10-1-1990

The Success of Constitutionalism in the United States and Its Failure in Latin America: An Explanation

Keith S. Rosenn
University of Miami School of Law, krosenn@law.miami.edu

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THE SUCCESS OF CONSTITUTIONALISM IN THE UNITED STATES AND ITS FAILURE IN LATIN AMERICA: AN EXPLANATION

KEITH S. ROSENN*

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* Professor of Law, University of Miami School of Law. B.A., Amherst College; LL.B., Yale Law School. The author would like to acknowledge the research assistance of Miguel de Dios and Donald Howard in constructing the Appendices.

I. INTRODUCTION

"Constitutionalism is the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order."[1] The concept of constitutionalism implies that government will conform its conduct to a law higher than ordinary legislation and that this body of higher law is set out in a document called the constitution or some other form of fundamental law.[2] Modern constitutionalism generally imposes two different types of restraints upon the exercise of governmental powers: separation of powers and individual rights.[3] By allocating powers among various branches of government and diverse political units and by guaranteeing certain fundamental rights against governmental intrusion, modern constitutions act as important limitations upon governmental power.

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1. *Constitutionalism*, in 4 ENCYCLOPEDIA OF SOCIAL SCIENCES 255 (1949).

2. This higher law need not be written down in a single document called "the constitution." Countries like England and Israel are governed in accordance with constitutional principles even though neither country has a written constitution. Nevertheless, one can find the English Constitution in such documents as the Magna Carta, the Petition of Right, the Bill of Rights, the Habeas Corpus Act, and the Parliament Act. A. GOODHART, THE BRITISH CONSTITUTION 1 (1946). Similarly, one can find the emerging Israeli Constitution in five Basic Laws. Sager, *Israel's Dilatory Constitution*, 24 AM. J. COMP. L. 88, 93-99 (1976).

3. *See* Friedrich, *Constitutions and Constitutionalism*, 3 INTERNATIONAL ENCYCLOPEDIA OF SOCIAL SCIENCES 318, 319 (1968).

If the world were destroyed today and archaeologists of the future were to discover only the texts of the constitutions of the United States and the Latin American republics, the archaeologists would undoubtedly conclude that constitutionalism was far more developed in Latin America than in the United States. The U.S. Constitution is a model of brevity, containing only seven original articles and covering little more than five pages in the U.S. Code. Even with respect to fundamental issues, such as judicial review, the U.S. Constitution is strikingly omissive. Compared with Latin American constitutions generally, and particularly when compared to the recent Brazilian Constitution (with 245 permanent articles and 70 transitional articles that cover 193 pages in the official version)[4] the U.S. Constitution appears undeniably underdeveloped. Yet, constitutional texts, like book covers, are deceptive. If archaeologists of the future were able to pierce through constitutional form to actual practice, they would conclude that the brief, frequently omissive U.S. Charter has worked extraordinarily well, while the more elaborate and detailed charters found in Latin America have generally worked poorly.

II. The Success of Constitutionalism in the United States

During its 214 years as an independent nation, the United States has had only two constitutions: the Articles of Confederation of 1777 and the Constitution of 1787. The former was an abject failure,[5] while the latter has been a resounding success.

The mandate of those attending the U.S. Constitutional Convention in Philadelphia in 1787 was simply to revise the Articles of Confederation.[6] Fortunately, the Convention quickly became a runaway constituent assembly that scrapped the Articles of Confederation and proceeded to draft a new constitution.[7]

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4. Braz. Const. of 1988.

5. The reasons for the failure of the Articles of Confederation are apparent. The Articles failed to grant to the central government the powers essential for governance. The Confederation lacked both an executive and a judiciary branch. It had neither the power of taxation, nor the power to enforce treaties. Nor did the Confederation have the power to regulate interstate commerce. The Congress had only those powers expressly delegated to it and no means of enforcing them. Ultimately, the inability of the Confederation to deal effectively with pressing foreign and domestic issues led to the calling of a constituent assembly. S. Morison, H. Commager, & W. Leuchtenburg, 1 The Growth of the American Republic 227-44 (7th ed. 1980) [hereinafter S. Morison].

6. *Id.* at 244.

7. Not only did the Convention exceed its mandate, but it adopted an illegal ratifica-

The U.S. Constitution, more so than any other written constitution, has endured the test of time. That it has remained in force for over two hundred years with essentially only fourteen amendments[8] is indicative of both its phenomenal success[9] and of the enormous difficulty involved in amending it. That North Americans have to resort to the French or Spanish languages to express the exotic phenomenon of *coup d'état* or *golpe de estado* is another indication of the Constitution's success.

Perhaps the best evidence of the success of constitutionalism in the United States is that constitutional precepts are widely respected and obeyed. The United States has had a long-standing commitment to the rule of law, whose basic postulate is that "we are all to be governed by the same preestablished rules and not by the whim of those charged with executing those rules."[10] The federal and state courts have played a major role in making the rule of law meaningful through their decisions, and federal and state executives have almost always carried out court decisions. The prestige of the U.S. Supreme Court is so great that its mandate is almost invariably respected, even if it directs the President of the United States to turn over tapes containing information that will cost him the presidency,[11] permits publication of purloined Vietnam War documents that the government alleges would endanger national security,[12] or directs the return of a steel mill seized by the Presi-

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tion procedure. Pursuant to the 13th Article of Confederation, the legislatures of all 13 states had to ratify amendments. The Framers of the 1787 Constitution bypassed the state legislatures entirely; Article VII provided that approval by just 9 of 13 special ratifying conventions would suffice. Ackerman, *Constitutional Politics/Constitutional Law*, 99 YALE L.J. 453, 456 (1989).

8. Technically, the Congress has formally adopted 26 amendments to the U.S. Constitution. The first 10 amendments (the Bill of Rights), however, were adopted in 1791, as a necessary condition for ratification of the Constitution itself. The 21st amendment simply repealed the 18th amendment, which had authorized the ill-advised experiment with Prohibition.

9. No objective method exists for determining the success or failure of a constitution. One approach is to view constitutions like plays: the longer they run, the greater their success. In some countries, however, a constitution remains in force for as long as a particular dictator remains in power. Surely, one would not want to regard a constitution as successful merely because a dictator managed to stay in power for a long period or had institutionalized a system whereby he and his heirs were designated presidents for life. Similarly, merely because a constitutionally elected government was overthrown by a *coup d'état* does not imply that the constitution itself was defective.

10. Kurland, *Curia Regis: Some Comments on the Divine Right of Kings and Courts "To Say What the Law Is,"* 23 ARIZ. L. REV. 581, 582 (1981).

11. United States v. Nixon, 418 U.S. 683 (1974).

12. New York Times Co. v. United States, 403 U.S. 713 (1971) (the Pentagon Papers case).

dent in an effort to prevent a strike from disrupting the Korean War effort.[13] The independence, forcefulness, and incorruptibility with which the U.S. Supreme Court has played its role as guardian of the Constitution has been unmatched by any other institution in the world.

From the Constitution's inception, the people of the United States have viewed their Constitution as a symbol of national political unity and as an embodiment of shared fundamental values. A deep-seated belief that their Constitution is not only perfect but sacrosanct has long been part of the U.S. political culture.[14] Today, most people overlook the original Charter's glaring imperfections. Despite the ringing statement in the Declaration of Independence that "all men are created equal,"[15] the Constitution permitted slavery, the most oppressive violation of human freedom, during the Constitution's first seventy-six years. Not until 1866 did the Congress adopt the thirteenth amendment abolishing slavery, and then it did so only after the bloody Civil War that nearly severed the Union. Although it established a democratic form of government based upon popular sovereignty, the Constitution failed to guarantee the right to vote. Instead, it relegated the issue of voter qualifications to state law. Consequently, in all but five states, the right to vote was originally limited to property-owning white males.[16] Only in 1870 was the Constitution amended to guarantee suffrage for Black males,[17] and only in 1920 was it amended to

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13. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) (the Steel Seizure case).

14. E. Corwin, *The Worship of the Constitution*, 1 CORWIN ON THE CONSTITUTION 47-55 (R. Loss ed. 1981); Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1 (1984); Lerner, *Constitution and Court as Symbols*, 46 YALE L.J. 1290 (1937); Levinson, *"The Constitution" in American Civil Religion*, 1979 SUP. CT. REV. 123-25; Monaghan, *Our Perfect Constitution*, 56 N.Y.U. L. REV. 353, 356 (1981). In the words of Professor Charles Miller: "The Constitution, like the era from which it came, is an object of almost religious adoration . . . . America has been a nation of Constitution-worshippers almost from the beginning . . . . The Constitution has been accorded the status of the original, as well as the true, faith and fundamental law." C. MILLER, THE SUPREME COURT AND THE USES OF HISTORY 181-82 (1969) (footnote omitted).

15. The Declaration of Independence para. 2 (U.S. 1776).

16. The exceptions were Georgia (restricted to taxpayers worth at least ten pounds or "being of any mechanic trade"), New Hampshire (taxpayer), North Carolina (taxpayer), and Pennsylvania (taxpayer or son of a freeholder). *See* W. ADAMS, THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA 293-311 (R. Kimber & R. Kimber trans. 1980). The territory of Vermont adopted the only constitution that extended suffrage to every adult male, regardless of whether he was a taxpayer. *Id.* at 196.

