
Reading Tocqueville in Argentina

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This chapter first highlights the institutional aspects of liberal democracy as present in volume one of *Democracy in America*. Secondly, it addresses the reception of Tocqueville's vision in Alberdi's project for the constitutional organization of Argentina. Last, it contrasts their ideas with the populist form of democracy as put forward in Laclau's theory and as illustrated by the contemporary history of Argentina.

Keywords: *Tocqueville – Alberdi – Argentina – Liberal Democracy – Populism*

According to Jorge Luis Borges, the plan of his much-admired poet Walt Whitman was «to display an ideal democrat, not to devise a theory»¹. Some analyses of Tocqueville's *Democracy in America*² (hereinafter referred to as *DA*) could lead us to think that a similar plan underlies that work, which is regarded as a description of modern democracy but not as a relevant theoretical contribution to understanding its principles. Along these lines, the book is not considered the work of a great political theorist or an institutional theory of liberty, nor a reflection on the essence of politics or a response to democratic despotism³. In contrast with these readings,

¹ J.L. Borges, *Other Inquisitions (1937–1952)*, trans. R.L.C. Simms, introd. J. Irby, Austin, University of Texas Press, 1964, p. 71.

² A. de Tocqueville, *Democracy in America*, vol. I, ed. E. Nolla, transl. J.T. Schleifer, Indianapolis, Liberty Fund, 2012 [1835].

³ Respectively: J. Elster, *Alexis de Tocqueville: The First Social Scientist*, Cambridge, Cambridge University Press, 2009, pp. 185-187; S. Morán, T. Wiczorek, *Alberdi lector de Tocqueville, o el liberalismo posible: teoría y práctica de la política en el siglo XIX argentino*, in «Revista Anacronismo e Irupción», vol. 11,

others see Tocqueville as a full-fledged political philosopher and consider *DA* not only the first political theory on modern democracy but an important contribution to the reflection on liberalism and democracy⁴.

This article is aligned with these latter perspectives. I find that Tocqueville's gaze in volume I of *DA* is philosophical given the scope and depth of his explanation of the values, mores, and institutions of modern democracy; his analysis on how they may emerge, change, and decline, and to what extent they are compatible with other values or traditions. It is also philosophical in a normative sense, in his defense of liberty and acceptance democracy, a stance made explicit in his words: «Shouldn't the gradual development of democratic institutions and mores then be considered, not as the best, but as the sole means that remains for us to be free?»⁵.

That said, and paraphrasing A. Craiutu⁶, what type of philosopher is Tocqueville? For I. Berlin, political philosophy invokes categories that are not «eternal and universal»⁷. But this premise does not seem applicable to the ideas in *DA*, where claims about the political order in general, and the form of a democratic government in particular, appeal to several eternal and universal elements. Take, for example, the axiomatic language used when stating that the division of legislative powers «can be considered a demonstrated truth»; the notions such as «natural right», «sovereignty of the human race» and «reason and humanity»; the vision of slavery as a «disturbance in the laws of humanity», and the need to subject majority rule to the dictates of «humanity, justice and reason»⁸. These concepts are condensed in Tocqueville's precept that we look at the «the laws most appropriate to the general and permanent condition of man»⁹, and underlie the defense of individual rights and political liberty, as well as the characterization of democracy and the institutions that protect it.

n. 21 (2021), pp. 48-87, 60; D. Roldán, *Tocqueville y la tradición liberal*, in E. Nolla et al., *Alexis de Tocqueville: libertad, igualdad y despotismo*, Ávila, FAES, 2005, pp. 125-178, 137.

⁴ In P. Manent's words, Tocqueville addresses the «correspondence between the order of the city and the order of the soul», see *Tocqueville: Political Philosopher*, transl. A. Goldhammer, in C.B. Welch (ed.), *The Cambridge Companion to Tocqueville*, Cambridge, Cambridge University Press, 2007 [2004], pp.108-120, 115; S. Wolin, *Tocqueville between two worlds: the making of a political and theoretical life*, Princeton, Princeton University Press, 2001, p. 8.

⁵ Tocqueville, *Democracy* cit., p. 512.

⁶ A. Craiutu, *What kind of social scientist was Tocqueville?*, in A. Craiutu and S. Gellar (eds.), *Conversations with Tocqueville: The Global Democratic Revolution in the Twenty-first Century*, Lanham, Lexington Books, 2009, epub, pp. 67-95.

⁷ I. Berlin, *Does Political Theory Still Exist?*, in H. Hardy-B. Williams (eds.), *Concepts and Categories: Philosophical Essays*, Princeton, Princeton University Press, 1999 [1978], pp. 143-172, 169.

⁸ Tocqueville, *Democracy* cit., pp. 137, 176, 410, 438, 579, 630.

⁹ Quoted in Craiutu, *What kind* cit., p. 74.

On this understanding, *DA* can be considered a work concerned with conciliating the principle of liberty and the principle of democracy as the foundations of the modern political order. Some authors see it as an «engagement» between these two principles or simply state that liberty «is intimately intertwined with modern democracy»¹⁰. I do not wish to assess here the type of relation (causal, accidental, necessary, etc.) between liberty and democracy in the arguments of Tocqueville. More modestly, my attention is first focused on a particular aspect that unites the two principles in his thought, namely, some institutional devices to protect both liberty and democracy such as the division of powers and rotation in public office. Since the focus is placed on institutions, I will not address the democratic condition of society nor the relation between soul and city, to use Manent's terms, which animate the second volume of the book.

