[an] send his children there daily, and they return home after the hours of class. Already at this time, there was a school with the title School of the King, established in Buenos Aires, whose teachers were paid by the Royal Treasury, and in it they taught reading, writing and regular counting. When young Mariano was in it, it was only to perfect himself in the last two areas, since he had learned the first skill under the tutelage of his own mother.” Moreno, *supra* note 8, at 27.

19. Chaves, *supra* note 13, at 25 (citing Abel Chaneton, *La Instrucción primaria en la época colonial*, at 130).

century Jesuit models of learning environment and method. Even after their expulsion by Carlos III in 1767, the Jesuits continued to finance the growth of the college. Its students took courses in Latin grammar, philosophy and theology.<sup>20</sup> The life of a collegiate, studying and living at the college, was economically demanding. For that reason, Moreno did his secondary and university studies as a *capista*, i.e. while living at home.

Castelli, however, after taking some classes at the college, interrupted his course of study because of a family-endowed scholarship to a son who chose to enter the priesthood. The decision to follow a religious career allowed Castelli to finish his secondary education and continue his university career at the Royal University of Cordoba del Tucuman, in the College of Monserrat in the city of Cordoba. His biographer states, "he [was] a resourceful student. He dominate[d] Latin perfectly; he [was] one of the most advantaged in the course of philosophy and [was] not a bad theologian. He [was] respectful and obedient."<sup>21</sup>

Monserrat also felt the impact of the Jesuit expulsion. Its new Franciscan directors tolerated the propagation of the ideas of the Enlightenment. The works of the major French authors (Montesquieu, Rousseau, Voltaire and Diderot) were studied and discussed in the college. It is worth noting that Castelli's academic career unfolded a few years after the Declaration of Independence of the British colonies in North America and the Tupac Amaru rebellion in Cuzco.<sup>22</sup> The books and news circulating about these events were ardently discussed by the students, many of whom would be Castelli's future colleagues during key moments of Argentine political life.

After finishing his university education, Castelli refused to continue in the priesthood and chose law instead. His reasons for not studying law at the University of Salamanca in Spain, following in the footsteps of his cousin, Manuel Belgrano, are unknown. Historians suppose that economic difficulties led him to study at the University of San Francisco Xavier in the city of Chuquisaca (or La Plata), province of Charcas, in 1786.

Moreno would choose the same destination in 1799, though he arrived by a different path. When Moreno finished his classes at the College of San Carlos, he spent several months unable to decide on his future. The lack of money necessary to undertake his doctoral studies kept him in Buenos Aires. At that time, a priest from the city of La Plata (Chuquisaca) arrived in Buenos Aires on his way to Madrid to appeal a decision of the Viceroyalty Court of Chuquisaca. The priest's departure was delayed when the war started in

20. This secondary school is still open and remains very prestigious. Today it is called Colegio Nacional de Buenos Aires (National College of Buenos Aires) and it is part of the University of Buenos Aires system and one of the few meritocratic institutions that survives in Argentina.

21. Chaves, *supra* note 13, at 29.

22. Castelli "completed his studies with total regularity. In 1783, after attending the grammar and Latin courses during 1781 and 1782, he entered the University to take classes in philosophy and theology. In 1784, he passed to the second course, to the third in 1785 and the fourth in 1786 . . . ." *Id.*

Europe and he heard Moreno's exposition for his final college exams. The priest was so impressed that he offered to finance a journey by Moreno to La Plata and put him in contact with people who would host him there so that he might continue his studies. The secret arrangement between the priest and the student was that Moreno would decide to study law or theology.

### *B. Outbound Journey: Power and Wealth*

At the end of the 18th century, San Francisco Xavier University Law School, in the city of Chuquisaca (today, the University of Sucre in Sucre, Bolivia) was the best law school in South America.<sup>23</sup> But getting there required travel by horse and mule for at least a month, enduring painful long days, horrible lodgings and the sickening height of the Andes.

An arriving traveler, however, saw a city that was a stunning white vision, surrounded by the Andes, where Spanish baroque mixed with native art in the innumerable churches and colonial buildings. The city was overseen by three wealthy sectors whose interests were intimately intertwined: the judiciary (the powerful *Real Audiencia de Charcas* and its judges, the *oidores*), the church (and the Inquisition) and the university faculty. These three factions vied for dominance in the city and beyond.

The power play between church, university and judiciary (representing the crown's interest) is reflected in the controversy surrounding the content and role of education in Chuquisaca. It is generally agreed that university students were familiar with Enlightenment thinkers such as Rousseau, Montesquieu, Voltaire, Vitoria and Suarez. But what was the position of the Spanish crown in allowing or censoring these readings?

Some say that, in an effort to strengthen his own power, Carlos III was inclined to allow the reading of the modern theorists, as long as they favored limiting the role of the Catholic Church, which held a central position in Spain and the Spanish colonies. The expulsion of the Jesuits in 1768 seems to confirm this hypothesis.<sup>24</sup> Others attribute the origin of the censorship to Spain, claiming that modern books arrived in English ships with other smuggled goods. Whatever the case, those with the capacity to censor in Chuquisaca were the same ones who wanted to read these books. As a consequence, the lights of the 18th century shone brightly in Upper Peru.

The philosophical debates around Enlightenment ideas, their validity and permissibility were not the only disruptive controversies. An equally intense

23. Moreno, *supra* note 8, at 42.

24. The change directed toward the university favored propagating new ideas. Jesuit instruction was minutely precise, the tiniest details orchestrated to obtain the students' absolute submission to the pope and the king. Scholasticism triumphantly defended this seamless theological construction. "When the sons of San Ignacio were expelled, they were replaced by the Franciscans. One author comments: 'It seems evident that the teaching of the Franciscans contained a minimum of liberalism, only compatible with the political institutions and with the priestly order, which was enough, however, to lay the ground for the destruction of the whole colonial castle (Martínez Paz).'" Chaves, *supra* note 13, at 30.

and jarring issue was related to the geographical location of Chuquisaca. Essentially, the city was very close to Potosí and to its mines, the source of the Spanish crown's incredible wealth for three centuries. Legends claim that a bridge could be built between America and Europe with the amount of gold and silver extracted from those mines. Since the courts were located in Chuquisaca, all controversies resonated there. The shameful situation of the natives was apparent to whoever had the sensitivity to perceive it. The mines operated with a system of slavery that killed half of the natives forced to work in them and left the other half sick and near death. Families would watch their men leave their homes, knowing they might not see them alive again.

Both Castelli and Moreno were deeply troubled. Castelli's own words to the natives of Chuquisaca attest to his sympathy: "[t]he image of your misery and sadness tortures my sensitive heart"<sup>25</sup> and "[n]othing new. Life is too short to read what has been written and done on this subject. Bad system."<sup>26</sup> They would later turn such feelings into new laws: "suppression of forced taxation, land redistribution, schools, representatives elected by the people."<sup>27</sup> Moreno's brother wrote a moving account of Moreno's impressions and the situation of the mines of Potosí.<sup>28</sup>

The future lawyers and judges who would regulate power in South America were personally aware of this situation, its injustices, its jousts for power and its complexities; it was the context in which they lived and studied. It is no coincidence, then, that the "Oxford of America," San Francisco Xavier University, was located there. The experience it offered was unique to the Americas. Lawyers were attracted to Chuquisaca because the education they received there occurred inside the sphere of economic, political, intellectual power. The prestige of the university, and especially the famous Academy of Jurisprudence, both reflected and absorbed the power around them.

