

Constitutionalism and the Rule of Law in Chile: The Role of Andrés Bello

by Iván Jaksic
Department of History
University of Notre Dame

Paper presented at the XXth International Congress of the
Latin American Studies Association
Guadalajara, Mexico
April 17-19, 1997

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This paper will examine the role of Andrés Bello in the constitutional and legal history of nineteenth-century Chile. Because Chile early on became a model of successful nation building in the continent, it is important to determine the extent to which the Constitution of 1833, in effect for nearly a century, and the development of civil law culminating in the Civil Code of 1855, played a role in the larger effort of building durable state institutions in the chaotic post-independence period. Andrés Bello had a role in both, but especially the latter. Because the design and implementation of the rule of law had various components in his work, this paper will also examine the sequence and relationship between the Constitution and civil law, with references to international and Roman law.

First, a word about Andrés Bello (1781-1865), who was one of the most talented and prolific intellectuals of nineteenth-century Latin America. His work spans a wide spectrum covering poetry, philology, grammar, education, history, international law, and a variety of scientific subjects. The first edition of what were then known to be his complete works included 15 volumes (Santiago, 1882-93). The latest edition of his works, published on the occasion of the bicentennial of his birth, included 26 volumes (Caracas, 1981-86). Bello was educated at the University of Caracas, where he received a Bachelor of Arts degree in 1800. He pursued, but did not finish, studies in law and medicine. In 1802, he joined the colonial administration as a minor official (*Oficial Segundo*) in charge of correspondence, bookkeeping, and public health efforts. He was in that position when the events of 1808-1810 that precipitated the independence process took place. Bello took sides with the revolutionary Junta, and continued to serve in the same administrative capacity in the new government. Soon, however, he joined Simón Bolívar and Luis López Méndez in a diplomatic mission to London. He was to stay there until 1829.

Bello's nineteen years in England were difficult ones. During that period, his country collapsed. He worked in a variety of jobs that were usually temporary and insufficient to support his growing family. This was, however, a rich period intellectually, for London afforded him the opportunity to interact with numerous leaders of independence, work with various outstanding British and Spanish intellectuals, and utilize the rich collections of the British Museum's library. The increasingly favorable developments of the independence struggle, and British acknowledgment of its inevitability, allowed Bello to work for the diplomatic legations of Chile (1822-1824) and Gran Colombia (1824-1829). It was in that capacity that Bello acquired significant practice in matters of diplomacy and international law. This was also the time when he launched two ambitious cultural projects: the journals *Biblioteca Americana* (1823), and *El Repertorio Americano* (1826-27). In collaboration with Juan García del Río, Bello published news, cultural and scientific information, and poetry designed to support the emergence of a new independent order in Latin America, which he hoped would take the form of stable institutions informed by Roman republican traditions, and extensive commercial and intellectual relations with Europe.

It was the eroding situation of Gran Colombia, combined with extreme financial penury and strained relations with Simón Bolívar that led Bello to leave England for Chile in 1829. His earlier service at the legation of Chile, in addition to his growing prestige in the Spanish-speaking community of London convinced the Chilean government of Bello's value as an experienced diplomat, gifted linguist, and scholar broadly trained in the humanities. Bello was first appointed *Oficial Mayor* of the ministry of finance, but was soon involved in Chile's foreign relations. That experience led to an appointment as *Oficial Mayor* of the Ministry of Foreign

Relations in 1834, a position he held until his retirement in 1853. During this period, and even beyond, there was no major foreign policy issue in which he was not involved. It was Bello who reported on foreign relations in the government newspaper *El Araucano*, of which he was editor from 1830 until his retirement. In 1837, he was elected Senator, an office to which he was reelected until his death. In 1842, he founded the Universidad de Chile, and led the institution as Rector also until his death in 1865. He was an advisor to every major government figure, and an influential member of both public administration and the senate. His career culminated in the preparation of the Civil Code, first presented in the form of a project in 1853, revised and submitted in a bill to congress in 1855, and finally adopted as the law of the land in 1857.