17. U.S. CONST. amend. XV.

guarantee women the right to vote.[18] Moreover, only in the past sixty years, through a process of judicial interpretation of the fourteenth amendment known as selective incorporation, have most (but not all) of the guarantees of the Bill of Rights been applied to the states as well as to the federal government.[19]

Although other shortcomings remain, the citizens of the United States appear satisfied with their Constitution. Nevertheless, from time to time, they have been willing to make minor changes in the Constitution, but only after the Civil War were they willing to make major changes in its structure.[20] At the present time, public clamor for serious constitutional reform is virtually nil (overlooking the rhetoric concerning an amendment to proscribe flag burning).[21]

III. The Failure of Constitutionalism in Latin America

Unlike that of the United States, the Latin American experience with constitutionalism has generally been a failure. The dilemma of Latin American constitutionalism has been candidly captured by the paradoxical lament: "Our poor Constitution! So virginal and so violated!" As one can see from Appendix A, since independence the twenty Latin American republics have promul-

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18. *Id.* amend. XIX.

19. The Supreme Court has specifically refused to incorporate into the 14th amendment only three of the rights guaranteed by the first eight amendments. These are the second amendment's right to bear arms, the fifth amendment's grand jury indictment requirement, and the seventh amendment's guarantee of a jury trial in all civil cases involving more than $20. The Court has not yet had the opportunity to decide whether two other rights—the third amendment's prohibition against quartering of troops in private homes and the eight amendment's prohibition against excessive fines—are also incorporated in the 14th amendment. The Court has either explicitly or implicitly held that all the other guarantees of the Bill of Rights apply to the states with the same force as they apply to the federal government. *See* 2 J. Nowak, R. Rotunda, & J. Young, Treatise on Constitutional Law: Substance and Procedure, ch. 14, § 14.2, at 3-7 (1986) (with 1990 Supp.).

20. Adoption of the 13th, 14th, and 15th amendments has been widely recognized as accomplishing a major change in the reallocation of power between the states and the federal government. Arguably, a similar reallocation of power between the states and the federal government occurred during the 1930s when the "Court switch" resulted in a substantial increase in the powers of the federal government. For a cogent argument that the New Deal marked a significant modification of the institutional structure of the U.S. constitutional system, see Ackerman, *supra* note 7, at 507-15.

21. Texas v. Johnson, 109 S. Ct. 2533 (1989), was the case that brought about the uproar. In *Johnson*, the Supreme Court held that burning the U.S. flag as a form of political protest is protected under the first amendment. *Id.* For a discussion on calling another Constitutional Convention, see W. Mead, The United States Constitution: Personalities, Principles, and Issues 210-14 (1987).

gated some 253 constitutions, an average of 12.65 per country. Three nations, the Dominican Republic, Haiti, and Venezuela, have enacted more than twenty constitutions apiece. Constitution-making has been called "Latin America's favorite indoor sport."[22] Today that sport appears to be as popular as ever. The Brazilian Constitution of 1988 even includes two transitional articles that insure future sporting events.[23] The latest player is Colombia, which has recently convened a constituent assembly to consider President Gaviria's Draft Constitution.[24]

Focusing attention on the astonishing number of Latin American constitutions tends both to understate and to overstate the degree of constitutional instability in the region. The 253 figure understates the degree of constitutional instability for three reasons. First, Latin American constitutions are notoriously easy to amend, and they are amended often. While some Latin American constitutions have endured for substantial periods, they too have undergone such major modifications that they could easily be denominated as different constitutions.[25] Second, abrogated constitutions are sometimes dusted off and repromulgated. Third, critical parts of many Latin American constitutions are often suspended for long periods by invocation of emergency devices such as the state of siege. Conversely, the 253 figure also overstates the degree of constitutional instability because many Latin American constitutions

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22. L. HARRIS & V. ALBA, THE POLITICAL CULTURE AND BEHAVIOR OF LATIN AMERICA 54-55 (1974).

23. Transitional article II mandates that a plebiscite be held on September 7, 1993, to determine whether Brazil should remain a republic or become a constitutional monarchy and whether Brazil should maintain presidentialism or adopt parliamentarianism. Transitional article III mandates that after a five-year trial run, the Congress shall revise the Constitution by the vote of an absolute majority of both houses in an unicameral session.

24. PRESIDENCIA DE LA REPÚBLICA, PROYECTO DE ACTO REFORMATORIO DE LA CONSTITUCIÓN POLÍTICA DE COLOMBIA (Feb. 1991).

25. Argentina's 1853 Constitution was replaced from 1949 until 1955 by a Peronist Constitution. R. FITZGIBBON, ARGENTINA: A CHRONOLOGY AND FACT BOOK 20-22 (1974). It was also significantly amended by a series of institutional acts promulgated by several *de facto* military regimes that moved in and out of power since 1930. *See* P. RAMELLA, DERECHO CONSTITUCIONAL 45-55 (3d ed. 1986). Colombia's 1886 Constitution has been subjected to so many major amendments that the government has to gather the amendments from time to time and republish them separately in order to avoid confusion. W. GIBSON, THE CONSTITUTIONS OF COLOMBIA 358 (1948). Mexico's 1917 Constitution has been amended more than two hundred times. The original and amended texts of the Mexican Constitution, as of 1983, are placed side by side in *Cuadro Comparativo entre el Texto Actual de la Constitución Política de los Estados Unidos Mexicanos y el Original del 5 de Febrero de 1917*, in NUEVO DERECHO CONSTITUCIONAL MEXICANO 487-622 (J. Massieu & D. Valadés eds. 1983). The difference between the two versions is striking and profound.

are virtually carbon copies of their predecessors.

Not only are Latin American constitutions short-lived, but they are also often honored in the breach. As Professor William Stokes has observed:

> [T]he evidence indicates that the theory of Latin American constitutions and the facts of politics are poles apart. Thus, more often than not, the student can find the following contradictions: instead of popular sovereignty, self-perpetuating oligarchy; instead of limited government, unlimited government; instead of federalism, centralization; instead of separation of powers and checks and balances, executive dictatorship; instead of protection of individual rights and guarantees, governmental violations of such rights; instead of peaceful, democratic procedures, violent, anti-democratic procedures; instead of administrative responsibility and probity, administrative irresponsibility and irregularities; instead of economic and social benefits, the unavailability of funds to provide most of such benefits.[26]

One important reason why many Latin American constitutions have short lives is that Latin American governments so frequently come to power through *coups d'état*. As Appendix B shows, between 1930 and 1990, the Latin American countries have had 139 extraconstitutional changes in government, an average of 6.95 per country. In the 19th century, successful *coups* were even more frequent.[27] Changes of government by extraconstitutional means are so common that a number of Latin American constitutions quixotically provide for their continued existence even after a revolution or *coup d'état*.[28] While enforcement is obviously problematic, such provisions reflect the frustrations of constitution-makers whose handiwork *coups d'état* continually subvert. A more pragmatic juridical response has been the development of a *de facto* doctrine for legitimating the acts of extraconstitutional governments.[29]

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26. W. STOKES, LATIN AMERICAN POLITICS 458-59 (1959).

27. Between 1823 and 1899, 17 Latin American countries had 187 successful *coups d'état*, an average of 11 each. Computed from M. NEEDLER, THE PROBLEM OF DEMOCRACY IN LATIN AMERICA 14 (1987).

28. For example, the first paragraph of article CCL of Venezuela's 1961 Constitution provides: "This Constitution shall not lose its effect even if its observance is interrupted by force or it is repealed by means other than those provided therein. In such eventuality, every citizen, whether or not vested with authority, has the duty to collaborate in the reestablishment of its effective validity." VENEZ. CONST. of 1961, art. CCL.

29. For thoughtful analyses of the *de facto* doctrine, see 2 G. BIDART CAMPOS, TRATADO ELEMENTAL DE DERECHO CONSTITUTIONAL ARGENTINO 536-37 (1989); Irizarry y Puente, *The Nature and Powers of a "De Facto" Government in Latin America*, 30 TUL. L. REV. 15 (1955).

On the other hand, a long period without a *coup d'état* do not necessarily mean adherence to constitutional rule. Another common Latin American political institution is *continuismo*, by which a regime remains in power through constitutional manipulation or electoral fraud or both.[30] Thus, the thirty-five years of apparent constitutionalism between 1954 and 1989 in Paraguay and the thirty-one years between 1930 and 1961 in the Dominican Republic were actually periods of dictatorship by Generals Stroessner[31] and Trujillo,[32] who blatantly rigged elections and ruthlessly suppressed political opposition while maintaining the trappings of constitutional rule. Similar examples of *continuismo* prevailed in Haiti under the Duvaliers[33] and in Nicaragua under the Somozas.[34]

Why has constitutionalism worked so well in the United States and so poorly in Latin America? There is no single nor simple answer to this question, and any explanation must be tentative. This Article will first attempt to explain why constitutionalism has worked so well in the United States.

IV. An Explanation of the Success of Constitutionalism in the United States

A. *Experience with Constitutionalism and Self-Government*

In contradistinction to the Latin American colonies, the North American colonies had substantial experience with both constitutionalism and self-government. Prior to 1776, the North Americans were subjects of a constitutional monarchy and enjoyed the "liberties, franchises, and immunities" of English citizens.[35] The English constitutional tradition dates back to the limitations on royal authority exacted from King John in the Magna Carta of 1215. These rights and liberties were later supplemented by the Petition of Right in 1629, the Habeas Corpus Act of 1679, and the Bill of

30. K. Karst & K. Rosenn, Law and Development in Latin America 184 (1975) [hereinafter K. Karst].

31. *See* P. Lewis, Paraguay Under Stroessner (1980).

