

## Louisiana Law Review

---

Volume 5 | Number 1

December 1942

---

NEW WORLD CONSTITUTIONAL  
HARMONY: A PAN-AMERICANADIAN  
PANORAMA, by George Jaffin, Columbia Law  
Review (reprint), New York, 1942. Pp. 53.

Juan Clemente Zamora

---

### Repository Citation

Juan Clemente Zamora, *NEW WORLD CONSTITUTIONAL HARMONY: A PAN-AMERICANADIAN PANORAMA*, by George Jaffin, *Columbia Law Review* (reprint), New York, 1942. Pp. 53., 5 La. L. Rev. (1942)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol5/iss1/29>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

## Book Reviews

NEW WORLD CONSTITUTIONAL HARMONY: A PAN-AMERICANADIAN PANORAMA, by George Jaffin, *Columbia Law Review* (reprint), New York, 1942. Pp. 53.

American foreign policy under the capable statesmanship of President Roosevelt took very definite steps in 1934 to bring about a coordination of common efforts of all the nations of America, both in the field of commercial exchange and in that of international law. The good neighbor policy implied a voluntary renunciation on the part of the United States in its dealings with Latin-American countries, of the use of force or of the threat to use force to promote the policies of the United States, or to support the claims of the financial interests of its citizens who happened to be doing business south of the Rio Grande. This changing attitude was both generous and far-sighted, and it accomplished its purpose most completely. It is due to the good neighbor policy that in the present world conflict the United States has found the whole-hearted support and sympathy of its Latin-American neighbors. Relations of mutual respect and sympathy can be attained by the wise application of a good neighbor policy, but now the time is right for the establishment of ties which shall be more intimate and more permanent than a mere relation of good neighborliness. The time has come when the good neighbor must be converted into a true, sincere and lasting friend.

Differences in language are, however, a very serious obstacle. Obviously, you cannot become the friend of a person whom you neither know nor understand. And without real understanding of other people's problems, likes, dislikes, and emotions, you can not very well go beyond the friendly gesture of an occasional distant nod in your acquaintance with them. If relations of real friendship are ever to be established between the United States and its South American neighbors, we must make a conscientious effort to first know each other. This can best be accomplished if we succeed in finding some field of common interest in which our respective experiences might be reciprocally beneficial.

Professor George Jaffin, who for a long time has been a devoted and successful pioneer in the study of comparative law, finds such a field of common interest in the process of democratic

constitutionalism throughout both Americas, in an illuminating essay which he very aptly entitles *New World Constitutional Harmony*. Professor Jaffin calls our attention to the fact that in spite of differences in language, in historical traditions, in the economic structure of their respective states, and even in legal systems, the Latin-American countries, once they had obtained their independence, adopted or adapted the constitutional pattern set up by the United States some thirty or forty years before. Since constitutional law in the Latin countries copied the Constitution of the United States, the study of comparative constitutional law between the various nations of America is one of those fields in which a common understanding can be more easily and effectively established. Professor Jaffin may be too optimistic in his appreciation of the degree in which the constitutional principles derived from the Constitution of the United States found effective application in the political life of the Latin-American countries, and with the distant perspective which we now have, we cannot fail to agree with Bolivar's foresight in believing that the Latin nations were not mature enough in their political development in the early years of the nineteenth century to adopt and apply Anglo-Saxon constitutionalism; or perhaps on Professor Jaffin's part his attitude is merely a friendly gesture to avoid emphasizing the fact of our lack of political preparation. But in any case, a truth remains: We in Latin-America adopted North American constitutionalism, and even though our experience with it may have been very different, or perhaps just because it has been so different, it constitutes a most fascinating and profitable field for comparative research.

Professor Jaffin very adroitly points out the fact that because the Constitution of the United States was the first of the democratic constitutions of modern times, and because it was copied everywhere in Latin-America when the movement for independence became successful, the people of the United States have taken it for granted that their Constitution was not only the first, but was also the last word in political wisdom.

