

DOMINGO SARMIENTO AND THE CULTURAL HISTORY OF LAW IN THE AMERICAS

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Like New York, Buenos Aires is a city of neighborhoods, a hard-worn jigsaw puzzle of *barrios*, each with its own distinct history, character, and palimpsest of back streets, and each calling out to be understood on its own terms. The finest of them is Recoleta, a wealthy, socially conservative district of broad avenues lined with Parisian-style apartments, many of whose residents leave the city on weekends to spend time in their beloved country homes. At the northeastern edge of this resolutely posh district lies the law school of the University of Buenos Aires, along the *Avenida Figueroa Alcorta* and just off the busy *Avenida del Libertador*. You have to watch your step as you cross the street there because, as an Argentine friend and law professor once explained to me ruefully, the attitude of many native drivers is that “red lights are for suckers” (the rule of law, or rather the lack of it, is a persistent theme in Argentinean conversation). The law school itself is massive, with a population of more than 25,000 students, and it is built in the style of Italian fascism, with wide stone columns, improbably high ceilings, and statues of square-jawed heroes. The students there, notably, study the law of a nation whose constitution was modeled directly, and sometimes word for word, on that of the United States (about which more in moment). Many will go on to practice in the federal courts of *Tribunales*, in a building that—without, I hasten to add, casting any aspersions on the people of Argentina—does not show off legal administration at its best. Paint is peeling off the walls in sheets, and if you look through the doors of some of the offices that line its maze of hallways, you can see shelves literally bending under the weight of towers of case files tied together with string, which look as though they have not been opened for years. On the day I visited in December 2004, a couple had built a makeshift religious shrine in

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front of the Art Deco Statue of Justice that guards the entrance of the building, and they were fervently praying with bowed heads, as was the man standing beside them, holding a leather briefcase, who looked to be their lawyer.

But let us pause here only for a moment, just long enough to imagine the lives of the graduates of this extraordinary institution. Let us instead visit a nearby place, close enough to suggest some silent association with the *Facultad de Derecho* and its work. If you now turn away from the law school, back across the *Avenida del Libertador*, through a small park, wending once more through the posh streets of Recoleta, you eventually meet a high concrete wall. If you then follow that wall, passing a new cineplex, you soon come to a large iron gate and a milling crowd. It is here that I wish to begin these reflections. For if you walk inside, you find yourself in what looks like a small, crowded city, laid out on a grid, with rows of small Italian stone houses, each pressed directly against the other, following avenue upon avenue into the distance. This is a necropolis, a cemetery, perhaps the greatest city of the dead in all of South America. Many important people are buried in the cemetery of Recoleta, including Eva Peron (on whose tomb, of course, visitors often place flowers),¹ but at the time of my visit, the one official sign identifying the location of a grave pointed not to Peron's tomb, but to a monument a few avenues away from the black-gated entrance and to the left, down a narrow path. That grave holds the remains of one the most important figures in Argentinean history—as important surely as Eva Peron, to whose spirit he represents a kind of antithesis—a man who not only played a central role in the debates over the national constitution that students discuss in the wide hallways of the nearby school of law, but who also wrote one of the most influential texts of modern Latin American letters. His name is Domingo Sarmiento, and he was a soldier, statesman, educator, diplomat, and author, in 1845, of *Facundo: Or, Civilization and Barbarism*. *Facundo* is an extraordinary book that is at once history, biography, novel, political pamphlet, sociology, and epic poetry, gloriously defying efforts to classify its genre.² In this essay, I would like to discuss Sarmiento's work and explain why I believe it offers a new avenue of inquiry for law and society research, an approach we might call the cultural history of law in the Americas.

The cultural history of law is still taking shape, but in general it can be described as the application of the techniques of cultural

1. Romina Smith, *The Main Entrance and Its New Look*, AFTERLIFE, (Jan. 12, 2010), <http://www.recoletacemetery.com/>.

2. DOMINGO F. SARMIENTO, FACUNDO: OR, CIVILIZATION AND BARBARISM (Mary Mann trans., Penguin Books 1998) (1845) [hereinafter FACUNDO]. All subsequent references to FACUNDO are to this edition of the text.