32. *See* R. Crassweller, Trujillo (1966).

33. *See* E. Abbott, Haiti (1988).

34. *See* Falcoff, *Somoza, Sandino, and the United States*, in The Continuing Crisis: U.S. Policy in Central America and the Caribbean 297, 310-17 (M. Falcoff & R. Royal eds. 1987).

35. E. Dumbauld, The Declaration of Independence: And What It Means Today 8 (1950).

Rights of 1689.[36] The American colonists were distinctly aware of the constitutional constraints upon the powers of English governments and, when convenient, relied liberally upon their privileges and rights as Englishmen in their disputes with the Crown.

Prior to independence, the English colonists had considerable experience with constitutional self-government. Since the English colonies were often founded as commercial enterprises, they were managed under charters from the Crown.[37] These charters frequently provided that the colonies could enact their own laws, provided these laws were "reasonable" and "not contrary to the laws of the Kingdom of England."[38] The English Privy Council regularly invalidated acts of the colonial legislatures for violations of colonial charters or the laws of England.[39] These charters combined many of the characteristics of a corporate charter and a constitution. Significantly, after independence, Rhode Island, Massachusetts, and Connecticut, with slight modifications, retained their colonial charters as their constitutions.[40] Most colonial assemblies, however, transformed themselves into congresses that drafted and secured popular approval of democratic state constitutions. Many important provisions in the U.S. Constitution were modeled on provisions of these state constitutions. Thus, in a real sense, the U.S. Constitution was the product of a people with a long and active tradition of constitutionalism.

The English colonies' experience with self-government was derived from their own legislatures and town governments. The colonial legislatures, which began in Virginia in 1619, consisted of two houses: a popularly elected lower house and an upper house chosen by the Crown or Governor.[41] Suffrage was far more widespread in the English colonies than in England or other European countries.[42] The colonists serving in the upper houses, usually called the Governor's Council,[43] played a prominent role in governing the En-

36. *See* A. HOWARD, THE ROAD FROM RUNNYMEDE 9-10 (1968).

37. M. CAPPELLETTI, JUDICIAL REVIEW IN THE CONTEMPORARY WORLD 39 (1971).

38. *Id.*

39. *Id.* at 39-40.

40. D. LUTZ, THE ORIGINS OF AMERICAN CONSTITUTIONALISM 6 (1988).

41. *See* S. MORISON, *supra* note 5, at 42.

42. The English rule extending the right to vote to men owning enough land to earn an annual rent of at least 40 shillings (generally about 50 acres) enfranchised only 2 to 6% of adult males in England. In the colonies, however, where land was cheap, the English suffrage rule enfranchised 50 to 65% of adult white males during the 1780s. D. LUTZ, *supra* note 40, at 51, 75.

43. *See* S. MORISON, *supra* note 5, at 42.

glish colonies, for in addition to their legislative duties, they performed the executive functions of advising the Governor and the judicial functions of the highest courts of appeals in the colonies.[44] Thus, by the time of independence, the English colonies had more than 150 years of experience with representative government. In a very real sense, they were thirteen political communities, united by a common language, common values, the common law, and a common enemy. "No taxation without representation" was an English constitutional principle utilized to justify colonial independence.[45] Not only were the colonists prepared to govern themselves, but they were prepared to fight for the privilege of doing so without interference from the English Crown.

B. The Delicate Balance between a Government with Adequate but Limited Powers

Critical to the success of constitutional democracy is creating a government strong enough to accomplish its aims, while at the same time maintaining appropriate limitations on governmental power. Not only must constitutions afford governments sufficient power to govern effectively, but they must also curtail governmental power in order to protect individual freedoms. James Madison put his pen precisely upon the problem: "In framing a government, which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself."[46]

One of the principal reasons the U.S. Constitution has worked so well is that the Framers succeeded in devising an ingenious solution to this dilemma. The Framers used the concept of federalism to divide governmental power vertically between the states and the national government. The national government's powers were limited to those delegated to it in the constitutional text and those that could be reasonably implied therefrom, as well as those necessary and proper for executing governmental duties.[47] All other powers were either reserved to the states or to the people. The task

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44. *An Ordinance and Constitution of the Treasurer Council, and Company in England, for a Council of State and General Assembly, reprinted in* 1 COLONY LAWS OF VIRGINIA 1619-1600, 110-12 (1978).

45. A. HOWARD, *supra* note 36, at 139-50.

46. THE FEDERALIST No. 51, at 399 (J. Madison) (J. Hamilton ed. 1892).

47. M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819); U.S. CONST. art. I, § 8 (the commerce clause), cl. 18 (the necessary and proper clause), amend. X.

of governing was thus left largely to the states and their own legal systems.

The Framers' solution was an unique scheme for fragmenting governmental power based upon three important concepts: federalism, separation of powers, and a system of checks and balances. The Framers utilized the concept of separation of powers to divide national governmental power horizontally among the executive, legislative, and judicial branches. These three compartments, however, were never intended to be watertight. Considerable overlap was deliberately built into this flexible notion of separation of powers to facilitate an ingenious, internal system of checks and balances, designed to prevent any of the three branches of the national government from becoming too powerful. A free press, guaranteed by the first amendment, and the ballot box serve as the ultimate checks against abuse of governmental power.

C. The Originality of the U.S. Constitution

The U.S. Constitution is an autochthonic document. Although it displays the influence of European theorists like Locke, Rousseau, and Montesquieu,[48] as well as 776 years of English constitutional tradition, the U.S. Constitution is an original creation, specially tailored to fit the fundamental values of American society. The Framers deliberately (and perhaps unintentionally)[49] turned their backs on European models and invented a new system of government with American conditions in mind. Despite its short length, the U.S. Constitution contains a great many important innovations, such as presidentialism, federalism, separation of powers, and a complex scheme of checks and balances. It can be said of the United States, just as it was said of ancient Athens: "Our constitution does not copy the laws of neighbouring states; we are rather a pattern to others than imitators ourselves."[50]

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48. *See* D. LUTZ, *supra* note 40, at 139-49.

49. In instituting separation of powers as a means of checking the powers of the various branches of government, the Framers relied heavily on Montesquieu's description of the British constitutional system. Commentators argue that Montesquieu's depiction had little to do with reality; consequently, the attempt to copy the English model resulted in felicitous innovation. A. HOWARD, *supra* note 36, at 219. *But see* S. MORISON, *supra* note 5, at 210-11.

50. THUCYDIDES, THE COMPLETE WRITINGS OF THUCYDIDES: THE PELOPONNESIAN WAR 104 (1951) (the Funeral Oration of Pericles).

D. The Flexibility of the U.S. Constitution

The U.S. constitutional system has displayed an unusual ability to adapt to the changing needs of the country. Unlike many Latin American Constitutions that include a great many detailed rules normally found in statutes or codes, the U.S. Constitution sets forth the broad outlines of government only in general terms. Moreover, the text is rich in omissions, many of them deliberate. The importance of not attempting to turn constitutional text into a governmental straitjacket was made forcefully by Hamilton:

> [N]ations pay little regard to rules and maxims calculated in their very nature to run counter to the necessities of society. Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.[51]

The flexibility of the U.S. Constitution is also due to the inclusion of a number of general clauses, such as the due process,[52] equal protection,[53] and contract clauses,[54] whose presence has provided the courts with conveniently open-ended textual points of departure for keeping the Constitution relevant in our rapidly evolving society.[55]

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51. THE FEDERALIST No. 25, at 213 (A. Hamilton, J. Madison, & J. Jay) (B.F. Wright ed. 1961).

52. U.S. CONST. art. XIV.

53. *Id.*

54. *Id.* art. I, § 10.

55. The Supreme Court occasionally acknowledges that the meaning of these open-ended clauses changes over time. For example, Justice Douglas, in his opinion for the Court in *Harper v. Virginia Board of Elections*, candidly admitted:

> [T]he Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights . . . . Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do* change.

383 U.S. 663, 669 (1966) (emphasis in original).

Observers often criticize the Court for interpreting the Constitution in ways that keep it behind, ahead, or tangential to societal evolution. For a discussion of the Court's tradition and future, see G. WHITE, THE AMERICAN JUDICIAL TRADITION 460-66 (1988).