Secondly, I point out that the early reception of *DA* in Argentina served as a source of inspiration for J. B. Alberdi, who in 1852 published a constitutional project to organize the nascent Argentine republic. Alberdi considered *DA* «the most appropriate and most beautiful political book» that had reached South America¹¹. Echoing Tocqueville's views, he was concerned with the threats to individual liberty, and in this sense he decried «the omnipotence of the state»¹². The values, norms, and institutions praised by the French author, defended by Alberdi, and incorporated in the Argentine Constitution began to change in the mid-twenty century, with a shift in the political paradigm that initiated a process of institutional instability and gradual economic decline. In particular, liberal institutions were contested and challenged by populist theories and practices.

The analysis of the nature of those challenges will occupy the third section of this work by looking first at the theory of E. Laclau, who became one of the twentieth-century's foremost apologists of populism¹³. Laclau's Left populism embodies what Tocqueville and Alberdi feared most: whilst the latter condemn the concentration of power and call for the protection of individual rights and liberty, Laclau promoted

¹⁰ Wolin, *Tocqueville* cit., p. 8; Manent, *Tocqueville* cit., p. 117, respectively.

¹¹ J.B. Alberdi, *Obras Completas*, Buenos Aires, La Tribuna Nacional, 1886-1887, 8 tt., digital ed., Biblioteca América de la Universidad de Santiago de Compostela, 2011, t.1, p. 344.

¹² Alberdi, *Obras* cit., t. VIII, pp. 161-175.

¹³ Laclau stands as the best representative of a contemporary theory of populism due to his original, comprehensive, and philosophical analysis. This type of approach has been largely absent among political theorists, with only a few recent exceptions, such as J.W. Müller's *What Is Populism?*, Philadelphia, University of Pennsylvania Press, 2016; C. Mouffe's *For a Left Populism*, London, Verso, 2018, and P. Rosanvallon's *Le Siècle du populisme. Histoire, théorie, critique*, Paris, SEUIL, 2020. These authors rely on the analytical framework developed by Laclau, either to align with his perspective or to engage in a criticism of it.

social antagonism and political conflict, he endorsed the implementation of hegemonic regimes and called to “deconstruct” liberalism’s universal principles.

Laclau’s theory found inspiration in the populist regimes that have ruled contemporary Argentina intermittently. In line with Tocqueville’s and Alberdi’s preoccupations with despotic regimes, the last part of this paper offers a brief account of how those historical experiences illustrate the challenges and dangers posed to the liberal form of democracy.

1. Tocqueville’s analysis

The political institutions that Tocqueville examines in the first volume of *DA* were first implemented in the local governments of New England and later extended to the rest of the country. What he calls the «point of departure» of that organization was «the love of equality and liberty»¹⁴. The combination of liberty and democracy was born with the Mayflower covenant that bound the signers to agree in approving «just and equal Laws [...] for the general good of the Colony». Curiously, Tocqueville quotes this passage but leaves out – among other sentences – the words “just and equal Laws”¹⁵. To put it succinctly, the so-called Puritan model rested on the ideal of just laws aimed at respecting individual liberty and property, and by means of equal laws, to rule out privileges and discrimination granted to or imposed on specific groups.

It has been argued that, by taking the ideas and practices of Puritans as «the only point of departure» for his analysis and ignoring the political culture in the South and the West, Tocqueville misrepresented the American democracy of the time¹⁶. However, Tocqueville was well-acquainted with the practices in the West and the South, and his fear of the concentration of governmental power in the legislatures has at the center of its attention the states in those regions¹⁷. In this respect, he writes: «In America the legislature of each state is faced by no power capable of resisting it»¹⁸. In addition to this fear, chapter ten in volume I of *DA* laments the

¹⁴ Tocqueville, *Democracy* cit., p. 455.

¹⁵ Cfr. the original citation with the full transcript added by the editor (Tocqueville, *Democracy* cit., p. 58).

¹⁶ B.H. Sparrow, *The Other Point of Departure: Tocqueville, the South, Equality, and the Lessons of Democracy*, in «Studies in American Political Development», vol. 33, n. 2 (2019), pp. 178-208.

¹⁷ J.T. Schleifer, *The Making of Tocqueville’s Democracy in America*, Indianapolis, Liberty Fund, 2000 [1980], p. 191.

¹⁸ Tocqueville, *Democracy* cit., p. 149.

misery and oppression of Indians and slaves in the West and the South, showing that Tocqueville did not ignore the political arrangements in such scenarios. Moreover, he depicts them using the language of the Puritan model. Thus, Alabama is marked by oppressive «prejudice and laws», and the Indians are half-forced into giving up their lands¹⁹. He concludes that «amid the democratic liberty and the enlightenment of our age, [slavery] is not an institution that can endure»²⁰. So, despite the Southern and Western mores and laws of that time, Tocqueville correctly perceived that the whole country would eventually take the path of the Puritan model of liberal democracy.

In Tocqueville's eyes that political model was based on the right to self-government understood as «the intervention of the people in public affairs, the free vote of taxes, the responsibility of the agents of power, individual liberty, and jury trial»; he also refers to it as «the dogma of the sovereignty of the people»²¹. As we know, that dogma was instantiated in a constitution approved by the people as the source of legitimate authority, which was America's «distinctive institutional contribution»²². Additionally, one of the main contributors, J. Madison, proposed the inclusion of a Bill of Rights expressly to «declare the great rights of mankind secured under this constitution»²³. In this last regard, Tocqueville writes: «Without respect for rights, there is no great people. You can almost say that there is no society; for what is a gathering of rational and intelligent beings bound together only by force?»²⁴. In terms of institutional design, one of the fundamental liberal questions is how best to protect individual rights from intrusive or undue coercion by the State in all its capacities. Tocqueville follows *The Federalist* in the answer to this problem, by endorsing the idea of dividing legislative powers so as «to slow in this way the movement of political assemblies, and to create a court of appeal for the revision of laws»²⁵. In America, he finds that this arrangement is coupled with the judicial «rule on the unconstitutionality of laws [...] one of the most powerful barriers that have

¹⁹ *Ivi*, pp. 521, 527-528.