How did Bello come to play such an influential role in the institutional development of Chile? What was the nature of his legal thinking that made it so acceptable and applicable to the country? How did he conceptualize the various areas of the law, and, in particular, how did he prioritize constitutionalism, civil law, Roman law, and international law? Bello's fundamental concern, like that of many others across Latin America during the period, was the establishment of social and political order. All his legal concerns therefore converge on this major goal. But before examining Bello's thinking more closely in this area, it is important to briefly examine the history of Chilean efforts to create post-independence political arrangements.

Constitutional Experiments, 1828-1833

Bello arrived in a land that was torn, like many other parts of Latin America, about which forms of political organization could better serve to balance disparate social, economic, and regional interests. Although Brazil retained a monarchical form of government, and Mexico briefly established one under Agustín de Iturbide in the early 1820s, the most important choice in post-independence Latin America, after it was clear that the republic was there to stay, was between a federalist or a centralist form of government. Chile was no different, and like many other countries in the region it experimented with both. After several failed attempts at achieving a workable political arrangement, Chile adopted the liberal constitution of 1828, which included federalist elements. Authored in large part by the Spanish emigré José Joaquín de Mora (who had shared exile with Bello in London in the 1820s), the Constitution of 1828 provided for a range of individual rights, and for the standard features of a republican system: representative government and a division of powers consisting of three branches, namely, executive, legislative, and judicial. The Constitution provided for the office of Vice President, to be chosen from the second majority of votes (arts. 71-74). In cases where the votes were too close or equal, it was the legislature that decided. Clearly, this office could potentially be filled by a representative of an opposing political force. Another important feature of the Constitution of 1828 was the creation and empowerment of provincial assemblies. Members of the provincial assemblies were elected every two years through direct popular vote. They had a wide range of prerogatives, including election of senators, and the nomination of intendants and judges. They could also establish municipalities in places of their choice (Ch. X, arts. 110-115). These assemblies could name the senators who formed part of the "Permanent Commission," the legislative body that

represented the legislative branch when the congress was in recess (Chap. VIII, arts. 90-92), which was most of the year because the sessions lasted from only June to September. Basically, they had a great deal of autonomy at the local level, but their frequent elections provided the occasion for political conflict.¹

Much has been said about the turmoil of the period 1828 to 1830, beginning with Simón Bolívar who called Chile "el país de la anarquía,"² from the adoption of the Constitution to the conservative victory at Lircay in April 1830. Essentially, the constitution led to much bickering about the Vice-Presidency, and to the politicization of the provincial assemblies that created the type of disorder which many found threatening, but especially those who felt that the 1828 Constitution was much too liberal. It is also well known how conservative forces under the leadership of Diego Portales and President Joaquín Prieto (1831-1841) set out to revamp the political system through a new constitution in 1833. For the purposes of this paper, I will concentrate on Andrés Bello's defense of the 1833 charter, which was the first and most articulate official message on this matter to the nation. The Constitution of 1833 was the product of the discussions of a constituent assembly, as most such documents are, but the principal writer was

¹ For an analysis of this and all other Chilean constitutions, see Brian Loveman, *The Constitution of Tyranny: Regimes of Exception in Spanish America* (Pittsburgh and London: University of Pittsburgh Press, 1993). See also Simon Collier, *Ideas and Politics of Chilean Independence, 1808-1833* (Cambridge: Cambridge University Press, 1967). For a perceptive analysis of the evolution of political institutions in nineteenth-century Chile, see J. Samuel Valenzuela, *Democratización vía reforma: La expansión del sufragio en Chile* (Buenos Aires: Ediciones del IDES, 1985). See also his "Hacia la formación de instituciones democráticas: Prácticas electorales en Chile durante el siglo diecinueve," (Unpublished manuscript, Oxford University-University of Notre Dame, 1996).