#### IV. General Characteristics of the Royal Carolina Academy of Jurisprudence in Chuquisaca

##### *A. Grooming Lawyers*

The university awarded the title of doctor (in theology or in the two branches of law: civil and canon). Once graduated as doctors, students were ready to enter the Royal Carolina Academy of Jurisprudence, an independent institution. The university was the natural center of debates, information and education. Nevertheless, the main reason for Chuquisaca's well-deserved fame (attracting the best and brightest South American youth to train as lawyers there) was the academy. Its importance is signaled by its clear connection with

25. Chaves, *supra* note 13, at 44 (citing Proclamation of Castelli to the Indians, Chuquisaca, Feb. 5, 1811).

26. *Id.*

27. Chaves, *supra* note 13, at 44 (citing Castelli to the Junta of Buenos Aires, Oruro, 5 April 1811).

28. Moreno, *supra* note 8, at 60-72.

the elite; an *oidor* (judge) of the *Audiencia* (the courts) presided over the most important public academy sessions, and was part of the archbishop's palace. But these features only hint at this institution's greatness and relevance.

The academy was remarkable for its intellectual and academic rigor and its educational quality. Law was studied as an argumentative practice through simulations and moot courts. Students taking defense and prosecution roles debated the interests of imaginary clients in cases invented by professors and argued before judges played by the same professors.

Students attended classes twice a week, reviewing exercises prepared by professors or listening to lectures by students on subjects assigned the previous day. Exams and some classes were presided over by an *oidor* of the *Real Audiencia*. In these sessions, students argued different positions in a reasoned way or wrote briefs and judicial decisions. The entrance and final exams were oral and public, often producing important legal, political and social controversies. The *Academia* was located in the Archbishop's Palace and it had a chamber, the *cámara*, which was always filled with students. "I am going to the chamber" or "the chamber was hectic" were common sayings. Final exams had two parts, theory and practice. The public, oral exam was solemn. The full dossier of a case was selected and the student had to describe the legal issues involved, deciding the case as a judge would.

Thus, the legal education of those responsible for Argentina's independence occurred in a climate of both ideological and political discussion. Knowledge of world events and news arrived in Chuquisaca freely. The law school was a center for debate and students were open to persuasion by new doctrines. Moreover, their professional, postdoctoral training developed the dialectic, rhetorical abilities that understand law to be a complex, argumentative practice. Moreno's brother describes it in this way:

This academy is a very useful base for the students and, thanks to the zealous efforts of some professors to perfect it, its state leaves little to be desired. It is necessary to spend two years studying the principles of law and the national code and in all that time, advancement is promoted through painful exercises on the material, frequent dissertations that must be made on some point chosen at random [24] hours in advance and, finally, through a solemn ceremony which the students publicly defend, they [are considered to] have merited approval by the heads of the institute [and] they obtain the degree of *bachiller*, which is required in order to exercise as a lawyer—doctor being a title that sounds higher than the first, but in reality is nothing more than a mere adornment. When the[ir] time at the academy is concluded, they must acquire the forum practicum, interning for two more years to a lawyer's firm, and then on to the judges of the court, without which prerequisite they are not able to be admitted to a private exam held by the court judges in whose jurisdiction they hope to practice the profession, and that is the last requirement that is demanded of them in order to be recognized as lawyers.<sup>29</sup>

29. *Id.* at 54-55.



This report by Moreno's brother and the descriptions that preceded it contain some surprises: 1) in the Academy, the object of study was national law, not Roman or canon law, which was exclusive material of the university doctorate; 2) the Academy of Jurisprudence demanded public defense of positions that arose from "painful exercises"—extremely rigorous work—to merit the title that would enable the student to take the next step; 3) a professional practicum of two years in a lawyer's office (an obligatory apprenticeship system); culminating in 4) an exam before a superior court of the jurisdiction where a student aspired to practice law. All of these elements helped develop an intellectual class of lawyers who were practiced in the arts that create political leaders. Graduates were able to defend their positions using reason and argumentation, they were aware of the multi-faceted approaches that are necessary for defending both sides of a position, they understood and could justify the broader view necessary—based on justice and law, rather than parties' interests—for deciding cases as judges. Finally, they were orators, capable of persuasion with rhetorical skills refined in moot courts and oral examinations.

## **V. The Royal Carolina Academy of Jurisprudence in Chuquisaca and the Political Project of the Spanish Bourbons**

### *A. Enlightened Policies*

Enlightened and progressive, the Bourbons had succeeded in assimilating some of the good economic, administrative and political principles that were beginning to be conceived at that time . . . . But the seed bore better fruit than its planters expected—or desired—since it grew vigorously in some spirits who wanted to take its principles to their ultimate consequences. And the final consequences were economic liberalism and political liberalism, the latter being achieved under a republican form [of government].<sup>30</sup>

The story of the origin and development of the academies of jurisprudence actually begins in the 18th century, when Carlos II, the last of the Habsburgs of the house of Austria, died with no descendants and left Felipe V, the grandson of the King of France, Louis XIV, as his successor to the Spanish throne. Despite the fact that Carlos' will presumed that Felipe would renounce his claim to the French throne, Louis XIV's attitude shortly after Felipe assumed the Spanish throne was increasingly arrogant and his armies advanced on Spanish positions. The possibility that the Bourbons would simultaneously occupy the French and Spanish thrones, despite previous agreements, alarmed European powers because such an alliance would alter the continent's equilibrium, leading to an inevitable French hegemony. The situation escalated when the war for the Spanish succession began in 1702 between France, Spain and Portugal and the Great Alliance (Austria, England, Holland and Denmark). It culminated more than ten years later in 1713 when the Treaty of Utrecht proclaimed a peace under which Felipe sat on the Spanish throne but maintained no alliance with

30. Jose Luis Romero, *Las Ideas Políticas en Argentina* 41 (Fondo de Cultura Económica, 4th ed. 1975).

France. The real winner of the negotiations was England, which gained a number of territorial benefits and permission for one English ship per year to trade with the Spanish colonies.

In this context, the Spanish monarchs of the Bourbon family understood that the success of their kingdom would be linked to their capacity to maintain Spain's imperial hegemony on the seas and in the trade relationship with the colonies. Thus, the reforms made by the next three Bourbon kings (Felipe, Fernando and, above all, Carlos III) continued in this vein with the characteristic (given the origin of the royal family) that they were typical reforms of enlightened monarchs influenced by the French Enlightenment. In this way, for the first time in the 18th century, Spain developed institutional reforms that would strengthen its position as a European power.

One of the most remarkable of these changes was the major administrative reform that permitted construction of the 18th century Spanish imperial state. This reform divided the kingdom into provinces, putting the French institution of the *intendancy* in place in each. This political partition guaranteed better administration and control than power concentrated in the monarch's hands. In addition to the increased royal presence throughout the vast Spanish territories, the state intervened significantly in the economy by creating basic banking institutions, reducing the commercial monopoly by permitting individuals to trade between Spain and South America<sup>31</sup> (which increased tax revenues and created a need for more sophisticated administrative structures), and instituting greater control of the seas with an improved Spanish navy. These reforms tended to maintain and increase the Spanish maritime hegemony over the colonies, making the administrative system more efficient. The division of Spanish American territory into districts began with the Viceroyalty of Lima and ended in 1776 with the creation of the Viceroyalty of the Río de la Plata.