²⁰ *Ivi*, p. 581.

²¹ *Ivi*, pp. 64-65, 76.

²² G. Wood, *The Creation of the American Republic*, Chapel Hill, University of North Carolina Press, 1969, p. 342.

²³ J. Madison, *Speech Introducing Proposed Constitutional Amendments* [1789], in B. Frohnen (ed.), *The American Republic: Primary Sources*, Indianapolis, Liberty Fund, 2002. URL: <https://oll.libertyfund.org/page/1789-madison-speech-introducing-proposed-amendments-to-the-constitution>

²⁴ Tocqueville, *Democracy* cit., p. 389.

²⁵ Tocqueville, *Democracy* cit., p. 137.

ever been raised against the tyranny of political assemblies», so much so that he even declares the jurists to be «the sole counterweight of democracy»²⁶.

Given the barriers or counterweights to legislative action, Tocqueville deduces that the legislature would tend to make excessive use of the mechanism of impeachment (he calls it «political jurisdiction») as a means to settle political conflicts or disagreements. Drawing from Jefferson, he asserts that said faculty is «the most formidable weapon ever put in the hands of the majority»²⁷. Furthermore, he predicts a positive correlation between the increase in the use of that weapon and the decline of the republic²⁸.

So far we have mentioned some basic aspects in the institutional crafting of liberal democracy. The opposite model is defined by Tocqueville as tyranny, omnipotence or despotism, by which he understands an oppressive action of a faction or a person, done with impunity, both at the political or associational levels, and either by legal or extralegal means²⁹. With reference to political despotism, Tocqueville alerts that it may emerge in every type of regime: «When I see the right and the ability to do everything granted to whatever power, whether called people or king, democracy or aristocracy, [...] the seed of tyranny is there and I try to go and live under other laws»³⁰. As previously mentioned, Tocqueville finds that the main danger to liberty in a democracy is legislative tyranny, or the imposition of the will of the majority, which could take the form of «the complete subservience of the legislative power to the will of the electoral body [or] the concentration, in the legislative power, of all the other powers of government»³¹.

In regard to his fear of legislative despotism, American history has proven Tocqueville right on at least one important account. *Pace* the opinion that legislative

²⁶ *Ivi*, pp. 175, 439.

²⁷ *Ivi*, p. 179.

Notice Jefferson's wording in a letter to Madison (15 February 1798): «I see nothing in the mode of proceeding by [legislative] impeachment, but *the most formidable weapon* for the purposes of a dominant faction that ever was contrived. It would be the most effectual one for getting rid of any man whom they consider as dangerous to their views» (emphasis added).

²⁸ Tocqueville, *Democracy* cit., p. 185.

²⁹ *Ivi*, pp. 307, 312, 415.

³⁰ *Ivi*, p. 413. In other classical conceptualizations, tyranny is synonymous with impoverishment, harassment, and submission (J. Locke, *The Second Treatise of Government*, ed. Thomas Peardon, New York, The Liberal Arts Press, 1954, p. 112). Tocqueville sounds less dramatic, probably because the America never suffered massive poverty, destruction or death as other latitudes did as a consequence of political tyranny. According to M. Horwitz, Tocqueville thinks about France when speaking of the political tyranny of the majority, and about America when he considers the moral tyranny of the majority: *Tocqueville and the Tyranny of the Majority*, in «The Review of Politics», vol. 28, n. 3 (1966), pp. 293-307).

³¹ Tocqueville, *Democracy* cit., pp. 249-250.

despotism «had turned out to be largely illusory»³², by 1862 the legal institution of slavery was still upheld by half the states, in what Tocqueville described as a situation of tyranny, oppression, and evil³³. It was formally repealed only when President Lincoln's Emancipation Proclamation triggered the 13th constitutional amendment that in 1865 put an end to the worst form of majoritarian legal despotism³⁴.

Tocqueville also contemplates the possibility of tyranny exerted by the Executive power in America. He understands the nature of autocracy as a restriction of political rights «for the profit of one man»³⁵, not as the devastation, impoverishment and violation of civil rights commonly associated with utterly despotic regimes. To impair it, he shows a preference for the indirect election of the president as a «remedy for the excesses of democracy», and he criticizes the possibility of presidential reelection for its «corrupting influence» since the president would become a «docile instrument in the hands of the majority»³⁶.

Despite these precautions, Tocqueville is unhesitant to predict that the tyranny of the Executive «will come in its turn, but in a more distant period»³⁷. Yet when looking at the case of President Jackson, who many at the time saw as a potential dictator, he infers that «in America, the time for such undertakings and the century of such men has not yet arrived»³⁸. Tocqueville was, once again, right to minimize the proximity of autocracy in America. Despite a few loud but failed attempts (including perhaps Jackson's), the projects to establish an executive despotism have not yet triumphed in changing the workings of the original institutions in that country, unlike what has happened in the rest of the continent. Some think that, in underestimating the figure of Jackson, Tocqueville overlooked «the germ of a new evil that was brewing within this new world governed by democracy»³⁹, namely, the autonomous construct of a populist leader. But we already mentioned how

³² Schleifer, *The Making* cit., p. 202.