² Simón Bolívar to José Fernández Madrid, en *Cartas del Libertador*, 8 vols. (Caracas: Fundación Vicente Lecuna, 1969), VII, 127-128.

Mariano Egaña, a close associate of Bello at the Chilean legation in London, and the architect of his transfer to Chile. Bello had an important participation in the preparation of the Constitution of 1833, which Diego Portales acknowledged in a letter to Antonio Garfias on 3 August 1833.³

Bello, who became a Chilean citizen in 1832, was probably hesitant about advertising his involvement in the writing of the Constitution of 1833, especially since much had been made of the fact that Mora, a foreigner, had authored the previous document. But Bello was not shy about defending the document publicly in the pages of *El Araucano*. In three installments published between May and June of 1833, Bello hailed the constitution as a major improvement on the old, especially with regard to the suppression of the provincial assemblies, the elimination of the Vice-Presidency, and the empowerment as well as checks on the executive branch. Bello described the accomplishments of the constituent assembly as follows:

Su principal empeño ha sido combinar un gobierno vigoroso, con el goce completo de una libertad arreglada; es decir, dar al poder fuerza para defenderse contra los ataques de la insubordinación, producida por los excesos de la democracia, y proporcionar a los pueblos y a los hombres recursos con que preservarse del despotismo.⁴

³ Portales to Garfias, in Guillermo Feliú Cruz, *Andrés Bello y la redacción de los documentos oficiales administrativos, internacionales y legislativos de Chile* (Caracas: Biblioteca de los Tribunales del Distrito Federal, Fundación Rojas Astudillo, 1957), 310-311. The text reads as follows: "Mucho me agrada la noticia que el compadre [Bello] se haya encargado de la redacción del proyecto de reforma de la constitución." Simon Collier concurs in *Ideas and Politics*, p. 332.

⁴ *El Araucano*, No. 140 (17 May 1833). Also reprinted under the title "Reformas a la constitución," in Andrés Bello, *Obras completas* [henceforth *OC*], 26 vols. (Caracas: Fundación la Casa de Bello, 1981), XVIII, 85-86.

Bello insisted in several parts of his presentation that the new document provided for a balance between the appropriate powers granted to the executive, and the prerogatives extended to a new Council of State to check any potential abuses of individual rights. But it was clearly Bello's sentiment that the first task of the new political organization was to check the advances of the unbridled concept of democracy that had been allowed to prosper under the imperium of the 1828 Constitution:

En el código de 1828 se pretendió establecer gobierno; pero a los encargados de él no se les proveyó de medios con que llenar la principal de las obligaciones en los riesgos más amenazadores e imprevistos que son tan frecuentes en un tiempo en que las repetidas lecciones de los sacudimientos populares han enseñado a los hombres a ser tan discretos en el obrar, como cautos en preservarse de las formas judiciales, dictadas para los casos particulares, a que se dejó ligado al jefe supremo.⁵

Bello's pronouncement regarding the new political order, and particularly his defense of a centralized republican system must now be placed in the context of his own political development. He had been, after all, a faithful servant of the colonial regime who found himself in the midst of the whirlwind of independence, declared himself at one point in favor of a limited monarchy, and eventually embraced the republican system with conviction. There is no sharp break or transition from one political advocacy to the other, and in fact there is a clear thread uniting the two. Bello's fundamental concern was social and political order; the form of government, although by no means unimportant, was subordinated to the larger project of

⁵ *El Araucano*, No. 141 (25 May 1833). Also in *OC*, XVIII, 88.

achieving functioning institutions that responded to local conditions without being separate, or militantly distinct, from the rest of the world.