history to law. In my own research, it takes the form of the study of the presence of legal ideas, ideas about what law is or should be, within national cultural life, especially in seemingly non-legal symbolic experience—in cultural products and forms that seem to have little immediately to do with law. In my view, the cultural history of law should be concerned with tracing the symbolic career of legal ideas, and with portraying legal ideas not as discrete and stable units, but as inextricable elements of the array of elite and popular cultural forms in which they are expressed. In this respect, it should seek to reveal a synthetic kaleidoscope of legal conceptual homologies throughout American culture and to describe their change over time. This approach shares a family resemblance with the study of “popular constitutionalism” by scholars such as Larry Kramer,³ and even more so with the examination of “popular political theory” by cultural historians such as Robert Westbrook,⁴ as well as with post-structuralist intellectual history after the linguistic turn.⁵ The purpose of such history is, ultimately, the appreciation of the cultural components of law. Law’s empire, that is, has a cultural foundation, and one significant component of that foundation is the shape legal ideas implicitly take in the “webs of significance” in which humans find themselves suspended.⁶ I describe the cultural history of law in this rather general way because I believe the man lying in the graveyard in Recoleta not only is a worthy subject of such inquiry, but also practiced something quite like it himself, and because his work has motivated me to consider the cultural history of law in a broader inter-American context. At bottom, *Facundo* concerns the struggle to establish a culture of the liberal rule of law in nineteenth-century Argentina—an effort still ongoing in much of Latin America (“red lights are for suckers”), and a struggle which might form the central subject of an inter-American cultural-legal history.

Domingo Sarmiento is a prime example of a distinctive type of nineteenth-century liberal nationalist reformers—men who saw the intellectual and political importance of merging legal, historical, cultural, and aesthetic interests (he can be usefully compared on this score to figures such as Jón Sigurðsson in Iceland and István

3. See LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* (2004).

4. See ROBERT B. WESTBROOK, *WHY WE FOUGHT: FORGING AMERICAN OBLIGATIONS IN WORLD WAR II* (2004).

5. See ELIZABETH A. CLARK, *HISTORY, THEORY, TEXT: HISTORIANS AND THE LINGUISTIC TURN* (2004); HAYDEN WHITE, *METAHISTORY: THE HISTORICAL IMAGINATION IN NINETEENTH-CENTURY EUROPE* (1973); John E. Toews, *Intellectual History After the Linguistic Turn: The Autonomy of Meaning and the Irreducibility of Experience*, *AM. HIST. REV.*, 879 (1987).

6. See Clifford Geertz, *Thick Description: Toward an Interpretive Theory of Culture*, in *INTERPRETATION OF CULTURES: SELECTED ESSAYS* 3, 5 (1973).

Széchenyi in Hungary).⁷ He is an archetype, too, of the liberal inter-American intellectual, effortlessly moving across the boundaries of North and South. He was born in humble circumstances in a province alongside the Andes in 1811, nine months into Argentina's war for independence from Spain, a symbolic association in which he took pride. As one scholar writes, Sarmiento "saw himself as a historical event, an embryo gestating nine months in the womb of his mother country."⁸ He began his career as a teacher, and he focused much of his prodigious energy throughout his life on issues of education, pushing Argentina to develop a system of public schools as a foundation of its social and economic development.⁹ He later served actively as a Unitarian military officer during the bloody Argentine civil war. His criticism of military authorities and of the dictatorial Federalist government of Juan Manuel de Rosas, who ruled from 1829 to 1852, soon earned him exile in Chile, where he would spend many years of his life.¹⁰ When he became a diplomatic liability for the Chilean government in the mid-1840s, he set off on an educational fact-finding mission to North Africa, Europe, and the United States, where he met and came to admire deeply the Massachusetts educational reformer Horace Mann.¹¹

He also fell in love with the United States—at the same time, significantly, that he was falling distinctly out of love with France. He loved its energy (it matched his own: his collected works run to fifty-two volumes), its informality (he was especially struck by how Americans ate and the pell-mell way they held their feet), its immigrants, its heroes (he was a great admirer of Benjamin Franklin), its natural and built infrastructure for transportation, its widespread literacy, its political independence, and its technological and commercial ingenuity, and he came to view American development as a model for Argentinean modernization.¹² Indeed, he admired the United States so much that, thanks partly to his efforts, the Argentinean structure of government and constitution is modeled directly on our own, sometimes following it word for word: "We, the representatives of the people," begins its Preamble, "in order to form

7. Jón Sigurðsson (1811-1879); István Széchenyi (1791-1860). The author hopes one day to write a comparative biographical study of the three figures.