³³ Tocqueville, *Democracy* cit., pp. 517, 549.

³⁴ For an analysis of the social and cultural aspects of the problem of racial relations (the «mores-based exclusions» or «extra-legal barriers») see C. Dunn Henderson, *Beyond the "Formidable Circle": Race and the Limits of Democratic Inclusion in Tocqueville's Democracy in America*, in «The Journal of Political Philosophy», vol. 30, n.1 (2022), pp. 94-115. For the general social aspects of democracy see A. Craiutu, *Liberalism under Siege: The Political Thought of the French Doctrinaires*, Lanham, Lexington Books, 2003, pp. 104-112.

³⁵ Tocqueville, *Democracy* cit., p. 636.

³⁶ *Ivi*, pp. 221, 227-229.

³⁷ *Ivi*, p. 426.

³⁸ *Ivi*, p. 624.

³⁹ J.A. Aguilar Rivera, *Tocqueville y el populismo*, in «Noesis. Revista de Ciencias Sociales y Humanidades», vol. 28, n.55-1 (2019), pp. 61-73, 73.

Tocqueville included the possibility of Executive tyranny in the long-term horizon, which shows his awareness of the “new evil”. Also, Tocqueville’s observations in the second volume of *DA* about the social conditions that sustain liberal democracy can help explain why it was reasonable to expect Americans to put limits to the rise of a strong populist leader, as long as those conditions remain substantially unchanged⁴⁰. Tocqueville was aware that in the long run, the situation could change.

From the preceding arguments, three typologies emerge from Tocqueville’s analysis of political systems and regimes⁴¹, which may be useful for our purpose in the next sections of comparing the liberal and the populist forms of democracy in Argentina.

Based on the values of political equality and individual freedom, we find in volume one of *DA* the following combinations:

Type 1. A system or regime marked by political equality or popular sovereignty (synonymous with democracy or self-government) and by individual freedom. Such was the Puritan political organization, and what Tocqueville catalogs more generally as «democratic republics»⁴². Since for Tocqueville democracy as the will of the majority can be present in a republic or a monarchy, this would also be the case of «the free countries that have retained monarchical form [and] those in which aristocracy dominates»⁴³.

Type 2. A system or regime marked by political equality and by the restriction of liberties (the extreme case defined as tyranny, oppression, or despotism). Tocqueville illustrates it with the Puritan «tyrannical laws» and «the oligarchy that reigned over

⁴⁰ Tocqueville’s arguments on the social conditions that favor or impair the rise of populism seem to be valid not only in America. For example, in France J.-M. Le Pen founded Front National in 1972 but he succeeded in attracting considerable popular vote only thirty years later, when his protectionist, populist and anti-immigration discourse resonated with a large portion of the economically-vulnerable, and socially-fearful voters. See N. Mayer, *From Jean-Marie to Marine Le Pen: electoral change on the far right*, in «Parliamentary Affairs», vol. 66, n. 1 (2013), pp. 160-178.

⁴¹ A political system refers to the organization of the state: its territory, its population, its principles, values, and laws, the institutions of government, and the electoral and legislative procedures. These forms are defined in the constitution and in the fundamental laws of a country. A political regime refers to how public institutions and procedures work at a given time and place in the hands of a party in government as manifest in its discourses, laws, policies, administrative measures, etc.

⁴² Tocqueville, *Democracy* cit., pp. 451 ss., 419.

⁴³ *Ivi*, pp. 376, 396.

France in 1793»⁴⁴. He also thinks of the possibility of an «equal tyranny [under] the *unlimited* power of one man» in Europe, as illustrated by Napoleon⁴⁵.

Type 3. A system or regime marked by inequality and the restriction of liberties, such as the «intelligent and enlightened despotism» of the *Ancien Régime* in France⁴⁶.

When this classification is applied to the case of Argentina, we can see that the country passed from the founding republican system in the period 1853-1930, marked by political equality and individual freedom (which corresponds to Tocquevillian type #1), to diverse contemporary regimes of political equality mixed with the weakening of the separation of powers and increasing concentration of Executive power (aligned with Tocquevillian type #2). In the next section, we will address these two scenarios by looking at the work of Alberdi and Laclau.

2. Tocqueville in Argentina

When addressing the situation of the young countries of South America, Tocqueville's assessment is realistic. He describes them in a «state of miseries and crimes», «not able to support the democratic republic», and desolated by civil wars and despotism⁴⁷. In the case of Argentina, his observation fits well the political fragmentation and anarchy that ensued after its independence from Spain in 1816, and the struggles to become a unified country that lasted until 1853⁴⁸. Yet, Tocqueville expects the future of South America to bring about positive changes:

South America is Christian like us; it has our laws, our customs; it contains all the seeds of civilization that have developed within European nations and their offshoots; beyond what we had, South America has our example: why would it remain forever barbarous? [...] A more or less distant period will undoubtedly come when the South Americans will form flourishing and enlightened nations.⁴⁹

With Argentina, his prediction was correct. The 1853 National Constitution established a federal republican system and the principles of a free society. J. B.

⁴⁴ *Ivi*, p. 64, and the editor's citation of a note at the margin: «The name republic given to the oligarchy of 1793 has never been anything except a bloody veil behind which was hidden the tyranny of some and the oppression of all», *ivi*, p. 360.

⁴⁵ *Ivi*, p. 514.

⁴⁶ *Ivi*, p. 148.

⁴⁷ *Ivi*, pp. 366, 494, 644.

⁴⁸ T.E. Skidmore, P.H. Smith, *Modern Latin America*, New York & Oxford, Oxford University Press, 2005 [1984], pp. 69-71.