Bello's experience of nineteen years in England, where he witnessed the emergence of a new world order in the post-Waterloo years, but most importantly where he saw the political system of England at work, inclined him in favor of a constitutional monarchy. Perhaps the key distinction, not always understood by Bello's critics, between traditional monarchy (as exemplified by Ferdinand VII in Spain in the 1820s) and constitutional monarchy is the legitimacy of popular sovereignty recognized by the latter. In the post-independence period, Bello defended constitutional monarchy precisely because of its recognition of popular sovereignty, which reflected his own evolving political views. As is clear in a letter dated 15 November 1821 to the Mexican thinker and independence advocate, Fr. Servando Teresa de Mier, Bello's recommendation for a constitutional monarchy was qualified and mild, but brought him both short and long term problems.⁶ His letter was intercepted and played a role in his isolation from Gran Colombia in the early 1820s, and perhaps contributed to his decision to serve the Chilean legation in London and to eventually move to Chile. Since Bello never disclaimed his inclination, and even continued to affirm that monarchy was not intrinsically a bad political system, he was continually under attack for his allegedly conservative and even monarchical views.

In practice, Bello did not advocate monarchy as *the* political system for Latin America. He was more concerned about how to achieve order at a time when examples of stable government could more often come from constitutional monarchies than from fledgling

⁶ The text of this letter is included in *OC*, XXV, 114-118.

republics. His own arrival in Chile, as mentioned above, was punctuated by a civil war resulting from political experimentation along liberal and federalist lines in the 1820s. Order, it appeared to him and others in Chile, could only be ensured by a political system that provided for strong executive powers, limited the number of elected offices especially at the provincial level, and discouraged popular mobilization. The issue was not finding the most perfect political system, but simply one that would work given the peculiar conditions and challenges of the post-independence period. The result was, in the case of Chile where Bello had influential supporters, a strong, centralized, even authoritarian government that at the same time contained the provisions for subsequent liberalization. This is in essence the aim of the Constitution of 1833. President Prieto made this message his own when he presented the new document to the nation in 1833,

No han tenido presentes [the members of the constituent assembly] más que vuestros intereses, y por esto su único objeto ha sido dar a la administración reglas adecuadas a vuestras circunstancias. Despreciando teorías tan alucinadoras como impracticables sólo han fijado su atención en los medios de asegurar para siempre el orden y la tranquilidad pública contra los riesgos de los vaivenes de partido a que han estado expuestos. La reforma no es mas que el modo de poner fin a las revoluciones y disturbios a que daba origen el desarreglo del sistema político en que nos colocó el triunfo de la independencia.⁷

The establishment of the 1833 Constitution allowed Bello to concentrate on other aspects of the law. Bello's central concern was a definition of order that had both internal and external aspects.

⁷ *El Araucano*, No. 142 (1 June 1833).

Bello's work in these two areas translated into two of his major projects, the *Principios de derecho de gentes* (1832) and the *Código civil* (1855). Both were enormously influential works that were repeatedly edited, printed, and even plagiarized. The first guided the external relations of Chile, various other Spanish American nations, and eventually informed the principles that culminated in the creation of the Organization of American States. The second, which is still in use in Chile, was adopted by several nations in the region, including Colombia and Ecuador. Understandably, both works have invited enormous amounts of commentary, much of it extremely specialized and confined to the fields of international and civil law. But they have a larger significance in the context of the emergence of Latin American nations as independent republics, and the construction of a domestic blueprint for order that was not simply a copy of European models (the French civil code most often comes to mind). Such copies were attempted, with disappointing results, as when Andrés de Santa Cruz tried to introduce the Napoleonic codes *verbatim* in Bolivia in the 1830s.