Together with the administrative reforms, the Bourbons created numerous cultural institutions rooted in Enlightenment ideals, among which were the Royal Spanish Academy (*Real Academia Española*), the San Fernando Royal Academy of Arts (*Real Academia de Bellas Artes de San Fernando*), the Royal Academy of History and, of particular interest here, the Royal Theoretical-Practical Academies of Jurisprudence (*Reales Academias Teórico-Prácticas de Jurisprudencia*). These academies were the result of two movements that occurred in tandem: Bourbon reforms that tended to give the Spanish state more autonomy from decisions of the Church and the opportunity that presented itself in the educational arena when a vacuum was left by (confrontation with and later) expulsion of the Jesuit order from Spanish territories.

The issue of education was particularly relevant in the context of the confrontation between the Bourbons and the Company of Jesus. In effect, the Jesuits had acquired significant, if not exclusive, influence in the field of higher education. Before their expulsion, they administered 105 schools and 12

31. "In 1778, Carlos III dictated the regulation of free trade, followed by other partial measures, thanks to which the traffic between the Spanish and colonial ports would develop with greater intensity." *Id.* at 49.

seminaries in Spain and 83 schools and 19 seminaries in South America, all of them strategically located in key cities of the Spanish territory.

The confrontation between the Jesuits and the crown had various origins. Two issues were most pertinent. The Jesuit attitude of obedience to the Pope openly contradicted regalist policies that the Bourbons wanted to take root in Spain<sup>32</sup> (intended to increase royal sovereignty through reforms making public policy more independent from Papal mandates). Secondly, the Jesuit missions on the Brazilian border of Paraguay, created to convert the indigenous populations, were growing in political, territorial and even military importance.

Tension mounted in the mid-18th century. In 1750, Spain agreed to the Treaty of the Borders of Madrid, giving Portugal part of the territory occupied by the Jesuit missions. That led to the Guarani war, pitting Spain and Portugal against indigenous people led by Jesuit priests. The European powers were victorious in the three-year war, which ended in 1757, and the Jesuits were expelled, first from Portuguese territories in 1759, then from Spanish territories in 1767. Jesuit assets were seized by the crown and used in different ways. In education, the Bourbons took advantage of the infrastructure left by the Jesuits to increase studies and scientific investigation in the French Enlightenment framework.

Expulsion of the Jesuits had enormous impact. The Argentine historian José Luis Romero states: "The Jesuits were eliminated and with them the strongest pillar of the authoritarian conception in the colony fell. Perhaps this circumstance, more than any other, favored the flourishing of the liberal spirit."<sup>33</sup> Thus, during the 18th century, the Bourbons perpetuated and reinforced the movement toward greater autonomy of the Spanish state and central control by the crown through an ever more sophisticated administrative system and regulatory framework. This required trained personnel to implement the system in the immense territory of the Spanish empire. Educational reforms were put in place to meet this objective.

There are ancient origins to systematic administrative reforms of this kind (including that of the educational system) intended to consolidate monarchical power. As Mexican professor Ma. Del Rufugio Gonzalez Domínguez explains, it can be identified by certain characteristics:

From the political dispersion that was dominant throughout the late medieval centuries, a change began towards the centralized structures that made the formation and development of the modern states possible. The process took place between the [11th] and [14th] centuries, and had its own particularities in each region of Western Europe. Regardless of the differences that each particular case presented, there are constants that allow for a set of factors to

32. "Without openly attacking the church itself, since there was not much less religious sentiment in that era, the royal power strengthened itself with the so-called policy of 'regalism,' according to which the state rejected all intervention by the church, which was not recognized as an institution with any right to interfere with the royal will." *Id.* at 45.

33. *Id.* at 56.

be identified as pertaining to the same phenomenon. Among these constants, at least the following can be noted: a) the constitution of a bureaucratic apparatus around the king; b) the substitution of popular judges for technical judges in the administration of justice, which was being imparted more and more in name of and by authority of the king, and c) the need to argue the legal fundamentals of both sides in a judicial trial so that the judge would consider them when passing sentence.<sup>34</sup>

As a way of implementing these reforms described by González Domínguez, the Bourbons' push toward regalist and central control required that practitioners of law be trained in the knowledge and application of its mandates; that is, they had to know national law and to have the intellectual tools necessary for implementing it under diverse circumstances. Universities, however, were not academically equipped to meet this task, nor did they have any intention of supporting the enlightened course the crown was pursuing for the Spanish nation. The Bourbons needed an academy to create the functionaries that would consolidate the burgeoning state apparatus.

As mentioned above, the tradition of legal education basically consisted of teaching Roman law (the *Corpus Iuris Civilis* of Justinian) and canon law.<sup>35</sup> However, as political and administrative necessity increased, kings looked for ways to control the training of legal professionals, requiring that a university graduate who wanted to practice law do an internship of two years in a law firm and take an exam before the superior court of the jurisdiction in which he wanted to practice. Together with these requirements, bar associations (*Colegios de Abogados*) were created to benefit their members. Thus, the law was converted into a profession whose development intertwined with the needs of the crown.<sup>36</sup>

34. María Del Refugio González, *Constituciones de la Academia de Jurisprudencia Teórico-Práctica*, in *Anuario Mexicano de Historia del Derecho* Vol. II 267, 267 (Ciudad Universitaria 1989).

35. "Throughout various centuries, in the law schools of some European universities, legal education was based on the more or less broad study of some texts and legal bodies contained in the *Corpus Iuris Civilis*, which had been created by the Emperor Justinian in the 6th century BC. The transmission of the contents of this 'body of law' permitted the formation of those who would perform as solicitors, lawyers, notaries, attorneys or academics in a medium that required ever more knowledge of the law." *Id.* at 267.

36. "Gradually, the monarchs interfered even more in the world of the jurists, establishing that to litigate in the courts of the kingdom, it was necessary to pass an exam before the court or superior court of the town, in which the lawyer must show that he knew not only the 'legal dogma' but also the laws of the kingdom. This fact paralleled the establishment of the bar associations as organizations for the protection and defense of their members, protecting the labor market, widows and orphans and the defense of its guild interests. The profession of 'attorney' was separated, in this way, from that of someone who knows the law. From that point on, the degrees of bachelor of arts or bachelor of science or doctor were not sufficient for the person who held them to represent a party in a trial. Theoretical knowledge was separated from practice." *Id.* at 268.