8. Solomon Lipp, *Sarmiento Revisited: Contradictions and Curiosities*, in SARMIENTO AND HIS ARGENTINA 7, 7 (Joseph T. Criscenti, ed., 1993). On Sarmiento's life, see DOMINGO FAUSTINO SARMIENTO, RECOLLECTIONS OF A PROVINCIAL PAST (Elizabeth Garrels ed., Elizabeth Garrels & Asa Zatz trans., 2005), especially the helpful chronology, introductory essay, and notes by the editor.

9. See DOMINGO FAUSTINO SARMIENTO, SARMIENTO'S TRAVELS IN THE UNITED STATES IN 1847, at 8-26 (Michael Aaron Rockland trans., ed., 1st ed. 1970).

10. *Id.* at 9, 24.

11. *Id.* at 19-23.

12. *Id.* at 15-17.

a national union, guarantee justice, secure domestic peace, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves, to our posterity, . . . do ordain, decree, and establish this Constitution for the Argentine Nation.”¹³ However, for Sarmiento, by then a prominent politician, even this was not enough; he wished Argentina had also directly adopted the constitutional jurisprudence of American courts. Sarmiento joyfully returned to the United States for a three-year visit as a diplomat in 1865, immediately after President Lincoln’s assassination (he would write the first Spanish-language biography of Lincoln), and he stood on a platform with President Johnson as he reviewed the triumphant return of the Grand Army of the Potomac. In June 1868, he was awarded an honorary doctor of laws at the University of Michigan, which he treasured deeply (even today, he is often referred to as “the doctor of Michigan”). Just after he left New York City in July, en route to Buenos Aires, he learned that he had been elected President of Argentina. He held the office until 1874 and afterwards served as the director of schools for Buenos Aires Province and for Argentina as a whole, and he was active in public life until his death in 1888.

Sarmiento wrote *Facundo* while in Chilean exile, and though it is a work of broad cultural vision, it had an immediate, practical purpose: to denounce the Rosas government and the Federalists, against whom Sarmiento and his fellow Unitarians were fighting a long and bitter civil war. Published first in serial form in a Chilean newspaper, at its most basic level it is a political pamphlet attacking Rosas as the kind of dictator now familiar in the United States through writers of the Latin American “boom” of the 1960s, such as Gabriel Garcia Marquez or Carlos Fuentes: brutal, capricious, corrupt, charismatic, populist, politically unenlightened, resting his power and patronage on a regime of fear, condemning his country to perpetual underdevelopment—a rural *caudillo*, backward and lawless.¹⁴ But what raises Sarmiento’s work above the immediate political context of his fight with Rosas is its indirection, for it is not in fact an attack on Rosas straight-on; instead, it is a biography of Rosas’s most notorious military lieutenant, who had been killed a decade before, in 1835, possibly on the order of Rosas himself, a violent chieftain named Juan Facundo Quiroga, the “Facundo” of the title. For Sarmiento, Facundo embodied the illiberal values of the Rosas government that Argentina would have to reject if it hoped to

13. CONST. NAC. (Arg.) 1853, pmb., available at http://www.servat.unibe.ch/icl/ar00000_.html.

14. On the history and reception of the text, see Diana Sorensen Goodrich, FACUNDO AND THE CONSTRUCTION OF ARGENTINE CULTURE (1993). See also Roberto González Echevarría, *Introduction* to DOMINGO FAUSTINO SARMINETO, FACUNDO: CIVILIZATION AND BARBARISM (trans. Kathleen Ross, 2003) (1845).

live up to its national promise. Sarmiento's Unitarian vision for his country was of a centralized, liberal state, an engine of social and economic modernization through its support for public education, immigration, free speech, scientific and policy expertise, communication and transportation infrastructure, wide distribution of land, and industrial and commercial growth (and, it should be emphasized, Indian removal, a policy supported by many nineteenth-century liberal nationalizers and a legitimate source of much criticism of Sarmiento today). Without particular subtlety, Sarmiento labeled this liberal vision "civilization" and opposed it to what, in his subtitle and throughout his book, he calls the "barbarism" of Rosas—though the words "civilization and barbarism," which for Sarmiento also map directly onto the dualism of "city and country," have a distinctly nineteenth-century ring, and one might translate the phrase into modern terms as "the liberal rule of law vs. tyranny."¹⁵ In any case, it is Sarmiento's Miltonic portrait of political evil in Facundo Quiroga that raises the book above the level of a mere salvo in a specific political war between Federalists and Unitarians, and transforms it into a work of larger social-philosophic reach: an analysis of the prospects of liberal life in Latin America, which takes the form of a biography.