The International Law Dimension

In observing the sequence of Bello's intellectual production, and specific publications, it is apparent that he believed that no internal blueprint for political organization, enlightened though it might be, could succeed without international recognition. International recognition, in turn, could only come from stable and accountable political institutions. Bello's proposals, as articulated in the *Principios*, began with the search for Latin America's position in the new international order. The literature on international law available in the 1820s and 1830s did not take into consideration the emergence of the new Latin American nations. Its limited focus on

non-European areas was insufficient for guiding the international relations of countries that viewed themselves as independent and sovereign. Bello's major objective was, on the one hand, to provide an adaptation of the existing literature on international law to the new phenomenon of independence, and, on the other, to work toward the recognition of nationhood by other countries from his position as a high official in the ministry of foreign relations. One of the fundamental elements of the *Principios* is its emphasis on the equality of nations, regardless of their political system and the way in which they originated as countries. In a new world order that included the nations of Latin America, countries were only required to exercise their sovereignty in the form of providing for internal order, and appointing representative officials for the conduct of affairs that concerned relations with other nations.⁸ His succinct definition of sovereignty reads as follows: "Toda nación que se gobierna a si misma, bajo cualquiera forma que sea, y tiene la facultad de comunicarse directamente con las otras, es a los ojos de éstas un estado independiente y soberano."⁹

The Domestic Political Order

The search for a legitimate international position was not unrelated to internal order. Countries would not be able to deal with other nations without a political system that was legitimate and ensured accountability. Bello's view of internal order, however, went beyond the

⁸ See Frank Griffith Dawson, "The Influence of Andrés Bello on Latin American Perceptions of Non-Intervention and State Responsibility," *The British Yearbook of International Law*, 1986 (Oxford: The Clarendon Press, 1987), 253-315.

⁹ Andrés Bello, *Principios de derecho de gentes* (Santiago: Imprenta de la Opinión, 1832), p. 13.

achievement of a strong government able to impose its will on the citizenry. Bello hoped that order would be internalized in the form of civic virtue and practice. Order could not be achieved if the laws were not seen as just and beneficial, and were consequently not observed, or if governments were expected to move the country forward without the understanding and support of the larger society.

The Constitution of 1833 represented the starting point for Bello's view of a republican system anchored in the rule of law. He separated the realm of the constitution from the realm of the law as one would separate the general from the specific. To the historian, it is apparent that Bello devoted more time and attention to the latter because he felt that, ultimately, it was at the level of society that the rule of law would find firm roots. Hints of this are already present in his 1833 article on reforms of the constitution cited above. In reference to the 1828 Constitution, he stated "se han corregido los principales defectos que se notaban en la formación de las leyes... Se ha suprimido todo lo que puede ser alterado con el tiempo, dejándolo a la disposición de leyes especiales que se varían según las circunstancias, y únicamente se ha conservado, lo que en la versatilidad de la condición humana se puede considerar como permanente." To further emphasize the distinction between the two, Bello added,

En la Constitución sólo deben consignarse los principios generales para la aplicación de la justicia, y establecerse las garantías judiciales y la responsabilidad de los jueces; pero el mecanismo de los juzgados y tribunales, y la organización de éstos debe reservarse a leyes particulares, como se ha hecho.¹⁰

¹⁰ *El Araucano*, No. 140 (17 May 1833). Also in *OC*, XVIII, 85.

Having established, at least theoretically at this point, the position of the new nations in the international order, and having endorsed the Constitution of 1833 as the basis for a centralized republican system enjoying wide executive powers, Bello could devote concentrated attention to civil law. As Alejandro Guzmán Brito has shown, there is an enormous complexity in the evolution of Bello's thinking with regard to the meaning of the term "codification." At first, Bello opposed the codification of the laws to the extent that it meant the introduction of an entirely new legal system. He preferred the term "reform," meaning the systematic revision of existing--Spanish--legislation. Eventually, he appropriated the term "codification," but clearly meaning reform, for he thought that there was much that was useful in Spanish legislation.¹¹ Until a new body of civil law could be proposed and established, which he eventually did with the *Código civil*, the country would be better served adapting rather than negating the previous legislation.