*B. The Expansion of the Academies of Jurisprudence in Spain and the Colonies*

The Bourbons' push toward concentrated administrative, political and economic power in royal hands, with scientific enlightenment but distanced from Papal dictates, set the stage for consolidation of the system of education in which the Academies of Jurisprudence, together with the other aforementioned academies, were created. As González Domínguez argues:

In Spain, the theoretical-practical Academies of Jurisprudence were intended to teach the law created by the king or his delegates. Bourbon teaching had not been incorporated by the universities, despite attempts by the monarchs to reform curriculums. The Academies of Jurisprudence were, then, an instrument of the crown to impose instruction of the royal body of law on the Spanish legal profession.<sup>37</sup>

The Bourbons substituted a course in the Academy of Jurisprudence for the previously required internship in a law firm. The course taught future legal practitioners the content of the national law created by the crown while they also, through various methods, developed the skills they would need to practice law in the new regulatory framework.<sup>38</sup> The following description of the founding of the Academy of Madrid shows the close relationship between the enlightened ministers of the Bourbon kings and the founding of these institutions:

The origin of the Royal Academy of Jurisprudence and legislation goes back to the year 1730, in which the Junta of Practical Jurisprudence begins to meet in Madrid in the house of the Lawyer of the Royal Boards, Don Juan Antonio Torremocha. The association was composed of 30 academy members. In 1739, it printed its first statutes. It met two times a week, on Mondays and Thursdays, and in those meetings, an academy member read a dissertation that was then discussed among everyone. The most outstanding members

37. María del Refugio González, *La Práctica Forense y la Academia de Jurisprudencia Teórico-Práctica De México (1834-1876)*, in *Memoria del III Congreso de Historia del Derecho Mexicano* 281, 282 (Universidad Nacional Autónoma de México 1984).

38. "In the 18th century, the need was felt very vividly to change the education of law professionals, based fundamentally in the Roman-canonical law and a bit on the margins of the reality lived in the courts and administrations. It was necessary to renovate the teaching methods and to attend more and in a better way to the study of Spanish law, in its laws and constitutional principles. In that sense, efforts were made at renovation, even though the weight of tradition continued to be very strong. Among those efforts, the ones carried out by individual initiative, under the auspices of the central administration, stand out. A series of academies of legal practice were formed in the second half of the 18th century, especially in Madrid, although there were also examples in the provinces. In them, they tried to complete the theoretical formation with the practice of law and the study of Spanish legislation through a series of exercises of a 'speculative and practical' nature." José Luis Bermejo Cabrero, *La Academia de Práctica Jurídica de San Carlos Borromeo de Valladolid*, in *Estudios En Memoria Del Profesor D. Salvador de Moxo* 161, 161 (Universidad Complutense de Madrid 1982). For more on Roman law and the teaching of native law in the 18th century, see Francisco Tomás Y. Valiente, *Manual de Historia del Derecho Español* 386-392 (Tecnos, 3d ed. 1981).

of the corporation, in those initial years, were Nicolás Álvarez Cienfuegos, Tomás Ibáñez, Pedro Joaquín Murcia, Bartolomé Galán and José Moñino, future count of Floridablanca and secretary of state of Carlos III. Don José Moñino, who was president of the academy, [wa]s responsible for the royal decree of February 20, 1763, in which the academy [wa]s officially recognized under the title of Royal Academy of Laws of this Kingdom and of Public Law. . . .<sup>39</sup>

Admittance to the academies required at least a bachelor's degree in one of the fields of law (Roman or canon) and certain personal or familial qualifications. As the Statutes of the Academy of Valladolid affirmed, whoever wanted to gain admittance needed to be "well born, of good life and customs. . . ."<sup>40</sup> Once the admission application was presented, the candidate was required to take an exam that could consist of an interrogation about the contents of what was studied in the university, that is, about civil law, law of peoples, or canon law or, in some cases, moot court-like exercises similar to those developed in the academies.<sup>41</sup> The candidates who already held more advanced degrees only had to give an oral presentation about the Spanish laws in front of the academy president.<sup>42</sup>

After being admitted to the academy, students attended once a week to participate in theoretical and practical exercises. The former were dissertations about doctrine or explanations of texts that were then discussed by the rest of the members of the academy.<sup>43</sup> The latter were assigned based on how much they resembled actual legal practice. Here, an historian expresses his surprise at the practical exercises in the Academy of Aragón:

The Academia Aragonesa . . . had been formed with a predominately didactic vocation. [It] . . . tried to educate new practicing Aragonese jurists using a curious method that, even today, we [continue] . . . to practice in university classrooms: it is the resolution of cases through a system of a simulated trial; a sort of scenic representation of what a real trial could be. Thus, in the part called "*Bylaws for simulated cases, questions and notes of the litigation*," the academia's norms established as an objective that "*with the variety of cases and their decisions, the academia achieves the complement through the scientific practice*." For that, "*it is organized by notes or simulated cases and litigation and arranging the judicial part of them, they . . . [compile and write] dossiers*." In this way, a matter of interest, what we would today call a practice case, was submitted for its debate and resolution in a simulated judicial process, following the same structure."<sup>44</sup>

39. Organización—Fines y Objetivos—Real Academia de Jurisprudencia y Legislación, Real Academia de Jurisprudencia y Legislación, available at <http://rajyl.insde.es/organizacion/historia-rajyl.aspx>.

40. See Bermejo Cabrero, *supra* note 38, at 169.

41. *Id.* at 161.

42. *Id.*

43. See *id.* at 166-67.

44. Jose Luis Merino y Hernández, Enseñanza del Derecho y Función de las Academias, in 64



Spain's South American territories had to wait until the last part of the 18th century for access to the institution of the Academy of Jurisprudence. The delay was attributable to the distance and complexity of implementing public policies over such vast territories. However, one explanation that takes into account the coincidence of the dates and confrontations that the Bourbon reforms generated, suggests that it could have been caused by resistance of the universities, of the Roman Catholic Church in general and of Jesuit institutions in particular, to allowing these new notions into their territories, given the loss of power over the administration of justice that it implied.

In Mexico, in the Viceroyalty of New Spain, the curriculum of the Royal and Pontifical University of Mexico closely followed the models characteristic of the Iberian Peninsula; these were even more archaic, since they did not implement the great changes of the last third of the 18th century.<sup>45</sup> The theoretical-practical Academy of Jurisprudence of Mexico served the same function that had been assigned to that type of institution in the metropolis. In Spain, the authority of royal law superseded that of feudal cities and lords; in Spanish America, it superseded the authority of Roman law. The Mexican academy was closely modeled after the Royal Studios of San Isidro in Madrid and both were part of the battle between royal and Roman law.<sup>46</sup>

The manner of studying in the Mexican academy reflected that of its Peninsular counterparts:

The students that were registered in some of the precincts where the legal career existed had to attend the exercises of the academy for four years to acquire the formation that allowed them to take the lawyer's exam, an absolute requirement for being able to litigate in the courts. Every Tuesday of the year, except for the vacation period, the young students went to the academy to do their exercises. The courses taught were directly related to the exercise of the profession in both their theoretical and practical aspects. That is, they studied the doctrinaire texts that described the legal institutions according to the royal legislation that had been dictated about these texts since the 18th century, approximately. The minimal schooling to have access to the courses of the academy was the bachelor's degree in canons or in laws. . . . Once the requirements were completed by the intern, the academy emitted a certificate of attendance and of the level of study, which had to be presented before the royal court [for the student] to have the right to take the lawyer's exam.<sup>47</sup>

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Congreso de Academias Iberoamericanas de Derecho, Academia Nacional de Derecho y Ciencias Sociales de Córdoba (El Copista 1999).

45. Jorge Mario García Laguardia & María Del Refugio González, Significado y proyección hispanoamericana de la obra de José María Álvarez, in *Instituciones de Derecho Real de Castilla y de Indias* 74-83 (ed. facsimilar de la edición Mexicana de 1826) (Universidad Nacional Autónoma de México 1982).