E. The Critical Role of an Independent Judiciary with a Common Law Tradition

The role of the courts in insuring the vitality and effective functioning of the U.S. Constitution has been critical. In the seminal case of U.S. constitutional law, *Marbury v. Madison*,[56] Chief Justice John Marshall established the seemingly obvious yet critical proposition that the Constitution is law, a rule of decision enforceable by the courts. This proposition, to a considerable extent, followed naturally from the experience of invalidation of colonial legislation because it was ultra vires or conflicted with colonial charters and principles of English law. Moreover, English judges occasionally maintained that the common law, based upon principles of right reason and natural reason, could control acts of the legislature.[57]

U.S. judges are trained in the common law tradition, which has been important to the success of constitutionalism in the United States. In this tradition, the real oracles of the law are the judges rather than the legislature or scholars.[58] The power of judicial review in the United States is completely decentralized; all courts, be they state of federal, trial or appellate, are expected to determine the constitutionality of laws or decrees whenever such an issue is presented in cases before them. Common law judges tend to obscure constitutional texts with judicial gloss, whose meaning can be understood in light of the specific facts of the case in which it was laid down. In the common law tradition, with its doctrine of *stare decisis*, judicial opinions interpreting the Constitution, particularly those of the U.S. Supreme Court, rapidly assume greater importance than the text itself. *Stare decisis* is less rigidly followed in constitutional law than in other areas, and the U.S. Supreme Court has not infrequently overruled precedents that it later deemed to be wrong or obsolete. More frequently, the courts change constitutional doctrine gradually by distinguishing existing precedents on their facts. As Professor Damaska has observed, "The flexibility of case-law has allowed the American constitutional system to absorb dramatic changes, such as the departure from strong *laissez-faire* positions — changes which would in more formal and textually centered systems have required a new

56. 5 U.S. (1 Cranch) 137 (1803).
57. M. CAPPELLETTI, *supra* note 37, at 36-41.
58. *See* J. DAWSON, THE ORACLES OF THE LAW ii-xvi (1968).

Founding instrument, perhaps even a revolution."[59]

The common law tradition has had a decided procedural advantage over the civil law tradition with respect to controlling unconstitutional governmental action and preserving individual rights. Because common law rights were largely a function of remedies, the common law came fully equipped with a panoply of procedural devices, such as the contempt power and the writs of mandamus, prohibition, habeas corpus, injunction, and quo warranto that were enormously useful in checking unconstitutional governmental action and in preserving constitutional rights. The doctrine of stare decisis and the more modern procedural device of the class action have obviated the need for numerous individual lawsuits to preserve one's constitutional rights. Moreover, unlike many Latin American constitutions, the U.S. Constitution generally does not impose affirmative duties on the government to promote individual rights or economic interests. Rather, it prohibits governmental actions that interfere with constitutionally protected rights. As the U.S. Supreme Court discovered when it imposed the affirmative duty on school boards to convert segregated schools into unitary, nondiscriminatory school systems rather than merely ceasing segregation,[60] enforcement of affirmative duties to promote individual or group interests is far more difficult for the judiciary than enforcement of prohibitions on certain government actions.

The Framers were keenly aware of the need for an independent judiciary. One of the most vocal complaints of the American colonists against the Crown was the lack of judicial independence. After 1761, colonial judges, unlike judges in England, served at the pleasure of the King. Dissatisfaction with the quality of justice rendered by a dependent judiciary was manifested in the Declaration of Independence, which included among the list of royal abuses: "He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers. He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."[61] From the start, the United States has placed a high priority upon creating and maintaining an independent judiciary. The Framers attempted to guarantee judicial independence by protecting judicial compen-

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59. Damaska, *Reflections on American Constitutionalism*, in U.S. LAW IN AN ERA OF DEMOCRATIZATION 421, 428 (J. Hazard & W. Wagner eds. 1990) (Supp. to 38 AM. J. COMP. L.).

60. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 20 (1971).

61. The Declaration of Independence paras. 10, 11 (U.S. 1776).

sation from diminution and by guaranteeing lifetime tenure,[62] but what has ultimately made those guarantees effective is a deep seated commitment in the U.S. political tradition to the value of judicial independence.

F. Creation of an Effective Common Market

The U.S. Constitution effectively created a common market. The Framers regarded the nation as a single economic unit and specifically prohibited the states from imposing barriers to free trade among themselves.[63] The courts have regularly invalidated state legislation that protects the businesses of one state from free competition with businesses from other states.[64] As Justice Brennan has written:

> The few simple words of the Commerce Clause — "The Congress shall have the power . . . to regulate Commerce . . . among the several States . . ." — reflected a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation . . . . The Commerce Clause has accordingly been interpreted by this Court not only as an authorization for congressional action, but also, even in the absence of a conflicting federal statute, as a restriction on permissible state regulation.[65]

From inception, therefore, the United States was able to achieve economies of scale and other economic benefits of a common market without having to undergo the slow, difficult negotiating process necessary to achieve economic integration among independent political entities.

G. Equality and Social Revolution in the United States

The United States experienced a social revolution in 1776. The existing power structure was dramatically rearranged. Large

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62. *See* Ziskind, *Judicial Tenure in the American Constitution: English and American Precedents*, 1969 SUP. CT. REV. 135.

63. U.S. CONST. art. I, § 10.

64. *E.g.*, Hood & Sons, Inc. v. Du Mond, 336 U.S. 525 (1949).

65. Hughes v. Oklahoma, 441 U.S. 322, 325-26 (1979).

Tory and Loyalist landholdings were confiscated, divided up into small farms, and either sold or given to individual farmers.[66] English laws on property transmission were modified to eliminate restraints on free alienation.[67] De Tocqueville observed that:

> [A]fter a lapse of a little more than sixty years, the aspect of society is totally altered; the families of the great landed proprietors are almost all commingled with the general mass . . . . The last trace of hereditary ranks and distinctions is destroyed; the law of partition has reduced all to one level.[68]

The Founding Fathers were convinced that the primary defense of the republic they had created lay in the "virtue" of its people. By virtue they meant the willingness of individuals to subordinate their private interests to the public welfare. As John Adams explained:

> [P]ublic virtue is the only foundation of republics. There must be a positive passion for the public good, the public interest, honor, power, and glory, established in the minds of the people, or there can be no republican government, nor any real liberty, and this public passion must be superior to all private passions.[69]

Widespread land ownership and public education were thought to be two of the best techniques for inculcating virtue in the citizenry. Working their own land would give people a stake in the community and enable them to see how their private interests were bound up with the common good. A nation of yeoman farmers was deemed to be a nation of naturally virtuous citizens. Moreover, a democracy founded on the principle of popular sovereignty required an educated citizenry. People can be taught to value liberty and the common welfare. In colonial times, New England established a system of free public education,[70] and, by the middle of the 19th century, a system of free elementary and secondary education had spread to the other parts of the country.[71] Since the United States possessed a seemingly endless supply of public lands, Congress enacted legislation (prior to adoption of the Con-

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66. S. MORISON, *supra* note 5, at 214.
67. 1 A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA 53 (P. Bradley ed. 1954).
68. *Id.*
69. D. FARBER & S. SHERRY, A HISTORY OF THE AMERICAN CONSTITUTION 13 (1990).
70. S. MORISON, *supra* note 5, at 57-58.
71. *Id.* at 460-61.

stitution) to permit easy purchase of unallocated lands and to dedicate certain sections for educational purposes.[72]

Thus, the United States underwent a true social revolution. Great estates were generally divided, and land was widely distributed among those willing to work it. The United States deliberately rejected titles of nobility and a society formally divided by class.[73] The aspect of U.S. society that made the greatest impression on a sophisticated European observer like de Tocqueville was "the general equality of condition among the people."[74] While this equality was obviously imperfect, the United States began with a society far more egalitarian than did any of the Latin American or European nations.

H. The Lack of Militarism

Unlike Latin America, the United States never developed a tradition of militarism or a military class. The War for Independence lasted only eight years (from the first shots fired at Concord and Lexington, April 19, 1775, to the Treaty of Paris, September 3, 1783). At war's end, Washington's army quickly disbanded.

The tradition of civilian control over the military and distrust of standing armies preceded the Constitution. Among the King's abuses of power set forth in the Declaration of Independence were: "He has kept among us, in times of peace, Standing Armies, without the Consent of our Legislature. He has affected to render the Military independent of and superior to the Civil power."[75] While some Framers wanted a standing army and successfully conferred upon Congress the power to raise an army, many of the Framers regarded a standing army as a huge threat to liberty. Although the precise meaning of the second amendment remains hotly contested, it was adopted to preserve the state militia and the right to bear arms as a means of insuring liberty and preventing the central government's army from having a weapons monopoly.[76]

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72. The Land Ordinance of 1785, adopted by the Continental Congress, divided public lands in townships six miles square, and subdivided into 36 sections of 640 acres each. Land offices were established to sell public lands, and one section of each township was reserved for maintenance of public schools. This Ordinance remained the basis for public land policy when the Homestead Act of 1862 was enacted. *Id.* at 231-32.

73. *Id.* at 214.

74. 1 A. DE TOCQUEVILLE, *supra* note 67, at 3.

75. The Declaration of Independence paras. 13, 14 (U.S. 1776).

76. *See* Hardy, *Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Sec-*

When the Constitution was promulgated in 1789, the entire U.S. army consisted of only 672 men.[77] Despite a decade of war threats, by 1800 the army had grown to only 3,429 men.[78] Real military power lay with citizenry in the form of the state militia reserves, which could be mobilized to meet emergencies. Absence of a professional military class made it relatively easy to establish the unbroken tradition of civilian control over the military.

I. The Economic Payoff

As Seymour Lipset has pointed out, the legitimacy of any constitutional system in a new state must ultimately survive a pragmatic test: Does the system have a substantial economic payoff?[79] The United States has enjoyed spectacular economic success, which, to a large extent, can be traced to the dominant cultural value system brought by the Puritans from England, a value system that emphasized hard work and saving as moral virtues.[80] The inhabitants of the United States have participated in a most impressive sustained economic growth, the benefits of which have been relatively widely dispersed throughout the society. They have also participated in a democratic system that operates under the rule of law, where elections are generally regarded as honest, where regimes peaceably hand over the reins of government to successful opposition parties and where *coup d'état* is unknown. Although veneration for the Constitution may ultimately have been a product of the nation's economic and political success, the Constitution has greatly contributed to that success by providing a viable institutional framework and a symbol for effective government.