⁴⁹ Tocqueville, *Democracy* cit., pp. 644-645.

Alberdi - lawyer, political philosopher, and diplomat - was the intellectual father of that project largely inspired by the analysis of Tocqueville. He writes: «The works of Tocqueville, Ohevaliery, and Aquiles Murat, who after 1833 came to enlighten and decide the youth of the Rio de la Plata, in the sense of that form of government, which the facts on the other hand made necessary and inevitable»⁵⁰.

In the title of his 1852 book on the constitutional organization of Argentina, Alberdi paraphrases Tocqueville when stating “the points of departure” to be acknowledged in the building of the new political order: its philosophical and legal aspects (natural law as a guide for the interpretation of the legislator, individual liberty, legal equality, etc.); the necessity to harmonize local interests with the new federal power, and the recognition of the social, economic and cultural preconditions for a successful institutional design⁵¹.

Tocqueville’s concept of the point of departure (which Alberdi adapted to the plural as “points”) served as the foundational structure for the argument in *Las Bases*. In other words, Alberdi found in that concept a crucial tool to address the social, economic, and cultural preconditions necessary for a successful institutional design. In this last regard, and inspired in Tocqueville’s observations, the continuity of the new constitutional order would depend on mores and practices as much as on the legal framework: «The main root of [Americans’] progress and well-being, the deepest and strongest base of their liberties, resides in their institutions, in their customs, in their municipal or communal liberties. A large part of M. Tocqueville's celebrated book is reduced to the practical demonstration of this truth»⁵².

Alberdi finds Tocqueville’s work of special interest since the French author lived amidst a similar kind of political turmoil as the one observed in Argentina: «A Latin country, like France, is more understandable for America of the same origin, which has imitated its same mistakes in its revolution and fallen into its same pitfalls, that the modern science of the French begins to realize by the pen of thinkers like A. de Tocqueville, de Coulanges, de Taine, for some years now»⁵³.

Like Tocqueville, Alberdi offers a defense of the democratic liberal State, understood as a self-governed and free people ruled by a limited government. We

⁵⁰ Alberdi, *Obras cit.*, t. V, p. 152.

⁵¹ J.B. Alberdi, *Bases y puntos de partida para la organización política de la República Argentina*, Cato / Liberty Fund, 2014 [1852], p. 136. URL: <https://www.elcato.org/sites/default/files/bases-libro-electronico.pdf> [*Basis and Starting Points for the Political Organization of the Argentine Republic* [1852], excerpts edited by N. Botana and E. Gallo, *Liberal Thought in Argentina, 1837–1940*, trans. I. Barnett, Indianapolis, Liberty Fund, 2014, pp. 115-176].

⁵² Alberdi, *Obras cit.* t. V, p. 48.

⁵³ Alberdi, *Obras cit.*, t. VIII, p.168.

can reconstruct Alberdi's stance as a criticism of the idea of a democratic and non-liberal State (where civil liberties are restricted) as well as of an autocratic and liberal State (where political equality is restricted). In their writings under analysis, Tocqueville and Alberdi present us with a portrait of political oppression and with a criticism of the logic that sustains it. Both address the problem of tyranny and despotism and assign to it several characteristics that can be summarized as follows: the concentration and abuse of power in the form of oppression and impunity, the absence of guarantees for life, liberty, and property, discrimination, privilege, fanaticism, servility, and submission.

Inversely, the political institutions of liberal democracy rest on the division of powers, rotation in public office, the publicity and transparency of governmental acts, and the accountability of rulers⁵⁴. Alberdi proposed that the President be elected by a simple majority of votes of an electoral college, with the possibility of only one reelection after an interval of six years⁵⁵. By introducing this stringent term limit, Alberdi counters his otherwise generous clauses proposing a strong, independent executive power, with as much constitutional power as possible, to guarantee the progress, unity, and the order of the republic. Although he endows the presidency with attributions to carry out important reforms to promote economic growth and political stability⁵⁶, he is unwilling to witness the rise of a despot who would use power against the spirit and letter of the constitution.

But by the same token, Alberdi was unwilling to allow legislative factions to resort frequently to the faculty of impeachment as a means to settle their disputes with the executive. For this reason, in Article 86 of his constitutional project, he stipulated the impeachment of the president only after leaving office⁵⁷. Alberdi's distrust of impeachment and his precautions were endorsed (albeit mitigated) by the 1853 constitutional convention and later confirmed by the reform of 1860. As it stands now, the causes for impeachment are limited to negligent and criminal actions, and

⁵⁴ Alberdi, *Bases* cit., pp. 94-95.

⁵⁵ *Ivi*, p. 151.

⁵⁶ Alberdi, *Bases*, chap. 26. Cfr. the debates of the Second French Republic in regard to the powers of the Executive, which Alberdi knew. On this point see E. Zimmermann, *Liberalismo y conservadurismo en el pensamiento político de Juan B. Alberdi* [originally: *Libéralisme et conservatisme dans la pensée politique d'Alberdi*, in D. Quatrocchi-Woisson (ed.), *Juan Bautista Alberdi et l'indépendance argentine. La force de la pensée et de l'écriture*, Paris, 2011, pp. 236-254].

⁵⁷ «The President is responsible, and can be impeached in the year following the period of his term, for all acts of his government in which he has infringed intentionally the Constitution, or compromised the progress of the country, retarding the increase of the population, omitting the construction of roads, embarrassing the freedom of trade or exposing the tranquility of the State. The law regulates the procedure of these trials» (Alberdi, *Bases* cit., p. 154).

a qualified majority of two-thirds of Congress is required to approve of the accusation of public servants in office and their posterior removal.