Significantly, the book does not begin with a discussion of Facundo Quiroga. In fact, about twenty-five percent of the text passes until we read of him and his exploits; instead, we hear about the immense, dry pampa grassland, and especially about the people who inhabit its treeless expanse—the nomadic cattlemen called gauchos and their violent, honor-based world centered around the social life of the *pulperia*, or country store. This is a world of horses and their masters, one that values physical strength and courage, where an overwhelming sense of self-sufficiency and lack of material ambition encourages a general idleness; it is a world of male drinking, unflinching gambling, and knife-fights intended only to wound. Only after extensively reading about the land and the gaucho do we come to an account of the *caudillo* Facundo himself, of the civil war in the provinces, when "Quiroga's name took the place of law," and of life under the Federalist regime and Facundo's assassination in 1835.¹⁶ For in Sarmiento's view, it is the gaucho and the *pulperia* that hold the key to understanding Facundo himself, and ultimately, the prospects for Argentinean liberalism. The text of *Facundo* as a whole thus rests on a lattice-work of images evocative of gaucho life: the horse; the knife; scorched meat, especially the gaucho's favorite

15. On the modernizing struggle in Latin America in the nineteenth century, see JULIO RAMOS, *DIVERGENT MODERNITIES: CULTURE AND POLITICS IN NINETEENTH-CENTURY LATIN AMERICA* (John D. Blanco trans., 2001).

16. *FACUNDO*, *supra* note 2, at 189.

morsel: the tongue; the guitar; eyes fixed upon the distant horizon—a set of motifs that are now available in even greater specificity and clarity than they have been in the past, as 2003 saw the publication of the first full English translation of *Facundo*, only the second translation since 1868.¹⁷

While Sarmiento's portrait of the gaucho is far from the romantic depiction created by Federalist José Hernández in the equally canonical *Martin Fierro*, in its unsentimental, novelistic depiction, it contains its own form of ambivalent admiration—an important fact in appreciating its theory and method. For instance, consider how chapter one of the first English-language *Facundo* opens, with a tone somewhere between lyric poetry and cartography that one might call the political sublime. “The Continent of America ends at the south in a point,” Sarmiento begins,

with the Strait of Magellan at its southern extremity. Upon the west, the Chilean Andes run parallel to the coast at a short distance from the Pacific. Between that range of mountains and the Atlantic is a country whose boundary follows the River Plata up the course of the Uruguay into the interior, which was formerly known as the United Provinces of the River Plata, but where blood is still shed to determine whether its name shall be the Argentine Republic or the Argentine Confederation.¹⁸

The final lines of the chapter close with an image which shows all too well why blood is still being shed—and which has the same tone, at once scientific and lyric, and a similar expression of awe, as Sarmiento uses in rendering the Argentine landscape. The lines describe a cattle branding, a festival “the arrival of which is received with transports of joy” for twenty leagues around.¹⁹ “The gaucho arrives at the spot on his best steed, riding at a slow and measured pace,” Sarmiento writes, opposing images of stillness and speed to express the gaucho's daunting self-control.²⁰

[H]e halts at a little distance and puts his leg over his horse's neck to enjoy the sight leisurely. If enthusiasm seizes him, he slowly dismounts, uncoils his lasso, and flings it at some bull, passing like a flash of lightning forty paces from him; he catches him by one hoof, as he intended, and quietly coils his leather cord again.²¹

Or listen to how Sarmiento describes one of four gaucho types, in a chapter that has earned a noted place in Latin American literature. The type is the *rastreador* or tracker (the others are the path-finder,

17. SARMIENTO, *supra* note 14. The year 2005 also saw the first full translation into English of Sarmiento's autobiography. See SARMIENTO, *supra* note 8.

18. FACUNDO, *supra* note 2, at 9.

19. *Id.* at 27.