J. The Institutionalization of Charismatic Leadership

Finally, one should not discount the substantial role that good luck played in the American constitutional process. Many of the Framers never expected the Constitution to work, and many would

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ond Amendment, 9 HARV. J.L. & PUB. POL'Y 559, 599-615 (1986); Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204, 211-25 (1983). *See also* Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989).

77. S. LIPSET, THE FIRST NEW NATION: THE UNITED STATES IN HISTORICAL AND COMPARATIVE PERSPECTIVE 106 (1967).

78. *Id.*

79. *Id.* at 52.

80. S. MORISON, *supra* note 5, at 51.

have preferred a different system had they not been forced to make compromises to win political acceptance.[81] One of the most obvious aspects of the good fortune of the United States was the example set by its first president George Washington, who was idolized during his own lifetime as the father of the American Revolution. His strong personal charisma legitimated the new government, just as Mao's did in China and Fidel's did in Cuba.[82] Fortunately, for the history of constitutionalism in the United States, Washington had no desire to be a king or a dictator. Although he wished to retire after one term in office, conflict between the Jeffersonians and Hamiltonians made it necessary for him to serve two terms. Washington set the precedent of being the first head of a modern state to turn over the reins of government to a duly elected successor.[83] Washington's prestige was great enough to keep the new nation from splintering into factionalism. Because he was committed to constitutional government and had the good sense and health to retire rather than to die in office, Washington facilitated the institutionalization of charismatic legitimacy along the rational-legal lines established by the Constitution.

The United States was also very fortunate that Washington's successor, John Adams, followed Washington's precedent and peaceably turned over the reins of government to the Jeffersonians, his victorious political opponents. To be sure, Adams did pack the judiciary with members of his Federalist party,[84] but he vacated the presidency. Luckily for the United States, a willingness to compromise and a spirit of moderation were present from the very start of independent government.

V. Causes of the Failure of Constitutionalism in Latin America

Any explanation for the lack of success of constitutionalism in Latin America must be more tentative and qualified when compared with the constitutional experience of the United States. Latin America consists of twenty nations, each with its own historical experience. The differences among them are enormous. Some

81. D. Smith, The Convention and the Constitution: The Political Ideas of the Founding Fathers 35-55 (1987).

82. S. Lipset, *supra* note 77, at 25.

83. *Id.* at 24.

84. S. Morison, *supra* note 5, at 345.

of the indicia of lack of success, such as frequent *coups d'état* and constant changes in constitutions, can be misleading. Latin American *coups* often signify only a change in a few government figures rather than any major institutional changes. The differences between the old and new constitutions are often essentially cosmetic. Moreover, constitutionalism has been successful for long periods in certain Latin American countries such as Argentina, Brazil, Chile, Colombia, Costa Rica, and Uruguay.

A. The Absence of Real Revolutionary Change

One of the paradoxes of Latin American history is that despite the large numbers of extraconstitutional changes in governments, with the exceptions of Cuba, Mexico, and the partial exception of Bolivia, Latin American countries have never undergone real social revolutions. The Wars of Independence never effectuated a revolution in the sense of restructuring the wealth, political power, and the social system.[85] A creole elite, loyal to the deposed Spanish king, Ferdinand VII, initiated rebellions. The rebellions were triggered not so much by a desire for democratic self-government, but by a legitimacy crisis created by Napoleon's invasion of Spain in 1808 and subsequent placement of his brother Joseph on the Spanish throne.[86] Joseph had no royal blood, and the creole revolutionaries, like their counterparts in Spain, refused to accept a commoner as their king.[87] Many of them organized juntas to govern in the name of the deposed Ferdinand.[88] In 1814, when Ferdinand returned to the Spanish throne, abrogated the liberal 1812 Constitution of Cadíz, and assumed absolutist powers, many creoles laid down their arms. Ironically, it was Ferdinand's sudden acceptance of the liberal 1812 Constitution and the abolition of the Inquisition that caused many conservative creoles to fight for independence from Spain.[89] Independence became "a *conservative* goal, a means of upholding traditional values and social codes."[90]

The wealth, power, and privileges of the aristocracy have persisted largely intact since independence in Latin America. Whereas

85. Blanksten, *Revolutions*, in GOVERNMENT AND POLITICS IN LATIN AMERICA 119, 123-46 (H. Davis ed. 1958).

86. T. SKIDMORE & P. SMITH, MODERN LATIN AMERICA 29 (2d ed. 1989).

87. *Id.*

88. *Id.*

89. *Id.* at 34.

90. *Id.* at 33.

land ownership has been relatively widespread in the United States, land ownership has remained highly concentrated in most parts of Latin America.[91] Perhaps the most significant legacy of Spanish and Portuguese colonialism in Latin America was the *latifundia*,[92] the large estate that has served as a political power base for the oligarchies that have controlled many Latin American countries.[93] In Latin America, oligopolistic control over land produced a highly stratified rural society, with a tiny upper class, virtually no middle class, and a huge lower class. The scarcity of arable land outside the large estates tied labor to the estates and made landless agricultural workers dependent upon the landowner for protection and support. To the extent these workers participate in the political process, they do so at the mandate of their *patrón*, the landowner.[94]

As Octavio Paz has observed, the liberal democratic principles expressed in the U.S. Constitution corresponded to historical reality,

> for they were an expression of the rise of the bourgeoisie . . . and the destruction of the old regime. In Spanish America they merely served as modern trappings for the survivals of the colonial system. This liberal, democratic ideology, far from expressing our concrete historical situation, disguised it, and the political lie established itself almost constitutionally.[95]

B. Inexperience with Self-Government

Unlike the English colonies, the Spanish and Portuguese colonies had little experience with self-government. Iberian rule was

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91. K. KARST, *supra* note 30, at 242-43.

92. Christensen, *Latin America: The Land and People*, in GOVERNMENT AND POLITICS IN LATIN AMERICA, *supra* note 85, at 26, 28.

93. Until the 20th century, the basis of oligarchy in Latin America had been the monopolization of, and access to, land ownership. In fact, the most significant feature of the history of land tenure in Latin America until very recent decades had been the spread of the large estate into frontier areas, or the aggrandizement of established estates, if not for control over cultivable lands or scarce water rights, then for control of scarce labor, agricultural manpower. In Latin America, the 19th century may be viewed as a period of acceleration in the rate of estate formation and estate owners' control over manpower. S. STEIN & B. STEIN, THE COLONIAL HERITAGE OF LATIN AMERICA 138 (1970).

94. Christensen, *A Changing Society and Economy*, in GOVERNMENT AND POLITICS IN LATIN AMERICA, *supra* note 85, at 53.

95. O. PAZ, THE LABYRINTH OF SOLITUDE: LIFE AND THOUGHT IN MEXICO 122 (L. Kemp, Y. Milos, & R. Belash trans. 1985).

paternalistic and absolutist. Except at the minor levels, government officials were almost always *peninsulares* sent from Iberia rather than creoles born in Latin America.[96] Virtually the sole representation for those born in the Iberian colonies was the *cabildos* (*câmaras* in Portuguese), the city or town councils. These councils, however, quickly lost the little power and autonomy that they had enjoyed. They became petty oligarchies rather than representative institutions.[97] As the most famous of creole leaders, Simón Bolívar, lamented, "We were left in a state of permanent childhood."[98]

Bolívar was keenly aware of the great gap between the United States and Latin America with respect to their abilities to govern themselves. In his famous address to the Congress at Angostura in 1819, Bolívar explained why the U.S. constitutional model would not work in Venezuela:

> The more I admire the excellence of the federal Constitution of [the United States], the more I am convinced of the impossibility of its application to our state. And, to my way of thinking, it is a marvel that its prototype in North America endures so successfully and has not been overthrown at the first sign of adversity or danger. Although the people of North America are a singular model of political virtue and moral rectitude; although that nation was cradled in liberty, reared on freedom, and maintained by liberty alone; and — I must reveal everything — although those people, so lacking in many respects, are unique in the history of mankind, it is a marvel, I repeat, that so weak and complicated a government as the federal system has managed to govern them in the difficult and trying circumstances of their past. But, regardless of the effectiveness of this form of government with respect to North America, I must say that it has never for a moment entered my mind to compare the position and character of two states as dissimilar as the English-American and the Spanish-American. Would it not be most difficult to apply to Spain the English system of political, civil, and religious liberty? Hence, it would be even more difficult to adapt to Venezuela the laws of North America.[99]

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96. "In the long list of over seven hundred and fifty viceroys, governors, and presidents of *audiencias*, less than twenty creoles appear." C. JANE, LIBERTY AND DESPOTISM IN SPANISH AMERICA 7 (1929).

97. C. HARING, THE SPANISH EMPIRE IN AMERICA 165 (1963).

98. R. HUMPHREYS, *The Fall of the Spanish American Empire*, in TRADITION AND REVOLT IN SPANISH AMERICA AND OTHER ESSAYS 83 (1969).