The liberal constitution organizes a limited government to secure a free democratic order. The next section addresses in what ways the populist pretension constitutes a stark break with Alberdi's model, in that it seeks to undermine the division of powers, for example by displacing independent judges and seeking unlimited continuity in public office⁵⁸.

Alberdi's constitutional proposal is aligned with Tocqueville's gaze in that it seeks to understand how to organize a limited government to secure a free democratic order. The division of powers, rotation in public office, the publicity and transparency of governmental acts, the accountability of rulers, and the limits to the president's impeachment were part of an institutional design meant to prevent the emergence of a despotic political power. The unparalleled importance of his intellectual contribution lies mainly in the fact that it inspired the 1853 Constitutional Convention to adopt the core of his proposals⁵⁹, making the subsequent country's stability and accelerated economic growth possible, one that benefited the next generations. In short, Alberdi's theory laid the foundation that shaped the nation's political and economic development.

However, the liberal rationale and its accompanying benefits started to be challenged at the beginning of the twentieth century. In 1916, President H. Yrigoyen was the first expression of the populist pretension to undermine the liberal legacy in Argentina⁶⁰. That pretension was later followed by J. Perón, who came to power in 1946. In light of the purposes of this chapter, how to explain in theoretical terms this populist turn? The next section addresses in what ways the theory of populism constitutes a stark break with Alberdi's model, in that it seeks to undermine the division of powers, for example by displacing independent judges and seeking unlimited continuity in public office⁶¹. Whereas Alberdi thought of a strong Executive to protect individual liberty, in the populist vision the aim is to use the

⁵⁸ N.P. Sagüés, *La constitución bajo tensión*, Querétaro, Instituto de Estudios Constitucionales, 2016, p. 181.

⁵⁹ R. Estévez, *Ethos y Polis: Constitución Nacional y Alberdi*, Buenos Aires, Editorial de la Universidad del Norte Santo Tomás de Aquino, 2007.

⁶⁰ Yrigoyen affirmed an almost unlimited executive power as fundamental for social, political, and economic reforms. For a compilation of his writings and speeches that show this trait see H. Yrigoyen, *El pensamiento escrito de Yrigoyen*, ed. with a prologue by G. Del Mazo, Buenos Aires, Raigal, 1945, pp. 52, 81-95.

⁶¹ Sagüés, *La constitución cit.*, p. 181.

executive power to rearrange political and economic life, a goal that entails restricting individual liberties and distorting republican institutions.

3. Undoing the liberal legacy

In the past two decades, E. Laclau has become the main and inescapable reference in the theoretical horizon of populism. This is acknowledged by renowned political theorists such as N. Urbinati, who highlights his “maximalist” theory, and P. Rosanvallon, who adopts his conceptualization in the analysis of this phenomenon⁶².

Laclau’s theory includes four main elements to explain the nature of populism: the existence of democratic demands unsatisfied with the political system, a leader who articulates those demands and constructs them as “the people”, their antagonistic stance with the opposition, and the critique of liberal institutionalism and the rule of law. In Laclau’s words, «populism means putting into question the institutional order by constructing an underdog as a historical agent»⁶³.

The populist construction consists in the hegemonic formation of an «equivalential chain» by which a leader unites diverse social demands and portrays them under a common antagonism with the establishment⁶⁴. Just like the words freedom, equality, and justice, the “people” is taken to be an «empty signifier», that is, one with no specific preexisting foundations; its profile emerges from the union of heterogeneous elements by means of the leader’s practical-discursive strategy⁶⁵.

Laclau differentiates between two political logics, the liberal and the populist: «the logic of difference (which organizes the positivity of the social) and the logic of equivalence (which introduces negativity and social division)»⁶⁶. The latter is irreducible to economic struggles and is impermeable to any conciliatory efforts to overcome political conflicts. In other words, populism can arise for political and not economic reasons only, and it rejects the spirit of compromise, deliberation, and agreement proper of liberal representation.

Closer to our interest here, the relevant distinction between liberalism and populism resides in their different institutional design, namely, a liberal government

⁶² N. Urbinati, *Political Theory of Populism*, in «Annual Review of Political Science», vol. 22, n.1 (2019), pp. 111-127; Rosanvallon, *Le Siècle du populisme* cit.

⁶³ Ernesto Laclau: *Post-Marxism, populism and critique*, D. Howarth (ed.), New York, Routledge, 2015, pp. 161-63.

⁶⁴ E. Laclau, *On Populist Reason*, London and New York, Verso, 2005, pp. 189, 202.

⁶⁵ *Ivi*, pp. 126-127.

⁶⁶ *Ivi*, p. 227.

limited by norms and procedures vs. the populist defense of hegemonic regimes. In this regard, we need

to distinguish between the State under the rule of law and one where the latter is absent. In the first case, there are political institutions, decisions and procedures established by law, and political life is carried out under legal principles and constitutional limitations. In the second case, the rule of law is weakened or abandoned for the sake of a particular political project. It is only in this latter situation that hegemony emerges, and that it can be defined as antonym of liberalism.⁶⁷

The populist theorist wants to “deconstruct” the relation between liberty and democracy and replace it with a populist form of democracy, on the grounds that there is no necessary or inherent relationship between liberty and democracy but only a contingent historical articulation⁶⁸. In this regard, Laclau proposes to break away with the liberal moral foundations of the political order, which implies rejecting the universal and enduring principles advocated by Tocqueville and Alberdi.