Roman Law

Bello's argument for the retention, at least for the time being, of Spanish legislation, was because of the latter's connection to Roman law. And Roman law, in Bello's view, represented one of the highest accomplishments in the organization of civil law. He was referring, in particular, to the compilation, pruning, and systematization of centuries of Roman legislation under emperor Justinian (AD 527-65), the *Corpus iuris civilis*. In 1832, he taught a private course of legal studies, which was based on Roman law and that used Justinian's *Institutiones*, a

¹¹ Alejandro Guzmán Brito, *Andrés Bello codificador: Historia de la fijación y codificación del derecho civil en Chile*, 2 vols. (Santiago: Ediciones de la Universidad de Chile, 1982).

part of the *Corpus*. In the absence of a text in Spanish he used Heineccius's *Elementa iuris romani*, which served as the basis of his own textbook *Derecho Romano*, published in two slightly different versions in 1843 and 1849, and which became the obligatory text for the rest of the century (until 1902).¹² The major secondary school of the nation at the time was the Instituto Nacional, but it did not teach Roman law on its own right. A reform in 1832 provided for a law curriculum that called the attention of Bello, who criticized it for confining the study of Roman law to the last year when it should be at the start of legal studies.¹³ Also in 1832, Bello was well positioned, as member of the commission appointed to review the curriculum of the school, to revamp the study of Roman law. His recommendations for the study of Roman law based on Heineccius's text were implemented in 1834, at which time he had to publicly defend the importance of such study.

From the pages of *El Valdiviano Federal*, an opposition newspaper, José Miguel Infante vehemently condemned the study of Roman law at the Instituto, relating it to "despotism," "colonial servitude," and naming Justinian a "tyrant."¹⁴ Bello responded from the pages of *El Araucano* that Roman law was the basis of Spanish law, and that, therefore, "los que lo miran [Roman law] como una legislación extranjera, son extranjeros ellos mismos en la nuestra." Also, that since Roman law was the foundation for civil legislation in most European countries, one needed to understand it in order to understand their laws. Since Roman law was also at the basis of canon law and international

¹² Alamiro de Avila Martel, "Bello y el derecho romano," in *Estudios sobre la vida y obra de Andrés Bello* (Santiago: Ediciones de la Universidad de Chile, 1973), p. 87.

¹³ *El Araucano*, No. 71 (21 January 1832).

¹⁴ *El Valdiviano Federal*, No. 75 (20 January 1834) and No. 77 (15 March 1834).

law, one also needed to know it in order to understand them.¹⁵ This was not the end of the debate, and it soon degenerated into a series of epithets unfavorable to Bello, who was called "El araucano monarquista" because Infante saw, at best, the incompatibility of Bello's views on Roman law with the new republican order, and, at worst, a hidden agenda of return to the colonial past. Bello was not deterred, at least publicly, and continued to defend the teaching of Roman law and Latin. He prevailed, and the teaching of both went on.¹⁶

With the inauguration of the Universidad de Chile, the study of Roman law acquired even more stature. At his inaugural speech in 1843, Bello announced that the University would cultivate the study of Roman law, indicating that "La Universidad verá probablemente en ese estudio el mejor aprendizaje de la lógica jurídica y forense." The University of Chile, it must be recalled, served as a superintendancy of education, and was thereby in a position to determine the curriculum of all national educational establishments.¹⁷ By 1853, Bello had accomplished his aim of placing Roman law at the basis of the law curriculum: it was taught daily the first and second year of studies.¹⁸ Earlier, in his report to the faculty in 1848, he had stated his view of the importance of this study,

¹⁵ "Latin y derecho romano," *El Araucano*, No. 184 (21 March 1834).

¹⁶ An examination of the Bello-Infante debate is in Sergio Martínez Baeza, "Bello, Infante y la enseñanza del derecho romano: Una polémica histórica," *Revista Chilena de Historia y Geografía*, No. 132 (1964), 196-229.

¹⁷ See Sol Serrano, *Universidad y nación. Chile en el siglo XIX* (Santiago: Editorial Universitaria, 1994), and Iván Jaksic y Sol Serrano, "In the Service of the Nation: The Establishment and Consolidation of the Universidad de Chile, 1842-1879," *Hispanic American Historical Review* 70, No. 1 (February 1990), 139-171.