46. González, *supra* note 37, at 282-83.

47. *Id.* at 283.

The territory that later became Argentina was not, in its beginnings, a very friendly place to practice law. The resistance to lawyers may explain how the only university offering legal training in the territory of Argentina was the not very prestigious University of Cordoba. The resistance to lawyers is demonstrated by the fact that they and their profession were perceived as a source of animosity and catastrophe:

One of the clauses of the contract signed on March 18, 1540, between the king and Álvaro Núñez Cabeza de Vaca, sending the expedition to the Río de la Plata river established "that no lawyers or attorneys can pass to these parts"<sup>48</sup> and . . . "[t]he years go by and the bitterness against the lawyers does not stop. When he realized the gradual demise of the ancient cathedral in the year 1752, the governor of Buenos Aires, Don José Andonaegui attributed the catastrophe, in a communication to the Viceroy of Peru, to the "punishment from Heaven for the continuous lawsuits, hate and rancor that the attorneys fomented among the neighbors."<sup>49</sup>

Beyond the prejudices that have always surrounded legal professions, the aversion to the development of legal practice in Argentina was linked to the political system described in the previous section. The concentration of colonial power in Lima, Chuquisaca, and other Spanish cities charged with oversight of the empire's administrative system did not help generate a professional class with incentives to develop government structures, to practice a jurisprudence of rights and generally to defend their clients' interests. Keeping legal education close to the place where the law was produced, interpreted and executed was also a form of colonial control.<sup>50</sup>

In that way, then, almost all of the 18th century passed without it being possible for [practitioners of law] to graduate in jurisprudence without abandoning what currently constitutes Argentine territory. One had to go to Charcas or Santiago de Chile, unless one could and preferred to cross the ocean, like Manuel Belgrano, who studied law and graduated in Salamanca.<sup>51</sup>

The Revolution of May changed all this: the development of law became a fundamental part of the institutional changes that followed. The way of teaching it was to be no exception.

48. Pestalardo, *supra* note 15, at 4-5.

49. *Id.* at 6.

50. "Lawyers, in addition to their knowledge of the dangerous sciences, were competitors in administrative careers, possible rivals and enlightened censors of the government. There was an immediate and economic interest in avoiding the formation of Creole ruling classes." *Id.* at 7 (citing Juan Agustín García, *La Ciudad Indiana* 227-228 (Buenos Aires desde 1600 hasta mediados del siglo XVIII) (A. Estrada y cía. 1900)).

51. Pestalardo, *supra* note 15, at 13.

*C. Buenos Aires Claims Her Rightful Place*

As previously mentioned, in 1810 the people of Buenos Aires seized power and created the *Primera Junta*. One issue remained undecided, though it already had been discussed in the May 22 assembly. Once Castelli gave his speech there, a member of the opposition asked: If the power goes back to the people, why should it go to the people of Buenos Aires? This question would eternally haunt Argentina and was one of its most difficult issues for decades. The founding fathers' answer was that the situation was temporary. Buenos Aires would act as an elder sister, they said, and later summon the provinces to send representatives to form a larger assembly, the *Junta Grande*. That paternalistic answer set the tone for the tragic future division between Buenos Aires and the rest of Argentina.

The *Primera Junta* worked at a hectic pace. The situation was difficult as there were territories still in the hands of Spanish loyalists. The *Primera Junta* sent an army to destroy armed opposition in Córdoba and then win over followers in the provinces. Castelli, the new government's representative, was able to gather an enthusiastic army that won the first battles for the *criollos*, freed indigenous peoples from the mines and tried to suppress the opposition of the land owners and the slave holders. Buenos Aires was reluctant to accept these wealthy land-owners as representatives of the provinces and delayed their incorporation. The revolutionary group faced a new challenge—the fierce reaction of conservatives in Buenos Aires. The split between the liberal revolutionaries, who refused pleas for democracy from the provinces, and the conservatives, who would reject the establishment of a constitution and bill of rights, turned into a long lasting fracture that submerged Argentina in civil war for 50 years. The struggle later morphed into the split between Buenos Aires and the rest of the country.<sup>52</sup>

The first 50 years of Argentine history were imprinted with the struggle between *unitarios* and *federales*. The Unitarians were mainly residents of Buenos Aires. Cosmopolitan and intellectual, they aspired to make Argentina a nation based more on the image of Europe than Latin America. They despised the interior of the country, the Spanish traditions and interior ruling leaders, the *caudillos*. They were liberal in the sense that they believed in the free market. But they also believed in restricted democracy. This later became the general meaning of the term “liberal” in Argentina. The Unitarians owned the largest source of the country's wealth: customs operations at the Port of Buenos Aires. They fought to make Buenos Aires the ruling province. The *federales*, on the other hand, believed in social and religious tradition. They were protectionists who opposed free navigation of the rivers and supported equality among the provinces.

52. “Argentina entered one of the most difficult and confusing periods of her history, comparable in some sense to what would have happened in the United States if the Revolutionary War, the War of 1812, the collapse of the Confederation, the Civil War and the French-Indian War had all occurred at once. Danger loomed every where.” Shumway, *supra* note 2, at 49.

Argentina's failure to establish a constitutional legal system at that time is linked to this dichotomy. The attempts to write a constitution were invariably Unitarian proposals and Unitarian constitutions were rejected systematically by Federals in 1817 and 1827. A state of anarchy prevailed for 20 years until Juan Manuel de Rosas, a federal *caudillo*, took power in 1829 and created a dictatorship that lasted two decades. He asserted that Argentina would become a united nation as a prelude to having a constitution. His bloody government crushed all opposition until he was defeated by another *caudillo*, Juan Jose de Urquiza in 1852.

The War of Independence and the civil wars severed the connections with Chuquisaca. Thus, the University of Córdoba was the only law school in the emerging new country. The Universidad Mayor de San Carlos de Córdoba, founded in 1614, was not a highly regarded place to study law. Most students who graduated from Córdoba's Colegio Monserrat departed for Chuquisaca in search of a better legal education. In 1813, however, Córdoba designed a new curriculum intended to improve its legal education. It was approved in 1815. The plan organized a law curriculum around Roman and domestic law, public law and the law of peoples.

In 1820, Argentina reached the peak of anarchy as a consequence of the civil war. Under control of their respective *caudillos*, the provinces became more isolated from one another. The province of Córdoba was run by its *caudillo*, warlord Juan Bautista Bustos, and the University of Córdoba lost its national character. The curriculum reform implemented in this period was aimed at strengthening "traditional views of the law and at disdaining the innovations of the century."<sup>53</sup> Nevertheless, an Academy of Jurisprudence was created on the Spanish model in Córdoba in 1821. There is very little information about this academy, although it was apparently closed in 1873.<sup>54</sup> By about 1830, the University of Córdoba was in decay.<sup>55</sup>

The court of Buenos Aires, known as the *Audiencia*, was created in 1785. It regulated admission to the Buenos Aires legal profession, requiring university graduates to do a long internship in a law firm and to sit for an exam given by the *Audiencia* itself. In 1815, Buenos Aires—in search of its own identity and asserting superiority over the provinces—opened its own Academy of Jurisprudence. Chuquisaca was simply too far away for prospective lawyers to go there for law school. Students at the new academy attended classes for three years, then completed a training period with a law firm. The idea that established professionals had the responsibility to train newcomers was still widespread.