The implications of the populist form of democracy are various. The leader is *de facto* attributed ample power and discretion to build a hegemonic regime. Whereas under the rule of law political life is carried out under general principles and constitutional limitations, the populist project invokes its own, *ad hoc*, notion of legality. In Laclau’s words, «Legitimacy can only proceed from the hegemonic practices of a group that organizes a certain social order in its opposition to a real enemy. Legality is part of that order and is, in that sense, an effect and not a cause»⁶⁹. Thus, the legal framework in the populist theory is subject to what the hegemonic practices (as opposed to norms and principles) take it to be. It is up to the leader to define if the separation of powers or term limits serve the cause of the people well, or if they are rather considered obstacles to the populist project.

At this point, we are not far from the rise of despotism or omnipotence criticized by Tocqueville and Alberdi. Some political theorists seem to underestimate the risk of despotic populism. M. Canovan argues, for example, that liberals overlook the fact that populism speaks to some «fundamental assumptions of contemporary politics», namely the empowerment of the people. Yet liberalism is not blind to those

⁶⁷ A.M. Salinas, *Post-Marxist Populism in the Twenty-First Century*, in D. Rasmussen-J. Wiśniewski (eds.), *Defending Liberty: Essays in Honor of David Gordon*, introd. D. Rasmussen, Auburn, L. von Mises Institute, 2022, pp. 155-187, 182.

⁶⁸ In Laclau’s terms, «the various possible connections between elements of the structure are, in their own terms, undecidable» (*Ernesto Laclau* cit., p. 28).

⁶⁹ *Ivi*, p. 230.

assumptions, it rather fears the lack of limits on the actions of those who carry out that empowerment⁷⁰. This worry is justified in light of the practice of populism, as evidenced in Argentina's contemporary history briefly analyzed below.

4. The practice of populism

Theoretically, the populist form of democracy can be present in any country with widespread unsatisfied social demands, where a strong leader unites and articulates those demands by creating antagonism with the political establishment⁷¹. In Argentina, the political movement known as Peronism has been the most salient among the populist experiences in Latin America. Starting in 1943 the whole effort of its charismatic military leader, Juan D. Perón, was to put behind the liberal political order and replace it with a populist one⁷². Systematic steps were taken to implement what we can now call Laclau's recipe: the fueling of unsatisfied social demands, the promotion of political antagonism, and the construction of a hegemonic regime. Two topics are of particular interest here, considering Tocqueville's and Alberdi's observations on presidential reelection and the potential abuse of the impeachment mechanism.

In 1949, under the rule of Perón, a constitutional reform took place to change the liberal basis of the constitution inspired in Alberdi's ideas. Before the meeting of the Convention, Perón said that his party had received a «*carte blanche*» to serve «the cause of the people». In defense of presidential re-election, he added: «If the people choose, they must choose without limitation, absolutely no limitation»⁷³. During the Convention, A. Sampay, a supporter of Perón, held that it was a sign of fidelity to the democratic principle that the people elect the same president as many times as

⁷⁰ M. Canovan, *Populism for political theorists?*, in «Journal of Political Ideologies», vol. 9, n. 3 (2004), pp. 241-252, 245. For a more critical perspective that points to the collusion between populism and constitutional democracy see Urbinati, *Political Theory* cit.

⁷¹ Historically, populism has been more typical of less developed countries than of advanced capitalist societies, although this is less true today than twenty years ago. See in this respect P. Ostiguy-F. Panizza-B. Moffitt (eds.), *Populism in Global Perspective: A Performative and Discursive Approach*, New York and London, Routledge, 2021; C. de la Torre (ed.), *The Routledge Handbook of Global Populism*, New York and London, Routledge, 2019.

⁷² J. Brown, *A Brief History of Argentina*, 2nd. Edition, New York, Infobase Publishing, pp. 204-213. For the economic aspects of populism see R. Cortés Conde, *The Political Economy of Argentina in the Twentieth Century*, Cambridge, Cambridge University Press, 2008, pp. 122-193.

⁷³ J.D. Perón, *Discursos, mensajes, correspondencia y escritos* [1949], Buenos Aires, Biblioteca del Congreso de la Nación, 2016, pp. 50-51, 53, 76. URL: <https://bcn.gob.ar/uploads/publicacionPeron-1949tomo1.pdf>

they want, and that Perón's outstanding political personality justified it⁷⁴. Tocqueville's and Alberdi's warnings against the dangers of reelection resonate inevitably when reading Sampay's words.

The constitutional text adopted at the time was short-lived since Perón was deposed in 1955. However, what eventually did succeed was the reform promoted (by the also Peronist) President Carlos Menem in 1994, which established the immediate re-election for one term. In 2011, under the mandate of President Cristina F. de Kirchner, there was another attempt to introduce the indefinite presidential re-election, which failed. On that occasion, Laclau sided with the proposed amendment on the grounds that the anti-personalistic and anti-populist opposition to the reform was a conservative reaction in defense of a «democracy diluted in a plurality of fractions [which] is incapable of, as the English would say, delivering the goods»⁷⁵.

Besides seeking to undercut the republican principle of rotation in office, another trait of Peronism has been to tamper with the judiciary and to seek the impeachment of the judges of the National Supreme Court for the sake of building a hegemonic regime⁷⁶. According to R. Bill Chávez, between 1862 and 1946 no judge was removed for political reasons, but this changed with Perón, who as soon as he took office succeeded in having Congress impeach and displace four of the five justices⁷⁷.

Perón thus initiated the departure from the system of checks and balances, since an independent Court would have been an obstacle to his ample redistributive policies and the associated violation of property rights⁷⁸. Unfortunately, he started a historical pattern: 33% of the justices who left the Court between 1946 and 1983 faced irregular removal, and 6% were impeached⁷⁹. The removal processes initiated

⁷⁴ Sagüés, *La constitución* cit., pp. 113-115.