99. Bolívar, Address Delivered at the Inauguration of the Second National Congress of Venezuela, *reprinted in* 1 SELECTED WRITINGS OF BOLÍVAR 173, 179 (H. Bierck 2d ed. 1951).

Yet, despite the differences in cultures and the lack of preparedness for self-government, the fascination with the kind of constitutional democracy implanted in the United States has persisted in Latin America, to a large degree as an aspirational model.

C. *The Imported Flavor of Latin American Constitutions*

Latin American constitutions are frequently criticized for unrealistically borrowing institutions from Europe and the United States without serious consideration of their suitability for implantation on Latin American soil. While there is obviously some truth to such criticism, the point is generally overstated. Latin American constitutions reflect inherent tensions between fundamentally conflicting traditions that continue to coexist in Latin American society. On the one hand, they reflect the liberal, democratic tradition consciously imported from France and the United States.[100] On the other hand, they also reflect the authoritarian, corporatist, and elitist tradition inherited from Spain and Portugal.[101] The strong influence of the Catholic Church and the military reinforce this tradition, which was also present in the political tradition of the native Indian population. Presidents are often granted incredibly broad powers to make policy and laws and to suspend constitutional guarantees by invoking a state of siege, one of the most abused legal institutions in Latin America.[102] Built into almost all

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100. The Latin American constitution most closely modeled after that of the United States is Argentina's Constitution of 1853. Yet, it is far from being an exact copy. *See* S. AMADEO, ARGENTINE CONSTITUTIONAL LAW (E. Patterson ed. 1943). The U.S. model also heavily influenced the Brazilian Constitution of 1891. H. JAMES, THE CONSTITUTIONAL SYSTEM OF BRAZIL 10 (1923).

To a considerable extent, U.S. and French influence was channeled through the liberal 1812 Spanish Constitution of Cádiz, which heavily influenced the 1821 Constitution of Gran Colombia, the 1830 and 1832 Constitutions of New Granada, the 1830 Constitution of Venezuela, the 1823 and 1828 Constitutions of Peru, the Argentine Constitution of 1826, the Uruguayan Constitution of 1830, and the Chilean Constitution of 1828. Safford, *Politics, Ideology and Society*, in SPANISH AMERICA AFTER INDEPENDENCE, c. 1820-c. 1870, 48, 62 (L. Bethell ed. 1987).

101. Davis, *The Political Experience of Latin America*, in GOVERNMENT AND POLITICS IN LATIN AMERICA, *supra* note 85, at 10; Safford, *supra* note 100, at 48.

102. Secretary General Javier Pérez de Cuéllar, in an address to the United Nations Commission on Human Rights on February 15, 1983, stated: "[I] consider that it should be one of the priority issues on the international human rights agenda to strive to make sure that situations of emergency are only resorted to in cases of absolute need." Ramcharan, *The Role of International Bodies in the Implementation and Enforcement of Humanitarian Law and Human Rights Law in Non-International Armed Conflicts*, 33 AM. U.L. REV. 99, 105 (1983). *See also* INTERNATIONAL COMMISSION OF JURISTS, STATES OF EMERGENCY: THEIR IMPACT ON HUMAN RIGHTS (1983).

Latin American constitutions are provisions that permit both democracy and dictatorship.[103] The cycle of democratic and dictatorial regimes that most Latin American countries have experienced reflects the still unresolved tension between Latin America's two conflicting political traditions.

D. The Difficulties in Establishing the Rule of Law

Unlike the United States, which began with a strong commitment to the rule of law,[104] Latin America began with a traditional disrespect for law. After independence this disrespect degenerated into anarchy in many areas. While the English colonies were largely governed by the laws enacted by their own legislatures and the established common law, the Spanish and Portuguese colonies were governed by laws promulgated for them by the Spanish and Portuguese Crowns.[105] Much of this legislation was confused and contradictory. The preamble to the Argentine decree, establishing a legislative drafting commission after the 1852 overthrow of dictator Rosas by General Urquiza, at the battle of Caseros, noted that the legislation Argentina inherited from Spain

> contains laws passed during a period of time extending over many centuries unknown to the people on whom they are binding, stored away in court archives or in the private libraries of a few individuals fortunate enough to possess them as priceless curiosities; society at large, and very often jurisconsults and the judges themselves, are ignorant of their very existence . . . .[106]

The Brazilian legislation was even more confused and more difficult to discern than that in the Spanish colonies.[107]

In the Latin American colonies, patrimonialism produced widespread corruption, an incredible penchant for bureaucratic red tape, and a highly unpredictable and personal legal system.[108] Since government positions were regarded as personal privileges granted or purchased from the Crown, notions of public service and public trust were nonexistent. Colonial administrators viewed

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103. *See* D. VALADÉS, LA DICTADURA CONSTITUCIONAL EN AMÉRICA LATINA (1974).

104. *See* 1 A. DE TOCQUEVILLE, *supra* note 67, at 73-74.

105. *See* Rosenn, *Brazil's Legal Culture: The Jeito Revisited*, 1 FLA. INT'L L.J. 1, 9 (1984).

106. Eder, *Introduction*, THE ARGENTINE CIVIL CODE xxi-xxii (F. Joannini trans. 1917).

107. *See* Rosenn, *supra* note 105, at 10-12.

108. *Id.*

their offices as a franchise for private gain. Citizens could claim no rights in patrimonial regimes.[109] What they could ask for were favors, which were dispensed on a personal basis or sold.[110] This patrimonialist legacy has made implantation of the rule of law extremely difficult in Latin America.

It has also been difficult to treat Latin American constitutions as law in the sense of being a rule of decision for courts. This is because Latin American constitutions typically contain a substantial number of aspirational or utopian provisions that are either impossible or extremely difficult to enforce. Some of these provisions contain social rights that seem far more appropriate as part of a political platform or a sermon than in a constitution. Relatively common are Catholic-oriented provisions designed to protect the family and to render a multitude of sins like divorce and usury unconstitutional.[111] In inflationary economies and societies where marriages break up at rates similar to those in other countries, such provisions inevitably produce widespread constitutional disrespect. Since World War I, Latin American constitutions have also included an impressive amount of secular, social welfare legislation designed to protect workers, the underprivileged, or the national economy. For example, Venezuela's Constitution provides: "Everyone shall have the right to protection of his health."[112] The following two articles are in a similar aspirational vein.[113] Inclusion of such obviously unenforceable, affirmative constitutional duties encourages citizens to regard the constitution as an aspirational document rather than a serious limitation on governmental powers.

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109. *Id.* at 9.

110. *Id.* at 9-10.

111. For example, Brazil's previous Constitution prohibited divorce, which was not legally permissible until adoption of constitutional amendment No. 9 on June 28, 1977. Article CXCII, section 3 of Brazil's 1988 Constitution prohibits charging an annual real rate of interest in excess of 12%. This provision has never been enforced; indeed, its enforcement would paralyze both public and private sector lending activities in Brazil. For an overview of this recent constitution, large parts of which have never been enforced, see Rosenn, *Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 AM. J. COMP. L. 773 (1990).

112. VENEZ. CONST. of 1961, art. LXXVI. The Brazilian Constitution contains a similar provision. BRAZ. CONST. of 1988, art. CXCVI.

113. VENEZ. CONST. of 1961, art. LXXVII provides: "The State shall strive to improve the living conditions of the rural population." Art. LXXVIII states: "Everyone has the right to an education."

E. Difficulties in Developing Procedural Institutions to Check Abuses of Executive Power

Latin America has been slow in developing institutions to check the arbitrary abuse of executive power. The Iberian monarchs were absolutist, particularly with respect to the colonies, which were regarded as royal patrimony. No counterpart to the Magna Carta had established the principle that the king is beneath the law.[114] Legislatures, particularly in this century, have usually been weak and dominated by the executive.

Latin American judiciaries have generally lacked real independence.[115] Latin America is heir to the civil law tradition, in which the judge is more a career civil servant than an independent political force. While most Latin American constitutions attempt to protect judicial independence, these guarantees have frequently been ineffective because of a lack of a deep seated societal commitment to the value of a truly independent judiciary.

Although most Latin American constitutions explicitly provide for judicial review, the courts have often lacked procedural devices for effectively checking abuses of governmental power. Moreover, judges that have courageously dared to exercise the power of judicial review to protect individual rights and the rule of law have often personally discovered the inefficacy of constitutional guarantees of life tenure for the judiciary in the wake of executive domination.[116] Nor have guarantees of press freedom been an effective check; censorship, closure during states of siege, withholding newsprint subsidies, and intimidation have been common techniques to mute governmental criticism.

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114. During the 12th century, the Spanish kingdom of Aragón created an institution called the Justice of Aragón. (Oftentimes, the national designation "of Aragón," was preceded by titular names, such as *juez supremo*, *juez mayor*, and *juez medio*.) The Justice, who was the chief judge of the king's court, was responsible for protecting citizens from arbitrary governmental action in violation of the *fueros*, quasi-constitutional charters in which the king granted rights and legal privileges to various corporate groups and municipalities. The Justice could issue writs analogous to habeas corpus and could grant stays to protect lives and property. During the 15th century the office became hereditary, and the Justice's ability to curb royal arbitrariness declined sharply. R. GIESEY, IF NOT, NOT: THE OATH OF THE ARAGONESE AND THE LEGENDARY LAWS OF THE SOBRARBE 65-68 (1968). The Justice's independence disappeared completely under King Phillip II, who in 1592 beheaded the Justice "in circumstances reflecting little credit on that monarch." E. VAN KLEFFENS, HISPANIC LAW UNTIL THE END OF THE MIDDLE AGES 243 n.1 (1968).