Yet Buenos Aires did not have its own university, remaining dependant on other cities to graduate students with law degrees. Therefore on August 9, 1821,

53. María Isabel Seoane, *La Enseñanza del Derecho en la Argentina: Desde sus Orígenes hasta la Primera Década del siglo XX* 46 (Editorial Perrot 1981).

54. *See id.* at 81–82.

55. *See id.* at 47.

the government of the Province of Buenos Aires created the Universidad de Buenos Aires. A legal studies department clearly was necessary for a complete educational offering.<sup>56</sup> The new department of law offered two courses, one on natural law and the law of peoples and another on civil law.<sup>57</sup> Prof. Antonio Sáenz, a follower of Hugo Grotius, headed the first course. The second course had a utilitarian orientation. Its head professor, Pedro Alcántara de Somellera, implemented a Benthamite approach to law. In the following decade, the university proceeded to offer courses on political economy and canon law.<sup>58</sup>

Thus, after 1821, to become a lawyer in Buenos Aires a student needed to spend three years in the Universidad de Buenos Aires Department of Law and another three years in the Academy of Jurisprudence. After a couple of years interning in a law firm, the student usually was ready to take an exam at the highest court in the jurisdiction where he intended to practice.<sup>59</sup> The bylaws of the Academy of Jurisprudence of Buenos Aires were not different from its Latin American counterparts:

The [a]cademy trained lawyers for the forum of Buenos Aires. Article 3 of the Constitution stated that it would “be its institute of the advancement and splendor of the law, as much for the instruction of the young people that aspire to exercise it, as for the better perfection of the professors.” Three types of members made up the academy: professors or lawyers, interns and honorary members. The lawyers of the district of the appeals court of the capital were automatic members. The interns or regular members had to present their diplomas of doctor, *licenciado* or bachelor in civil law and take an entrance exam to be admitted to the academy. The length of stay in the academy was three years, during which the members were required to pass theoretical and practical exercises: the theoretical dealt with the explanation of the laws, of the best summaries and issues of law that could be proposed, the practical ones were about the substantiation of the civil and criminal cases that were promoted in the academy. The director of the academy designated which of the members should perform the roles of judges, prosecutors, notary, plaintiff, defendant, etc., in the cases. Once the term of practice was over, in order to be able to be attorneys, the members had to sit [for] two exams, one on theory and one on forensic practice.”<sup>60</sup>

56. *See id.* at 55.

57. *See id.* at 56.

58. “At the beginning of the life of the Universidad de Buenos Aires, [legal ideas were described by] two tendencies. One saw two phases in the law: earthly and supra-earthly, that is below natural law, nucleus of immutable principles, coming in a single instant from the mind of the supreme creator. The other derived its principles from the utilitarian doctrine of Bentham, that was beginning to spread through the country.” Pestalardo, *supra* note 15, at 39.

59. David Alberto Leiva, *Un Registro de Ejercicios Prácticos de 1838 de la Academia de Jurisprudencia de Buenos Aires*, in *Aprendizaje Jurídico y Entrenamiento Profesional* 147 (Siglos XVIII a XX, Ediciones Dunker 1996).

60. Pestalardo, *supra* note 15, at 26. In even greater detail: “From 1873, procedural law was taught in the Department of Jurisprudence. Until then, that discipline was studied in the Theoretical-Practical Academy of Jurisprudence, and we owe Doctor Malaver, the first

The members of the academy were prominent jurists who would play a leading role in Argentina's political future. During the dark years of the 1820s, 1830s and 1840s, the academy trained lawyers through practice, legal exercises and case studies. Ricardo Levene, an Argentine historian, found a notebook of academy exercises, dated 1838,<sup>61</sup> a year after the institution was taken over by Juan Manuel de Rosas. This notebook is a register of the cases and names of professors at the academy. It helps to describe the dynamics of the classes and the interaction between professors and students.

In these exercises, the jurists acted as trial judges, prosecutors and members of the appellate courts in both secular and ecclesiastical jurisdictions. They prepared hypothetical cases for students to argue. The facts were presented in advance or sometimes left open to discovery for the students to gather and present evidence in accordance with procedural law. Thus, as in Chuquisaca, lawyers in Buenos Aires were trained both in theory and practice well into the 19th century—and not under the best of circumstances. Their legal education was aimed at providing skills of reasoning, argumentation and discussion. They were required to put themselves in different simulated situations, to defend different parties and to argue with the most brilliant of their future colleagues.<sup>62</sup> Many of the students participating in the academy's practice moot courts went on to illustrious careers. "[T]hose pretend prosecutors, defense lawyers, trial and appellate judges actually became those professions over the

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professor of that subject in the university, for his precise exposition of the way in which it [procedural law] was taught in the academy. [I]t was practiced as well, through files or cases that were initiated and followed by the students, some of whom performed as lawyers, others as judges, notaries, etc. These exercises were directed by the academy committee that was made up of, in addition to the academy director, a president, censors, a fiscal monitor and a secretary; positions that, elected annually by the students, were carried out pro bono by the most distinguished lawyers of our forum, except for that of secretary, which was carried out by one of the students. The obligatory attendance of the new attorneys at the academy sessions lasted for three years, at the end of which they had to take, before the academy, two general graduation exams, one theoretical and one practical. For the theoretical exam, there was a written commentary on one of the *Leyes de Toro*, chosen at random, to be finished within [24] hours, and the oral exam was about civil, commercial law, and criminal law, without any limitations. For the practical graduation exam, the student was given a case to pursue in the courts. . . . After passing all of these exams, the student had to solicit that the Superior Court of Justice admit him to take the lawyer's exam, which was done before ten ministers who made up that court. The last exam dealt with all of the courses and points of law and of jurisprudence, either theoretical or practical; because of that, as well as the respectability of the examiners and the public nature of the exam, which was taken in the court room, it was the most imposing exam, even for the most prepared students. If the court gave the student a passing grade, it gave the new lawyer possession of the court rooms, it emitted the diploma that authorized him to freely exercise the profession, and it sent him to register in the notary public's register of lawyers of that same court." Leiva, *supra* note 59, at 121–22.

61. Leiva, *supra* note 59, at 145–62.

62. In the era of Rosas, the Department of Jurisprudence was reduced to teaching, through two *cátedras*, natural law and law of peoples, civil law and Canon law. This state of things is explained by the dictatorship that meant only dark days for the university. See Pestalardo, *supra* note 15, at 39–41.



course of time, many of them arriving, like Alberdi, Juan María Gutiérrez, and Vicente Fidel López ...to occupy public positions of great responsibility or to teach in their respective scientific or cultural specialties thanks to the quality of their works.”<sup>63</sup>

Despite its success at training and graduating capable lawyers who developed a mastery of the material and its implementation, on October 5, 1872, the Academy of Jurisprudence in Buenos Aires closed its doors. It was replaced by a course on procedural law taught at the university. By 1874, the law school, without the requirements of an apprenticeship in a law firm, was independently permitted to issue a law degree enabling a graduate to practice law. The course of study lasted four years, with a fifth year for the procedure course. For this last subject, the students had to pass a mid-term exam and a final, theoretical-practical exam. Once this exam was passed, the student had to pass an exam before the Supreme Court before he could obtain the degree that would enable him to practice law. Not only was the internship system terminated but, with the closing of the Academy of Jurisprudence, the case method it had utilized and the intellectual and practical skills it had honed disappeared from Argentine legal education for good.