20. *Id.*

21. *Id.*

the minstrel, and the gaucho outlaw): “The Rastreador. . . is a grave, circumspect personage,” Sarmiento writes.²²

Consciousness of the knowledge he possesses, gives him a certain reserved and mysterious dignity. . . . A theft has been committed during the night; no one knows anything of it; the victims of it hasten to look for one of the robber’s footprints, and on finding it, they cover it with something to keep the wind from disturbing it. They then send for the Rastreador, who detects the track and follows it, only occasionally looking at the ground as if his eyes saw in full relief the footsteps invisible to others. He follows the course of the streets, crosses gardens, enters a house, and pointing to a man whom he finds there, says, coldly, “That is he!” The crime is proved, and the criminal seldom denies the charge. In his estimation, even more than in that of the judge, the Rastreador’s deposition is a positive demonstration; it would be ridiculous and absurd to dispute it.²³

Sarmiento continues,

I have had some acquaintance myself with Calibar, who has practiced his profession for forty consecutive years in one province The story is that his best horse-trappings were once stolen while he was absent on a journey to Buenos Ayres. His wife covered one of the thief’s footprints with a tray. Two months afterwards Calibar returned, looked at the footprint, which by that time had become blurred, and could not have been made out by other eyes, after which he spoke no more of the circumstances. A year and a half later, Calibar might have been seen walking through a street in the outskirts of the town with his eyes on the ground. He turned into a house, where he found his trappings, by that time blackened by use and nearly worn out. He had come upon the trail of the thief nearly two years after the robbery.²⁴

Sarmiento’s description of the track-finder is an expression of mimetic desire. Sarmiento has such awe for the tracker’s “microscopic power” because it parallels his own aspirations as a writer: to penetrate the legal secret of his country through minute observation of detail, to approach the mundane images of social and cultural life in rural Argentina like footprints covered by a tray. It is these “lesser points,” writes Sarmiento, that “serve to explain all . . . social phenomena”; this description of “[t]he life of the Argentine country people” reveals an “order of things” that “in itself affords a full explanation for our revolution.”²⁵ Wonderfully, in that process of description, Sarmiento produces a work as independent as the gaucho himself, a political pamphlet against Rosas and yet a

22. *Id.* at 35.

23. *Id.* at 35-36.

24. *Id.* at 36.

25. *Id.* at 53-54.

biography of Facundo, and in turn, a work of self-fashioning for Sarmiento in exile; a biography, but a national history; a national history, yet an intensely localist work of sociology and cultural anthropology; a sociology, but one that often reads like epic poetry. Its analysis is marked, above all, by what today seems like a confusion of genres—indeed, it is precisely its mixture that makes the analysis possible by allowing the “lesser points” of Argentinean rural life to speak in their full range of symbolic meaning.

What does its analysis reveal? As admiring as at least elements of Sarmiento’s portrait of the gaucho are, the life of the countryside, the beloved countryside where the conservatives of Recoleta have their weekend homes, is in his view the seat of Argentina’s political troubles, and in this regard, he sounds two themes over and again, and they are linked: the gaucho’s relation to death and his relation to law—and, a third, how these two themes meet on the field of the gaucho self (one utterly opposed to the Franklinian psychology Sarmiento admired). For Sarmiento, in a kind of Argentine version of Frederick Jackson Turner’s frontier thesis, which is to say long before the closing of the frontier, the simple extent of the land is “the evil from which the Argentine Republic suffers,” because its insecurities “stamp[] upon the Argentine character a certain stoical resignation to death by violence” and an ability to “inflict death or submit to it with so much indifference.”²⁶ “[W]hat impressions must be made upon the inhabitant of the Argentine Republic by the simple act of fixing his eyes upon the horizon, and seeing nothing? . . . What is there beyond what he sees? The wilderness, danger, the savage, death!”²⁷ And in this nearness to death, the gaucho has developed a culture “with no notion of government, all regular and systematic order being wholly impossible,”²⁸ a culture opposed to “civilization, law, and liberty.”²⁹ The tracker might help solve crimes through his powers of microscopic observation, but he does so implicitly as a matter of honor and pride in his personal skill and not through any interest in the state administration of justice. “In a word,” Sarmiento writes of the Argentinean countryside and its people, “there is no *res publica*.”³⁰

The most representative gaucho figure in this respect for Sarmiento is the gaucho outlaw, a thief by trade, one who may have experienced what the men gathered around the *pulperia* would call a “misfortune,” which is to say that he had killed a man with a knife in

26. *Id.* at 9-10.

27. *Id.* at 30-31.

28. *Id.* at 47.

29. *Id.* at 55.