115. *See generally* Rosenn, *The Protection of Judicial Independence in Latin America*, 19 U. MIAMI INTER-AM. L. REV. 1, 23-35 (1987).

116. *Id.* at 27-28.

F. Failures of Economic Integration

Latin America has been largely unsuccessful in creating common markets.[117] Simon Bolívar's Congress of American States in 1816 was the first attempt, but Bolívar's vision of a united Latin American republic vaporized in incessant political squabbling. Despite several attempts at economic union in Central America, none has been very successful. The Central American Common Market (CACM), the latest effort, has been in a state of crisis since 1969, when the so-called "soccer war" broke out between El Salvador and Honduras. The Latin American Free Trade Association, created by the Treaty of Montevideo in 1960, and its successor, the Latin American Integration Association, created by the Treaty of Montevideo of 1980, have had only limited success in reducing trade barriers. The Andean Pact, a subregional integration group formed in 1969, splintered with Chile's 1976 withdrawal and has been plagued by serious problems. It has recently rewritten basic provisions to authorize the widespread prior disregard of its trade and investment restrictions.[118] The latest effort at regional integration, Mercosur, was formed in March 1991 by Argentina, Brazil, Paraguay, and Uruguay.[119]

G. The Persistence of Militarism

From inception, Latin America has been plagued with militarism.[120] The Wars of Independence dragged on for a decade longer in Latin America than in the United States. Even before the Spanish armies were finally defeated, the "liberating" armies began to turn on the liberated. As Professor Johnson put it, "Armies became permanent and also the permanent enemies of the people."[121]

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117. *See generally* Tomassini, *The Disintegration of the Integration Process: Towards New Forms of Regional Cooperation*, in REGIONAL INTEGRATION: THE LATIN AMERICAN EXPERIENCE 210 (A. Gauhared ed. 1985); *Integration*, 37 CEPAL REV. 79 (Apr. 1989); Blejer, *Regional Integration in Latin America: Experience and Outlook*, 3 J. INT'L ECON. INTEG. 10 (Aug. 1988).

118. Esquirol, *Foreign Investment: Revision of the Andean Foreign Investment Code*, 29 HARV. INT'L L.J. 169-77 (1988); Comment, *The Andean Pact's Foreign Investment Code Decision 220: An Agreement to Disagree*, 20 U. MIAMI INTER-AM. L. REV. 649 (1989).

119. LATIN AM. WEEKLY REP., Apr. 4, 1991, at 1.

120. J. JOHNSON, THE MILITARY AND SOCIETY IN LATIN AMERICA 178 (1964). Initially, this was not true for Brazil, whose independence from Portugal was achieved without bloodshed in 1822. Brazil achieved more than six decades of stability under a constitutional monarchy that lasted until 1889, when the armed forces overthrew it. *Id.*

121. *Id.* at 25.

Since 1823, when the Peruvians adopted the first constitution to accept the principle,[122] standing armies have become an accepted and permanent feature of Latin American political life. Analysts have estimated that, prior to 1850, allocations to these armies consumed more than half the annual budgets of the new Latin American republics.[123] Latin America's initial experience with self-government was characterized by extraconstitutional seizures of power by *caudillos*[124] and military officers that kept the region in a state of constant political turmoil. Once loosed, the genie of militarism is extraordinarily reluctant to return to the bottle. Only Costa Rica, which abolished its army in 1948, has successfully resolved the dilemma of ensuring civilian control over the military.[125] It is no coincidence that Costa Rica has the best record in Latin America for adherence to constitutional government. Despite the fact that over the last century the military in other countries have considered themselves professional and therefore outside the political forum, Latin American militaries still consider political intervention their proper role.[126] Furthermore, so do important, civilian groups, who not only expect, but actively foment military intervention to oust ineffective civilian regimes. A Dominican army officer, in commenting upon the military's temporary detention of the chief opposition candidate shortly before the 1974 election, concisely stated the problem: "*La Constitución es una cosa; los militares somos otra*" (The Constitution is one thing; we soldiers are another).[127]

H. Lack of a Widespread Economic Payoff

Latin America has not had the degree of political and economic success experienced by the United States and other developed economies. Moreover, in most Latin American countries, a

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122. *Id.* at 33.

123. *Id.* at 49.

124. *Id.* at 39.

125. *See id.* at 120.

126. Mexico is also a special case. By the 1940s, Mexico's political leaders were strong enough to remove the revolutionary army from political participation and commit it to professional pursuits. Stevens, *Mexico in the 1980s: From Authoritarianism to Power Sharing?*, in LATIN AMERICAN POLITICS AND DEVELOPMENT 403, 419 (H. Wiarda & H. Kline 2d ed. 1985). Mexico's army has thus far remained co-opted by the political system, but there is evidence that the political role of the Mexican army is increasing in recent years in the wake of economic crisis and political unrest. *See* Ronfeldt, *The Modern Mexican Military*, in ARMIES AND POLITICS IN LATIN AMERICA 224, 232-41 (A. Lowenthal & J. Fitch eds. 1986).

127. Lowenthal, *Preface*, ARMIES AND POLITICS IN LATIN AMERICA 3 (A. Lowenthal ed. 1976).

small elite earns the lion's share of national income. Constitutions are much more difficult to maintain if they fail to deliver a widespread economic payoff. Economic success and constitutional success are interrelated. In ancient times, men buried their gold during times of revolution. In Latin American countries beset by frequent *coups*, capital is salted away in foreign bank accounts and real estate. Latin America desperately needs more capital, particularly capital that is channeled into productive investment rather than capital in the form of loans to governments enabling them to assemble even larger bureaucracies. Yet, the failure to provide an institutional framework that secures a high degree of compliance with law and security for personal liberties and private property only exacerbates the basic task of producing economic prosperity.

VI. Conclusion

The failure of constitutionalism in Latin America cannot be cured by changing constitutional language alone. Despite the long-standing belief in Latin America that constitutions and laws can perform magic only if they are drafted properly, history offers compelling evidence that effective democracies cannot be produced by simply adopting democratic constitutions.

Latin America is still struggling with the issue of what kind of constitutions should be adopted. Constitutions are not panaceas that can cure unresolved fundamental social, economic, and political problems. Unfortunately, any democratic constitutional model is not likely to succeed until the dominant political elites agree to abide by the outcomes of honest elections and to create a political climate in which political power can genuinely alternate between or among the parties. Nor is constitutionalism likely to work well in Latin America until governmental power becomes less concentrated and centralized in the executive branch, and the underlying conflict between democracy and authoritarianism is resolved.

APPENDIX A

CONSTITUTIONS OF THE TWENTY LATIN AMERICAN REPUBLICS FROM INDEPENDENCE TO DATE

Total = 253

ARGENTINA[1]

Independence 1816	Total 5
1. Constitution of 1819	4. Constitution of 1853[a]
2. Fundamental Law of 1824	5. Constitution of 1949
3. Constitution of 1826	

BOLIVIA[2]

Independence 1825	Total 15
1. Constitution of 1826	9. Constitution of 1871
2. Constitution of 1831	10. Constitution of 1878
3. Constitution of 1834	11. Constitution of 1880
4. Constitution of 1839[b]	12. Constitution of 1938
5. Constitution of 1843	13. Constitution of 1947[c]
6. Constitution of 1851	14. Constitution of 1961
7. Constitution of 1861	15. Constitution of 1967
8. Constitution of 1868	

a Reinstated in 1955

b Reinstated in 1847

c Reinstated in 1964

[1] The Modern Argentine Republic did not technically come into being until *c.* 1826. Before that, it would more properly be characterized as a city-state centered in Buenos Aires and surrounded by other lesser ones.

[2] The Bolivian Confederation did not end until after the 1839 Constitution.

BRAZIL

Independence 1822	Total 8
1. Constitution of 1824	5. Constitution of 1946
2. Constitution of 1891	6. Constitution of 1967
3. Constitution of 1934	7. Constitution of 1969[d]
4. Constitution of 1937	8. Constitution of 1988

CHILE

Independence 1818	Total 10
1. Constitution of 1811[e]	6. Constitution of 1823
2. Constitution of 1812[f]	7. Constitution of 1828
3. Constitution of 1814[g]	8. Constitution of 1933
4. Constitution of 1818	9. Constitution of 1925
5. Constitution of 1822	10. Constitution of 1980

COLOMBIA

Independence 1810	Total 12
1. Act of Federation of United Provinces of New Granada 1811	8. Constitution of New Granada of 1853
2. Constitution of 1821	9. Granadine Confederation Constitution of 1858
3. Organic Decree of 1828	10. Pact of Union of United States of Colombia of 1861
4. Constitution of 1830	11. Constitution of United States of Columbia of 1863
5. Fundamental Law for New Granada of 1831	12. Constitution of 1886
6. Constitution of 1832	
7. Constitution of 1843	

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d Formally labelled Amendment No. 1, but redrafted the entire 1967 Constitution

e 1810-1812 — Provisional government

f 1812 — Spaniards retake and expel O'Higgins

g 1817 — Chilean victory over Spanish and beginning of true independence

COSTA RICA

Independence 1821	Total 9
1. Constitution of 1824[h]	6. Constitution of 1869
2. Constitution of 1844	7. Constitution of 1871
3. Constitution of 1847	8. Constitution of 1917
4. Constitution of 1848	9. Constitution of 1949
5. Constitution of 1859	