⁷⁵ Quoted in M. Serrafiero, *La reelección presidencial indefinida en América Latina*, in «Revista de Instituciones, Ideas y Mercados», n. 54 (2011), pp. 225-259, 234.

⁷⁶ Article 53 of the National Constitution requires a qualified majority of two thirds of the House of Representatives to accuse the President, Vice President, the Chief of Cabinet of Ministers, and the members of the Supreme Court for negligent or criminal conduct in the exercise of their duties or for ordinary crimes.

⁷⁷ R. Bill Chávez, *The Evolution of Judicial Autonomy in Argentina: Establishing the Rule of Law in an Ultrapresidential System*, in «Journal of Latin American Studies», vol. 36, n. 3 (Aug. 2004), pp. 451-478, 456.

⁷⁸ A-A. Gallo-L.J. Alston, *Argentina's Abandonment of the Rule of Law and Its Aftermath*, in «Washington University Journal of Law & Policy», vol. 26, n. 1 (2008), pp. 153-182, 153, 165-166, 180.

⁷⁹ Bill Chávez, *The Evolution* cit., p. 459. More recently, in 2002 President E. Duhalde failed to secure Congress approval to impeach the justices. Under the presidency of N. Kirchner, Judge E. Moliné O'Connor was impeached and removed in 2003; Judges J. Nazareno, G. López, and A. Vázquez resigned during the impeachment process to avoid removal, and A. Boggiano was

by Perón illustrate the populist attack on the rule of law, and his legacy has consequently altered Argentina's institutional quality. According to a report by the World Justice Project, in 2015 Argentina was listed 71st out of 102 countries in the rank that measures the effectiveness of the checks on government power by the legislature, the judiciary, and independent auditing and review agencies, as well as the effectiveness of non-governmental oversight by the media and civil society⁸⁰.

As a final and ironic remark about the practice of populism in Argentina, the threats to liberal democracy have come from the very same strong Executive that Alberdi thought of to secure the stability and the normativity of the liberal republic. He feared that the President would be a target of the opposition's recourse to impeachment, but the Executive itself systematically implemented this measure to undermine the independence of the Judiciary.

5. Conclusion

What Tocqueville saw in the political organization of the United States was a novel combination of liberalism and democracy and the institutional designs to preserve them, so as to avoid despotism. What Alberdi admired in Tocqueville was the sociological analysis of political events, institutions, and processes, as well as the philosophical claims of universal validity about the desirability of liberal democracy. These approaches served Alberdi's purpose of drafting a constitution that could promote a free and democratic social order and generate sustained economic growth. Under that model, Argentina became the destination of millions of immigrants who contributed to forging a free, educated, and prosperous country between 1853 and 1930. By 1910 the country not only ranked 10th in the world economy but it had enjoyed sixty years of political stability⁸¹.

Argentina's success of that period was due to the political stability made possible by the respect of the separation of powers and the limited re-election of the president, which had the purpose of guaranteeing the republican principle of government. There is one aspect of the separation of powers worth highlighting

impeached and removed in 2005. While I write this text, the Peronist party in office has (again) initiated a process to impeach all of the Supreme Court judges.

⁸⁰ World Justice Project, *Rule of Law Index*, 2015, p. 24.

⁸¹ For a brief historical account of the political and economic evolution see J.I. García Hamilton, *Historical Reflections on the Splendor and Decline of Argentina*, in «Cato Journal», vol. 25, n. 3 (2005), pp. 521-540; 527-529.

here, namely, that of impeachment as a removal mechanism of the highest authorities of government. Both Tocqueville and Alberdi imagined situations of potential abuse of the impeachment process; the former associated the increase in its use with the decline of the republic, and the latter stipulated the impeachment of the president only after leaving office in order to guarantee the position sufficient stability.

In light of Tocqueville's view on the judiciary as a barrier against tyranny, this text called attention to the use of impeachment as a means for the removal of judges who oppose, or threaten to oppose, the Executive's decisions or policies in Argentina. As already mentioned, until 1946 no judge was removed for said reasons, but this situation changed during the first presidency of Perón, who had Congress remove the majority of the Supreme Court and thus initiated a Peronist "tradition". It is the merit of Laclau to have developed a political theory that helps us understand the logic behind that kind of action, namely, the attempt to deconstruct the system of liberal democracy and replace it with populist ideas and regimes. And it is the great merit of Tocqueville and Alberdi to have warned against the uncertainties and preoccupations associated with despotism, which nowadays may take the form of populisms implemented by unscrupulous leaders and defended by contentious apologists.

In summary, Tocqueville and Alberdi cautioned against the potential of the Executive branch to consolidate or concentrate public powers. Their fundamental arguments on this matter remain pertinent for critiquing populist ideas and practices, especially in light of the increasing global trend of populist regimes to undermine the foundations of liberal democracy. In particular, practical lessons can be gleaned from the case of Argentina, where populist Presidents have systematically manipulated the judiciary and local governments, and more generally, disregarded the constraints on Executive power imposed by republican institutions and the rule of law. In this context, the contemporary history of Argentina effectively illustrates Tocqueville's and Alberdi's concerns regarding the perils of unchecked Executive authority. More importantly, for those concerned about present-day populist dangers, the lesson offered by the recurrently-voted Argentine populism is that countering its effects on the sociopolitical beliefs of the electorate may prove to be as complex and formidable a challenge as controlling its hegemonic will when in office.