30. *Id.* at 22.

a fight of honor. He was a man for whom the law was foreign to his very being, a horse never bridled, a mastering self but not a disciplined one, a self not constituted by law. His deeds were sung by gaucho minstrels throughout the pampa. Notably, in describing gaucho society, Sarmiento recurs to a cultural, legal, and psychological comparison for this state that sounds in the developmentalist evolutionary theories of Lord Kames and others: that gauchos are like the North African Bedouin.³¹

After Sarmiento's discussion of the life of the pampa, his description of Facundo is in a sense a footnote, at least for socio-legal concerns. For Facundo Quiroga, known as the "Tiger of the Plains," grew from the gaucho culture of the *pulperia*, and was merely an extreme type of the gaucho outlaw.³² He felt "an unconquerable and instinctive hatred for the laws which have pursued him, for the judges who have condemned him, and for the whole society"—an extreme made possible by the socio-legal ideals at the heart of the rule.³³ "At the end of a year of steady work," as Sarmiento recounts in illustration,

[the young] Facundo asked for his wages, which amounted to seventy dollars, and mounted his horse without knowing where he was bound, but seeing a collection of people [gambling] at a [country] store, he alighted, and reaching over the group around the card-dealer, bet his seventy dollars on one card. He lost them, and remounting, went on his way, careless in what direction, until after a little time a justice, Toledo by name, who happened to be passing, stopped him to ask for his passport. Facundo rode up as if about to give it to him, pretending to be feeling for something in his pocket, and stretched the justice on the ground with a stab. Was he taking his revenge upon the judge for his recent loss at play? or was it his purpose to satisfy the irritation against civil authority natural to a gaucho outlaw, and increase, by this new deed, the splendor of his rising fame?³⁴

I will not recount here Sarmiento's many other stories about Facundo, horrible tales that show how he "delighted in exciting fear" and never flinched from the shedding of blood, or repeat his numerous aphoristic characterizations of the man, except one that seems to me especially psychologically acute: that "[h]e recognized no form of subjection."³⁵ To recognize no form of subjection, to take pleasure from fear, to stare blankly at death: these were the ideal

31. See, e.g., *id.* at 16, 59. For other Arabic, Islamic or Asian comparisons, see *id.* at 15, 20, 25, 30, 48, 52, 54, 87, 125.

32. *Id.* at 93.

33. *Id.* at 83.

34. *Id.* at 77-78.

35. *Id.* at 83.

traits for the chieftain and military commander for Juan Manuel Rosas that Facundo would become in leading troops of gauchos against the Unitarians in the Argentine civil war under the banner “Religion or Death,” and they were the values of lawlessness against which Sarmiento fought long after Facundo himself was killed, when Sarmiento was only twenty-four, and after Rosas fled into exile in England in 1852. These were the values of lawlessness against which Sarmiento posed not only his own ideology and his body as a soldier, but also his own being-in-the-world (it was once famously said of Sarmiento that he was “not a man but a nation,” and indeed, in his eyes—those of an admirer of Benjamin Franklin’s *Autobiography*—national and self modernization were inextricably linked).³⁶ The values of Facundo and Rosas also are those, it should be said, against which many Argentinean liberals see themselves as fighting today, in large and small ways (I am interested especially in the smaller ones: “red lights are for suckers”).

This is where a cultural history of law in the Americas might begin. For it seems to me that, in the struggle to create a culture supportive of the liberal rule of law, the history of the United States shares much in common with Argentina and the rest of Latin America, and that its character is linked more deeply and in more interesting ways with Latin America than it is with modern Europe. I think the history of *Facundo* as a text in English illuminates the nature of that bond, and so I would like briefly to turn my attention at this point away from *Facundo*’s words and to the history of its publication, before offering some concluding observations. Published in Spanish in 1845, the English translation of *Facundo* would wait over twenty years for the loving hand of Mary Peabody Mann, who had served as the intermediary in the conversations between Sarmiento and her husband during the Argentine’s first visit to the United States, and who introduced Sarmiento to the New England intellectual elite, with which she was intimately connected (she was the sister-in-law, for instance, of Nathaniel Hawthorne, and she was friends with Sarmiento’s favorite American poet, Henry Wadsworth Longfellow).³⁷ Mann’s translation of *Facundo* appeared in 1868, and it is reasonable to think that what positive attention the book received in the United States was of a piece with its times: not so much, as some scholarship has suggested, because Americans could by comparison feel superior to a society ridden with “barbarism,” but rather because the struggle to establish a liberal rule of law under the aegis of a modern, centralized state was one in which the North