¹⁸ This lasted until the reform of 1863, when legal studies were shortened to five years and the study of Roman law to one. Alamiro de Avila Martel, "Bello y el derecho romano," p. 92.

Yo desearía, señores, que el estudio de la jurisprudencia romana fuese algo más extenso y profundo. Lo miro como fundamental. Para alcanzar su fin, no basta que aprenda la nomenclatura de la ciencia y que se adquiriera una tintura de reglas y prescripciones inaplicables muchas veces a nuestra práctica. El objeto de que se trata es la formación del jurisconsulto científico; *el aprendizaje de aquella lógica especial, tan necesaria para la interpretación y aplicación de las leyes*, y que forma el carácter que distingue eminentemente la jurisprudencia de los romanos.¹⁹ [my italics]

Bello was clearly attracted to the rationalism of Roman jurisprudence, but his emphasis on the study of Roman law had ulterior motives. Influenced, as Alamiro de Avila Martel has shown, by the jurist Frederich Karl von Savigny and the German historical school, Bello was convinced that for a body of civil law to succeed, it had to be firmly anchored in the country's customs and traditions. Such customs and traditions happened to have been shaped by centuries of Spanish legislation, which was in turn based on Roman law. The study of Roman law could serve, therefore, as the basis for the willing public acceptance of the new civil code, which was, as the *Institutiones* had been, a systematic compendium of existing legislation, with modern additions and revisions based on the experience of other countries, rather than a completely new body of civil law. In this context, Bello's view of Roman law was primarily as an element of continuity, a formative and transitional instrument, pending the adoption of a national civil code. "Entonces," he stated in 1833, "y no hasta entonces, el conocimiento del derecho romano dejará de ser una

¹⁹ "Memoria correspondiente al curso de la instrucción pública en el quinquenio 1844-48," in *OC*, XXI, 68.

adquisición indispensable a los que se dediquen a la carrera de la jurisprudencia."²⁰

The Civil Code

Since his arrival in Chile, Bello had been advocating a revision of the existing legislation. On his own initiative, he published a critique of the laws of succession in 1831. He was particularly concerned with inheritance issues when there was no will (succession *ab intestato*) and suggested various reforms. In the 1830s, however, he found himself more involved in foreign policy and in educational matters. It was only on September 10, 1840, that he was officially appointed to propose legislation on succession. From then until 1853, when he presented the first draft of the Civil Code, Bello worked actively on other civil matters such as contracts and obligations. The previous year, 1852, President Manuel Montt presided over a commission [*comisión revisora*] that incorporated the comments of legislators, jurists and the courts. The product of these recommendations and Bello's revisions became the final *Código Civil* approved by law in December 1855, and in effect since January 1857.

Bello's *Código Civil* was prepared with the aim of reducing the areas of conflict most likely to engage the citizenry and therefore threaten both the internal and external components of the larger vision of order. The very structure of the work reveals a search for clear rules and regulations to guide the conduct of complex, yet central, human affairs. The major areas covered in the 2,525 articles of the civil code include (1) definitions of personal status (marital, national, residential, juridical, etc); (2) control, possession, and use of assets; (3) matters of inheritance and donations, and (4) contracts and other obligations. That is, the multiplicity of daily human

²⁰ "Codificación del derecho civil," *El Araucano*, No. 146 (28 June 1833).

affairs whose lack of attention had led either to litigation without uniform results, or simply neglect and abuse. The continuation of such a state of affairs threatened to deligitimize and discredit the political arrangements established in 1833.