Until this point, history demonstrates the pedagogical success of jurisprudence academies. In effect, their methodology trained a large part of the ruling class—not only for the law, but for politics, economics and to no lesser extent, for military victories—that was responsible for Argentine independence. Given that the academy functioned in Buenos Aires through most of the 19th century, it also had teachers like Juan Bautista Alberdi, Benjamín Gorostiaga and Vicente Fidel López, who were central figures in the creation of the Argentine Constitution of 1853 and of the establishment of the nation’s institutions after the difficult first four decades. The facts also show that, while their Latin American graduates betrayed the Bourbon political project that brought the academies, these very same Enlightenment political ideals ended up as the basis for the Spanish colonies’ independence.

When legal training—once shared by the university, the academy and a professional practicum—became the exclusive jurisdiction of the university, critics focused on pedagogical content of the classroom, curricula and the education and legal theories of professors. This same transformation extended to the manner in which the law was studied. Discussions of legal theories were privileged over more general visions of legal education that would also permit debate—beyond an understanding of what law is and the adequate way to teach it—about the future role of graduates in society, if only as judges and attorneys.

## **VII. The Royal Carolina Academy of Jurisprudence in Charcas and the Formation of a Political Elite: From Bureaucrats to Revolutionaries**

This long road brings us back to the Royal Caroline Academy of Charcas, where—as is now clear—the forces unleashed by the Bourbon reforms created

63. Leiva, *supra* note 59, at 162.

a battlefield in South America on political, legal and religious fronts as well as between powerful economic and social interests. The academy was founded within a perturbing framework that included Chuquisaca's proximity to the Potosí mines, the slavery structure that sustained the permanent shipment of fabulous riches to finance Spanish power, the presence of the Church and the Company of Jesus as ideological anchors for social stratification, the threat of Portugal on the border and England on the Río de la Plata and the rise of a commercial bourgeoisie that pressured for greater free trade and navigation based on the ideas of the French Enlightenment. As we have seen, since its founding in 1776<sup>64</sup> from two typically Bourbon gestures (administrative reform and seizure of power in the educational structure<sup>65</sup>), the institution that was designed to stabilize and reinforce the monarchy's power generated the unexpectedly deliberative context that ultimately fostered independence.

The academy functioned like its older counterparts, developing theoretical lessons based on royal laws and compilations<sup>66</sup> and a practical education that was imparted through simulation exercises.<sup>67</sup> But it differed from the rest of the academies in its impressive academic quality.

64. "... in 1741, the Board of Castilla demand[ed] from these attorneys the elimination of the scholastic conceptions of law in order to begin to make these law firms more vigorously truly royal. This decision, which is part of the current of the Enlightenment, cause[d] places for training to be created that had pedagogical programs inspired in the notions of rationality, utility, over the relative sterility of the exhaustive studies of Roman law. In the 1760s, [a]cademies were founded like that of Madrid, then Coruña, Oviedo, Seville and Barcelona. With the public prosecutor Ramón de Rivera, these innovations crossed the Atlantic. He was the philosophical father of the school of Charcas, who wanted to build on the model of the academy in which he himself had become an attorney, that of the crown, in this ancient system of recruiting. It was sufficient to obtain the bachelor's degree and then two certifications. Wanting to break with the legal practices, he propose[d] to create a plan for a law school...both innovative and conservative. The royal decree of November 3, 1776, recognize[d] the existence of the institution." Clément Thibaud, *La Academia Carolina de Charcas: Una "Escuela De Dirigentes" para la Independencia*, 26(1), *Bull. de l'Institut Français d'Etudes Andines* 90 (1997). I thank Luciana Gutzat for the translation of this work from French into Spanish.
65. "The appearance of the Carolina Institute was prompted by the expulsion of the Jesuits in 1767, which greatly disorganized the finances and teaching of one of America's oldest and most prestigious universities, University San Francisco Xavier. This was a very tough blow: The fruits of the prosperous foundations of the religious companies were lost, [these became] the object of lengthy suits that would have new beneficiaries." *Id.*
66. "The nature of the teaching [wa]s practical, the treatment is modern, but the knowledge is theoretical and will palliate the university shortcomings that remain as a custom. We find, in sum, handbooks from the 18th and 19th century, the eternal Justinian Code. In the two years of study in the academy, three or four dissertations [were] required, commentaries of recompilations of the Indias or Castilla, the Toro Laws, first in Latin, then in Spanish, and after an [a]cademy examiner judges them." *See id.* at 91.
67. "The exercises of simulation of a trial, inspired in the Jesuit methods, used theater, participation in an abundant way. Students participate in the conception of an education outside of the reality of the legal processes. From start to finish, they can defend, judge accuse or be accused with the objective of gaining knowledge in all of the aspects of how the courts function." *Id.*

[W]hat is most important is to insist on the pedagogical success of the school in Charcas. The high quality and novelty of its teaching made it a prestigious institution that contrasted with the not very innovative university that was established in the Americas after the Jesuits left. It was judged to be more prestigious, even, than the new ideas that the elite had conceived.<sup>68</sup>

The academy's impact was not limited to the fame that its classrooms won among young people with political ambitions in the region. It also advanced by creating study materials that would guarantee that this particular form of legal training would expand.

Very soon, a handbook of legal practice written in 1782 by one of the school's professors comes as a guide to the students. Its objective [wa]s the clarification of the law as it is practiced and not as it is conceived; it summarizes well the academy's philosophy, forged from realism and pragmatism (in opposition, as it is understood, to the practices and ends of scholastic teaching). That is, the handbook [was] filled with procedures and rhetoric. Its success was such that it expanded all over South America and was re-edited in 1832 in Santiago de Chile.<sup>69</sup>

The academy's success must also have been one of the causes for the expansion of the academies of jurisprudence in the colonies. In effect, following Charcas, the academies of Santiago in 1778, Caracas in 1790, Lima in 1808 and Mexico in 1809 were founded.<sup>70</sup>

Charcas was not, however, an exception. First, selectivity in admissions was the norm (although it eased over time), requiring that aspiring students have "the baptism certificates of their parents and grandparents to verify the purity of their blood" and the "three classic certificates of legal status: priests, town councilors, mayors and royal officials to certify the family honor."<sup>71</sup> In the second place, the academy maintained a close relationship to circles of power in Charcas. It was secured at the beginning through the court, which designated a teaching supervisor at the academy and the president of the institution. Because of this relationship, the efficiency with which students were selected and the success in training them in the threat of external control by the Court was never realized.<sup>72</sup>

In this way, the academy more than complied with its mandate to educate for purposes of royal administration, at least within its classrooms. The most exceptional aspect of this institution, however, is not its theoretical content nor its training in professional skills, but its impact on the future of South America, particularly of Argentina. The academy was the place in which a generation

68. *Id.* at 92.

69. *Id.* at 91.

70. *Id.* at 93.

71. *Id.* at 92.