36. See Ilan Stavans, *Introduction to FACUNDO*, *supra* note 2, at vii, xxvii (quoting Mary Mann).

37. SARMIENTO, *supra* note 9, at 33-62.

had been engaged during the recent Civil War; the character of Mann's translation certainly seems marked by this context. All the same, in the United States, I believe *Facundo* should not be understood primarily as a text of the 1860s. For though Sarmiento was known and fondly remembered in America for his work as an educator, especially in the wake of the Spanish-American War, which turned U.S. political attention southward, and though *Facundo* was warmly received by those who read it in the 1860s, the historical evidence suggests that it received little notice overall. Indeed, though Mann had originally hoped to split with Sarmiento the profits that resulted from sales of the book, in the end, the publishing house of Hurd and Houghton was wary enough about its appeal that her contract stipulated that she and Sarmiento were to receive no money whatsoever, as she sadly explained in a letter to Longfellow.³⁸ Even more, it seems that the 1868 printing of the book was the only true run to appear in English until almost one hundred years later—when a copy was reprinted by Hafner Publishing Company from the original book in 1960, after which it came to be reissued regularly throughout the next forty years, in new editions, culminating in the latest translation by Kathleen Ross.³⁹

In this respect, though it is not a traditional view, it is helpful to consider *Facundo*—that is, the *Facundo* of the United States—as a novel of the Latin American “boom,” the flowering of fiction from Central and South America associated with Gabriel Garcia Marquez, Jose Donoso, Mario Vargas Llosa, Julio Cortazar, and Carlos Fuentes. One important characteristic of the boom, in particular, was its rejection of the rigid rules of genre and the stifling realism of the social protest novel. Another was its internationalism, its openness to European and North American literary influence and its expectation to influence European and North American writing in turn, and its implicit comparativism. In both qualities, the boom can trace its roots back to the writings of Jorge Luis Borges of the 1930s and 1940s, which is to say to Argentina and to the international city of Buenos Aires. The boom also is significant in fostering the very concept of Latin America as a unified region with a common set of concerns, rather than a collection of individual states—an outgrowth of common consciousness that was a result, in part, of the cultural mission of Cuba after the revolution. I also would suggest that an important aspect of the common regional identity that the boom both reflected and helped create was the effort to modernize Latin America by establishing a just political order, to rationalize the power of the state against local *caudillos*, to establish law; hence, the

38. *Id.* at 54.

39. See SARMIENTO, *supra* note 14.

boom famously produced a series of so-called “dictator novels,” such as Garcia Marquez’s *Autumn of the Patriarch*. The reappearance of Sarmiento’s work in the United States during the boom is no surprise, then, as it anticipates some of its socio-legal principles. *Facundo* helped North Americans understand one of the major themes of modern Latin American literature on its own terms.

This same theme, moreover, situated *Facundo* in close relation to the fault lines of the culture of the United States itself. For as much as *Facundo* is a kind of boom dictator novel, it also can be read as a work of the North American 1960s. In particular, the book resonates profoundly with one of the guiding issues of the Civil Rights Movement in whose reference the decade was often lived, the same issue that transfixed the country as Mary Mann was translating the text for the first time: the struggle to establish a culture of the liberal rule of law in the South. That struggle played itself out through many of the same structural terms of nationalism and federalism, the urban and rural, as did Sarmiento’s clash of civilization and barbarism under Rosas. In addition, as I have written elsewhere, the Civil Rights Movement initiated a transformation whose material aspiration was economic modernization.⁴⁰ Ralph Ellison once noted trenchantly that Gunnar Myrdal’s *American Dilemma* was “the blueprint for a more effective economic exploitation of the South’s natural, industrial and human resources,” a judgment that could just as well be applied to *Facundo*.⁴¹ The Movement also approached the self as its indicator of socio-legal progress, looking toward the “hearts and minds” of schoolchildren damaged by racial segregation, in the words of *Brown v. Board of Education*,⁴² a theme of Sarmiento’s political and educational work as well. And, most importantly, the Movement was a struggle that took culture as its field of jurisprudential battle. A culture, especially in the South, of low-church Protestantism melded with honor-based social codes and quasi-religious principles of racial purity and pollution was to be displaced by a national, liberal rule of law and a government guided by elite professionals, trained in graduate programs in the social sciences. The Civil Rights Movement and its historical aftermath, that is, was part of a long-term transformation of the philosophy-of-law-in-culture in the United States, and Sarmiento’s work spoke to this aspect of U.S. history as much as it spoke to American liberal aspirations in the immediate

40. MARK S. WEINER, AMERICANS WITHOUT LAW: THE RACIAL BOUNDARIES OF CITIZENSHIP 107-30 (2006); MARK S. WEINER, BLACK TRIALS: CITIZENSHIP FROM THE BEGINNINGS OF SLAVERY TO THE END OF CASTE 274-301 (2004).