CUBA

Independence 1898	Total 7
1. Constitution of 1901[i]	4. Constitution of 1940
2. Constitution of 1928	5. Constitution of 1952
3. Provisional Constitution of 1934	6. Constitution of 1959
	7. Constitution of 1976

DOMINICAN REPUBLIC

Independence 1821	Total 32
1. Constitution of 1844	17. Constitution of 1881
2. Constitution of Feb. 1854	18. Constitution of 1887
3. Constitution of Dec. 1854	19. Constitution of 1896
4. Constitution of Feb. 1858	20. Constitution of 1907
5. Constitution of Sept. 1858	21. Constitution of 1908
6. Constitution of 1865	22. Constitution of 1924
7. Constitution of 1866	23. Constitution of 1927
8. Constitution of 1868	24. Constitution of Jan. 1929
9. Constitution of 1872	25. Constitution of June 1929
10. Constitution of 1874	26. Constitution of 1934
11. Constitution of 1875	27. Constitution of 1942
12. Constitution of 1876	28. Constitution of 1947
13. Constitution of 1877	29. Constitution of 1955
14. Constitution of 1878	30. Constitution of 1962
15. Constitution of 1879	31. Constitution of 1963
16. Constitution of 1880	32. Constitution of 1966

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h Part of Central America Conference

i Reinstated in 1933

ECUADOR

Independence 1822	Total 19
1. Constitution of 1830	11. Constitution of 1884
2. Constitution of 1835	12. Constitution of 1897
3. Constitution of 1843	13. Constitution of 1906[j]
4. Constitution of 1845	14. Constitution of 1929
5. Constitution of 1846	15. Constitution of 1938
6. Constitution of 1851	16. Constitution of 1945[k]
7. Constitution of 1852	17. Constitution of 1946[l]
8. Constitution of 1861	18. Constitution of 1967
9. Constitution of 1869	19. Constitution of 1979
10. Constitution of 1878	

EL SALVADOR

Independence 1821	Total 14
1. Constitution of 1824[m]	8. Constitution of 1883
2. Constitution of 1841	9. Constitution of 1886[n]
3. Constitution of 1859	10. Constitution of 1939
4. Constitution of 1864	11. Constitution of 1944
5. Constitution of 1871	12. Constitution of 1950
6. Constitution of 1872	13. Constitution of 1962
7. Constitution of 1880	14. Constitution of 1983

GUATEMALA

Independence 1821	Total 9
1. Constitution of 1824[o]	5. Constitution of 1945
2. Constitutional Act of 1851	6. Constitution of 1956
3. Constitution of 1876	7. Constitution of 1965
4. Constitutional Act of 1879	8. Fundamental Law of 1982
	9. Constitution of 1985

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j Reinstated in 1938

k Reinstated in 1972

l Reinstated in 1970

m Part of Central American Conference

n Reinstated as modified in 1944

o Part of Central American Conference

HAITI

Independence 1804	Total 24
1. Constitution of 1801	13. Constitution of 1888
2. Constitution of 1805	14. Constitution of 1889
3. Constitution of 1806	15. Constitution of 1918
4. Constitution of 1807	16. Constitution of 1932
5. Constitution of 1811	17. Constitution of 1935
6. Constitution of 1816	18. Constitution of 1946
7. Constitution of 1843	19. Constitution of 1950
8. Constitution of 1846	20. Constitution of 1957
9. Constitution of 1849	21. Constitution of 1964
10. Constitution of 1867	22. Constitution of 1971
11. Constitution of 1874	23. Constitution of 1972
12. Constitution of 1879	24. Constitution of 1987

HONDURAS

Independence 1821	Total 14
1. Constitution of 1824[p]	8. Constitution of 1894[q]
2. Constitution of 1925	9. Constitution of 1906
3. Constitution of 1839	10. Constitution of 1924
4. Constitution of 1848	11. Constitution of 1936
5. Constitution of 1865	12. Constitution of 1957
6. Constitution of 1873	13. Constitution of 1965
7. Constitution of 1880	14. Constitution of 1982

MEXICO

Independence 1813	Total 8
1. Constitution of 1814	6. Constitution of 1856
2. Constitution of 1824[r]	7. Constitution of 1857
3. Constitution of 1836[s]	8. Constitution of 1917
4. Constitution of 1837	
5. Organic Bases for Centralization of 1843	

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p Part of Central America Conference

q Reinstated in 1908

r Reinstated in 1846

s 7 Constitutional Laws

NICARAGUA

Independence 1821	Total 14
1. Constitution of 1824[t]	9. Constitution of 1939
2. Constitution of 1826	10. Constitution of 1948
3. Constitution of 1838	11. Constitution of 1950
4. Constitution of 1858	12. Constitution of 1974
5. Constitution of 1893	13. Fundamental Law & Statute of Rights of 1979
6. Constitution of 1896	
7. Constitution of 1898[u]	
8. Constitution of 1913	14. Constitution of 1986

PANAMA

Independence 1903	Total 4
1. Constitution of 1904	3. Constitution of 1946
2. Constitution of 1941	4. Constitution of 1972

PARAGUAY

Independence 1811	Total 5
1. Constitution of 1813	4. Constitution of 1940
2. Constitution of 1844	5. Constitution of 1967
3. Constitution of 1870	

PERU

Independence 1821	Total 12
1. Constitution of 1923[v]	7. Constitution of 1856
2. Constitution of 1826	8. Constitution of 1860[x]
3. Constitution of 1828	9. Constitution of 1867
4. Constitution of 1834	10. Constitution of 1920
5. Constitution of 1836[w]	11. Constitution of 1933
6. Constitution of 1839	12. Constitution of 1979

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t Part of Central America Conference

u United States of Central America

v Reinstated in 1827

w Separate Constitutions in effect from March to August for North Peru and South Peru

x Reinstated in 1868, revoked in 1879, reinstated again in 1885

URUGUAY

Independence 1828

1. Constitution of 1830
2. Constitution of 1918
3. Constitution of 1934
4. Constitution of 1942

Total 7

5. Constitution of 1952
6. Constitution of 1966
7. Constitution of 1985

VENEZUELA

Independence 1811

1. Constitution of 1811
2. Constitution of 1819[y]
3. Constitution of 1821[z]
4. Constitution of 1830
5. Constitution of 1857
6. Constitution of 1858
7. Constitution of 1864
8. Constitution of 1874
9. Constitution of 1881
10. Constitution of 1891
11. Constitution of 1893
12. Constitution of 1901
13. Constitution of 1904

Total 25

14. Constitution of 1909
15. Constitution of 1914
16. Constitution of 1922
17. Constitution of 1925
18. Constitution of 1928
19. Constitution of 1929
20. Constitution of 1931
21. Constitution of 1936
22. Constitution of 1945
23. Constitution of 1947
24. Constitution of 1953
25. Constitution of 1961

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y Republic of Colombia

z Republic of Gran Colombia

APPENDIX B

EXTRACONSTITUTIONAL CHANGES IN GOVERNMENT IN LATIN AMERICA 1930-1990

COUNTRY	NUMBER	DATES
Argentina	12	9/30, 6/43, 2/44, 9/55, 11/55, 3/62, 6/66, 6/70, 3/71, 3/76, 12/81, 6/82
Bolivia	18	6/30, 11/34, 5/36, 7/37, 12/43, 8/46, 5/51, 4/52, 11/64, 9/69, 10/70 (2), 8/71, 7/78, 11/78, 11/79, 7/80, 7/82
Brazil	6	10/30, 10/45, 8/54, 11/55, 4/64, 8/69
Chile	6	7/31, 6/32, 9/32, 10/32 (2), 9/73
Colombia	2	6/53, 5/57
Costa Rica	1	5/48
Cuba	4	8/33, 9/33, 3/52, 1/59
Dominican Rep.	5	2/30, 5/61, 1/62, 9/63, 4/65
Ecuador	15	8/31, 10/31, 8/32, 8/35, 9/35, 10/37, 5/44, 8/48, 9/47, 11/61, 7/63, 3/66, 6/70, 2/72, 1/76
El Salvador	7	12/31, 5/44, 12/48, 1/49, 10/60, 1/61, 10/79
Guatemala	11	12/30, 7/44, 10/44, 6/54, 10/57, 3/63, 2/72, 1/76, 3/82, 6/82, 8/83
Haiti	10	1/46, 5/50, 12/56, 2/57, 4/57, 5/57, 6/57, 2/86, 6/88, 9/88
Honduras	6	12/54, 10/56, 10/63, 12/72, 4/75, 8/78
Mexico	—	
Nicaragua	3	6/36, 5/47, 7/79
Panama	10	2/31, 10/41, 11/49, 1/55, 10/68, 7/82, 2/84, 9/85, 2/88, 12/89
Paraguay	10	4/33, 2/36, 10/36, 8/37, 6/48, 1/49, 2/49, 9/49, 5/54, 2/89
Peru	7	8/30, 3/31, 10/48, 7/62, 3/63, 10/68, 8/75
Uruguay	2	4/33, 7/73
Venezuela	4	10/45, 11/48, 12/52, 1/58