72. *Id.* at 92.

of students was trained that 30 years later would lead the revolutionary movements that finally led to independence for the Spanish colonies.<sup>73</sup>

It is thus, that the Academy of Charcas was called the school of training for independence. . . . The originality of this phenomenon and the interest in the Carolina Academy reside in [the fact] that these lawyers exercised their functions in the new independent states in which the administration, justice and political elite were constituted. . . . Many of these students, later academic lawyers, participated in the revolutionary movements of emancipation. Some names and numbers illustrate this commitment; for example: Bernardo Monteagudo, Juan José Castelli, Jaime Sudanes, who figure among others, as signers of the manifesto created in Chile in 1810, *Catecismo Político Cristiano* (Christian Political Catechism). Thirty-five percent of the members of the Insurreccional Junta of La Paz in 1809, three members of the Junta of Buenos Aires in 1810 and at least 13 of the 31 representatives who proclaim Argentine independence in 1816 [were academy members].<sup>74</sup>

Thus, the institution created to improve the administration of an enlightened monarchy educated the ruling class that would displace that monarchy through a rapid succession of revolutions. This paradox contains a few other elements of interest. For example, the *criollos* who had been traditionally displaced from positions of power by the Spanish, were allowed to flourish. Their education provided the skills needed for leadership. The Bourbon reforms that sought to consolidate political unity under the crown instead concentrated the interests of the southern part of the continent.<sup>75</sup> The unbearable subjugation of the inhabitants of Upper Peru and merchants' opposition to the Spanish political and economic monopoly were causes that Charcas graduates represented.<sup>76</sup> Political philosophies on the legitimacy of

73. "From 1776 to 1809, the period that corresponds with the beginning of the revolutionary agitation, at least 362 lawyers were formed in Charcas. The documents in the archives, thanks to the sociological facts that they give, allow us to discern the establishment of an intellectual elite, whose action during the wars of independence was essential." *Id.* at 88.

74. *Id.* at 88-89.

75. "The liberal reformism of the Bourbons contributed more than any other factor to forming an emancipatory and revolutionary consciousness among the Creoles. The creation of the viceroyalty in 1776, with the motive of Don Pedro de Cevallos' expedition against the Portuguese, gave political unity to an extensive region that until that point was not united. In effect, to the governments of Buenos Aires and of Paraguay were added the entire territory that fell under the courts of Charcas." Romero, *supra* note 30, at 53.

76. "The relationship between the economic problems and the social and political aspirations was soon established according to a polarized affinity; for the beneficiaries of the old, monopolistic regime, the attempt to modify that situation meant—or they pretended to believe that it meant—the upheaval of the traditional order inasmuch as it had political, moral and social content. They wanted the unconditional submission to an order that only benefited them and they considered this submission, which meant complete stagnation, was the only attitude that corresponded to the colonized. Those who aspired to achieve a regime of economic liberty within which they could better their situation discovered, upon reflection, that this type of freedom would not be given to the colony except insofar as it benefited the metropolis. From this point, beginning to see the possibilities and advantages

royal power that circulated in the academy and in the social circles to which its members belonged<sup>77</sup> led the graduates to question the ideological status quo. And finally, the social climate of discussion among equals that generated relatively uninhibited public deliberation<sup>78</sup> fostered democratic government.

Regardless of the impact that the graduates of Charcas had on the continent's destiny, for my purposes it is enough to see that the academic and professional training of lawyers was understood within the context of a political project that supposed a certain way of understanding the law and the legitimacy of political authority—in this case, the regalist doctrine of French Enlightenment. Teaching legal education was the means of implementing the Bourbon national project. The issue was not, in principle, a pedagogical or even conceptual one: it was first and foremost a political question that embodied a distinct legal concept, requiring a specific form of training for those who would put it in practice.

Carlos IV's reign, which began in 1788, was besieged by fear that the French Revolution, which exploded in 1789, would expand to Spain. The defensive and conservative reaction of the monarchy in the face of this threat came too late—a generation of South American revolutionaries was already in place and the momentum of their intellectual movement could not be reversed. Near the turn of the 19th century, Castelli, Moreno and others would return to Buenos Aires educated as academics and lawyers and take their exams before the Court of Buenos Aires. Turbulence awaited them: professional practice, hours of conspiracy, the enlightened days of the Revolution, the bloody months of the first battles for independence, the exasperating discussions with conservatives and premature death. It is clear now that the argumentative skills of the Revolution's lawyers and their broader abilities as politicians were not a rare lucky exception in a fundamental moment of Argentina's history but the unforeseen consequences of explicit political decisions made long before and with very different objectives.

### VIII. Final Reflections

The academies were created to teach the law that Church-controlled universities would not. Their task, though, was multifaceted: as part of the larger project of the Bourbon dynasty's enlightened monarchs, it was intended to help them break from the power of Rome, to regulate and administer their

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of political independence was only a short step that circumstances made shorter every day after the French Revolution." *Id.* at 49–50.

77. "There was, thus, in the urban bourgeoisie of Buenos Aires and of Charcas, which was made up mostly of Creoles who had studied or had been self-taught, an explicit and immediate ideal that was represented by social and economic improvement and material progress; but there was also an implicit and remote ideal, which was the success of a liberal political regime, for which emancipation was a previous requirement. So, this idea was slowly developed and began to work on the hearts and minds of that bourgeoisie." *Id.* at 57.

78. See Thibaud, *supra* note 64, at 107–10.

territory less centrally and more efficiently and to create institutions that would enable them to do so.

In the 18th century, Spanish America was a large and diverse territory. It no longer could be run by command and control techniques. The French Enlightenment gave the Bourbons institutions—including the academies—and methods that would help them better administer their dominions. Knowledge of national law and the capacity to implement decisions in a diverse environment were taught to academy students in a way that rewarded basic advocacy skills. The ability to defend a given interest within a legal framework includes the imagination to create arguments and counter arguments and to assess their correctness as a judge would.<sup>79</sup> Thus, for the Bourbons, a good lawyer—or a good bureaucrat—was also a creative thinker. This form of legal education was intended to enhance Spanish control over a more developed Spanish America.

The irony is that the French Enlightenment, the source of these ideas, also encouraged the forces unleashed by the academies to expand abruptly into a revolutionary force—betraying the purpose sought by the Spanish crown. The statesmen created by the academies became the leaders of the independence movement in South America.

This form of legal education acknowledged the fact of legal adjudication and the importance of accommodating the interpretation of norms to territorial needs and local customs, thus it will necessarily be rejected by Argentina's state building process, a political project that favored central authority and formalism.

"The wise and profound criticism," that is the development of the difficult argumentative practice necessary for lawyers and for which the academies of jurisprudence were designed, has been lacking from that moment until this very day. From 1872 forward in Argentina, the deliberative practice of putting oneself in the shoes of different interests, of interpreting laws and customs developed over centuries harmoniously has been left to the university graduate to discover for himself or herself and to develop in real cases for real clients in the daily practice of the law. Nevertheless, while legal education changed fundamentally from the revolutionary-fomenting dynamism of the academy, it created a stable class of lawyers who channeled the frenzy and chaos of post-independence Argentina into a stable political culture that allowed the nascent country to successfully overcome the turbulence of its initial days and become a cohesive nation. But that is another story.

79. See more about the use of moral imagination in law in Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* 109–65 (Harvard Univ. Press 1995).