41. RALPH ELLISON, *An American Dilemma: A Review*, in THE COLLECTED ESSAYS OF RALPH ELLISON 328, 337 (John F. Callahan, ed., 1995).

42. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 494 (1954).

aftermath of the Civil War. *Facundo's* publication in the United States during a central moment in the American reception of modern Latin American literature, and the thematic relation of that literary movement to political movements here at home, thus might point us toward one thematic core of an inter-American cultural history of law.

Indeed, Sarmiento has much to contribute to the project of an inter-American cultural history of law, not only in his thematic concerns, but also in his method, a form of socio-legal thick description that fully ignored disciplinary boundaries. This was a method, it is worth emphasizing, that Sarmiento forged in the midst of an active military battle for a liberal polity, and which therefore is animated by a quality central to the gaucho character, the consciousness of the possibility of death. Much of the contemporary interest in Sarmiento's writing lies in its sensitivity to symbolic meaning; one scholar even views that sensitivity as a major source of Sarmiento's desire to adopt American constitutional jurisprudence for Argentina, namely because of our constitution's "talismanic" quality.⁴³ But that sensitivity gains power and urgency in *Facundo* only because it is presented within a text that resists being bound by rigid rules of genre. From Sarmiento's examination of the poetry of the gaucho minstrel to his extended discussion, for example, of the political significance of the color red when discussing the ribbon that Federalists forced Argentineans to wear as a show of political support, his work rises and falls especially on how jurisprudential and political-philosophic ideas shine through small moments of cultural expression, and these ideas are made to shine so brightly because of Sarmiento's formal eclecticism and his consequent ability to combine systematic analysis with poetic drive.⁴⁴ Many of Sarmiento's fellow liberals, anticipating the more rigidly policed boundaries between the disciplines that modern liberalism itself would help create, criticized *Facundo* for precisely this aspect of his work. They condemned its thick description as myth-making, and railed against its small factual inaccuracies. One of these erstwhile allies, Valentin Alsina, wrote Sarmiento a group of picayune notes in which he chided that "your rule must be not to depart from rigid historical exactness" and remonstrated Sarmiento for showing a "penchant for systems."⁴⁵ But many of Sarmiento's enemies did not make the same mistake. It is said, notably, that when Juan Manuel Rosas read *Facundo*, he exclaimed, "The book by that crazy

43. Jonathan M. Miller, *The Authority of a Foreign Talisman: A Study of U.S. Constitutional Practice as Authority in Nineteenth Century Argentina and the Argentine Elite's Leap of Faith*, 46 AM. U. L. REV. 1483, 1488 (1997).

44. See FACUNDO, *supra* note 2, at 126-30.

45. *Id.* at 111.

Sarmiento is the best that has been written against me. That's the way to attack!"⁴⁶ A liberal book whose method and power were appreciated by the opponents of liberalism—that is a kind of book worth writing.

And so, with admiration from such an unlikely source in mind, I wish to close this essay with a tribute to the extraordinary man lying in the Recoleta cemetery. When I visited, his monument was covered not with flowers but with cobwebs, though at least he was spared the fate of Facundo Quiroga, whose grave lies just nearby: the monument to the “Tiger of the Plains” was covered with about a dozen sleeping stray cats! In any case, this is the bouquet I should have laid at the time. Domingo Sarmiento was a liberal cultural historian of American law whose political vision contained a quality later generations of liberals have tended to lack: a recognition of its own cultural and aesthetic foundations. He was an interdisciplinary scholar before the full professionalization of the disciplines, and a writer who can point us toward a promising thematic and methodological path of socio-legal research. This is a path that, I believe, is consistent with the values of the equally extraordinary man whose influence we celebrate with this volume—a man who throughout his academic career found a way to seamlessly blend his democratic, historical, and aesthetic commitments.

46. Lipp, *supra* note 8, at 14.