As Pedro Lira Urquieta has pointed out, one can observe a clear emphasis on equality in the civil code. Any individual, regardless of nationality, social status or race, could marry, own property, and enter into contracts. In these areas, the Civil Code introduced a vision of equality that went beyond that of the Constitution, which still retained a restricted suffrage, and imposed severe restrictions on the holding of public office.²¹ At the same time, the civil code was a cautious document. For instance, it provided recognition of the Church on matters of marriage: a union that was acceptable to the Church was also legitimate for civil law. But the code prevailed when civil interests were considered to be at stake. The establishment of a legitimate space for the Church on civil matters shows that Bello was careful in avoiding any drastic departures from both the past and current custom. Just as in his other intellectual endeavors, Bello made sure that tradition and change would be reconciled, that the guiding elements of the new political order would combine the best civil legislation of the past with the best of the present, and that there would be a role for religion.

Partly because the civil code emerged from the matrix of the Spanish legislation, and was therefore an adaptation to new realities rather than a sharp break, it became a source for other Latin American civil codes. Almost everywhere in Spanish America, nations had by midcentury become more complex and more a part of the larger world. Bello's work provided a useful model

²¹ Pedro Lira Urquieta, "Bello y el Código Civil," in *Estudios sobre la vida y obra de Andrés Bello*, pp. 99-118.

for countries to remain within tradition while at the same time institutionally addressing the changing social and economic realities of the period. The national and local conditions of other countries certainly played a role in whether the civil code would remain unaltered, or would even be implemented. But the blueprint for domestic order that it contained was the major force behind its adoption in other nations.²²

In Chile, the Civil Code experienced some changes over time, but they were of a technical nature and did not alter the code's fundamental purpose: to provide clear rules and regulations for matters of juridical status, the administration of property, and the responsibility of various parties in contracts and obligations. Such would not be the case with the Constitution of 1833, which, although in effect until 1925, would suffer major transformations in the decade of the 1870s and beyond, such as the no reelection clause, and other measures intended to reduce the powers of the executive.²³ Both because the problem of internal order did not seem as pressing in the 1870s as in the 1830s, and also because of an emerging consensus on the need to expand political rights, changes in the Constitution seemed more palatable. In the context of clearer rules of the game with regards to civil affairs, it was now possible to relax the tight reign of the Constitution of 1833.

²² Bernardino Bravo Lira, "Difusión del Código Civil de Bello en los países de derecho castellano y portugués," in La Casa de Bello, *Andrés Bello y el derecho latinoamericano* (Caracas: La Casa de Bello, 1987), 343-373.

²³ See Luis Valencia Avaria, *Anales de la República*, 2 vols. (Santiago: Editorial Andrés Bello, 1986), I, 198-213.

Conclusion

Andrés Bello encountered obviously favorable conditions for the implementation of his view of the rule of law. He was at the center of a period of nation building when political leaders spared no measure to establish social and political order. Such measures were, as indicated, centralistic and authoritarian, but at the same time they set in motion a highly institutionalized and impersonal system of laws. It is in this context that Bello provided the requisite intellectual and legal substance to produce a package that left no significant dimension of the rule of law unattended. The major components of his legal thinking and practice included, first, the search for international legitimacy so that the nation could establish its own political system. With the establishment of the Constitution of 1833, Bello turned his attention to the reform of existing Spanish legislation, combined with the incorporation of models from other nations, culminating in the *Código Civil* of 1855.

A somewhat neglected aspect of this sequence from international law, constitutionalism, and civil law, is the central importance of the study of Roman law, which Bello legitimized and redefined as a fundamental, yet transitional, instrument for understanding and reforming Spanish legislation, as well as training a new generation of jurists. Without identifying this central component, one can make little sense of the otherwise arcane but heated discussions on the nature of Roman law and the significance of the teaching of Latin during the period. Roman law was viewed by Bello as the basis for the formation of the republic. His view of the republic, shared by political leaders who followed his advice and implemented his recommendations, was essentially the rule of law. Popular sovereignty, representative government, and separation of powers would mean little or nothing without the predominance and widespread understanding of

the law. Whether the law can ultimately translate into civic virtue, or defend a nation from abuses of power, in Chile or anywhere, is probably questionable. But without laws there can be no republic, and the republic was the best and only option for nineteenth-century Spanish America.