"It is evident that in undertaking comparative constitutional studies the first habit to be overcome is that of American constitutional isolation. Ever since the Constitution and the Bill of Rights were adopted 150 years ago, it has been assumed that the American Constitution is the last word, simply because it was the first word on the modern subject of constitutional democracy. Before the Constitution was adopted, it is curious to observe, the

Constitutional Fathers were especially interested in ascertaining the experience of other systems. Once the Constitution went into effect, however, hardly any curiosity existed as to the other constitutions which followed the American. There has persisted the tendency to regard all constitutions adopted after 1787 as imitations unworthy of serious attention and study."<sup>1</sup>

"It is difficult to avoid the inference that the prevailing isolationistic attitude in American constitutional thought rests, at least partly, upon ignorance. For if there were some familiarity with recent Latin-American constitutional developments, it is almost inconceivable that interests therein would not increase—even in legal circles. Maybe the attitude of isolation is irrational and reducible to a mere feeling of constitutional complacency or smugness or provincialism or inertia. In the light of the common constitutional heritage of the Americas, what better and more timely opportunity can there be for Pan-American cultural cooperation?"<sup>2</sup>

Such cooperation, with the ultimate purpose of reaching a better understanding of our common problems, is particularly urgent now because there are certain movements which seem to threaten at this time the attainment of Pan-American solidarity. Of such tendencies Professor Jaffin specifically mentions two: the proposed Anglo-American Union which would naturally exclude non-English speaking countries, and the Pan-Hispanic Union. It is not for us to offer here any comment on the advantages or advisability of an all-inclusive Anglo-American alliance; but with reference to the second of these tendencies, the efforts made by Spain in recent years to unite the Spanish-speaking countries of Latin-America with the mother country in a common empire, or at least in a cultural and moral unit, we feel quite confident that it cannot become a means of preventing Pan-Americanism. If such an appeal had been made sincerely, with no other purpose in view than its proclaimed objective of reinforcing the cultural and spiritual values which are our common heritage, it would no doubt carry great weight and it would very likely meet with warm response from the Latin-American nations. But no Latin-American today is so naive as to be deceived by the propaganda activities of what Professor Jaffin with exquisite tact and discretion refers to as "an artificial but deliberate attempt on the part of Spain to woo her lost New World colonies." The Pan-Hispanic

---

1. P. 14.

2. P. 15.

movement now so intensely promoted by the Council of *Hispanidad* is not at all a mere cultural enterprise. It is a crude attempt on the part of the Spanish *Falange* to exploit the political doctrines of the totalitarian New Order, disguised in the glamorous attire of our cultural values. We realize that only too clearly in Latin-America, and whatever may have been the misadventures of democratic constitutionalism in our Latin countries, its principles have become sufficiently established, sometimes as a reality, and always as an ideal, to constitute a bulwark against the inroads of the Spanish Dictatorship.

Having first discussed the necessity of studying Latin-American constitutionalism, both as a means of achieving a better understanding of Latin-American problems and as a source of inspiration and possible improvement in the constitutional legislation of other nations, Professor Jaffin undertakes in his essay to give us an example of just how such a comparative analysis can best be made. In this portion of his work, Professor Jaffin's extraordinary experience in the field of comparative law and his exhaustive first-hand acquaintance with Latin-American bibliographies on the subject, assert themselves, and he gives us a masterly discussion of the constitutional machinery devised by some of the Latin-American countries for the protection of the Bill of Rights. A brief but intelligent review of European precedents is brought in to show why the founders of the American Constitution did not feel it necessary to go beyond the legal process of the common law to guarantee the intangibility of the individual rights of the citizen. But because the machinery for the administration of justice in continental Europe under the Code Napoleon did not offer any effective means to safe-guard constitutional guarantees, the Latin-American countries, who had preserved the organization and traditions of Spain in the field of civil law and in the administration of justice, were forced to devise their own special methods of constitutional protection. Professor Jaffin proceeds then to offer us a very precise discussion of the *recurso de amparo*, of the *recurso de inconstitucionalidad*, and of the *acción pública* as recognized in Latin-American constitutionalism, with comparative references whenever possible, to the practice of courts in the United States. He then leads us to a more detailed examination of the provisions of the Cuban Constitution of 1940, which in Professor Jaffin's words "contains the most comprehensive machinery for the protection of constitutional guarantees."

Professor Jaffin's practical demonstration of how subjects of common interest to the two Americas can profitably be found and studied, thus provoking sufficient interest to provide solid and permanent grounds for a better and more intimate knowledge of the problems and achievements of our reciprocal cultures, is so highly successful and stimulating, that we cannot but hope that this essay will be only a first step to be followed by many others no less valuable.

JUAN CLEMENTE ZAMORA\*

---

REPORT TO THE JUDICIAL CONFERENCE OF THE COMMITTEE ON PUNISHMENT FOR CRIME. A report of the Committee of United States Circuit and District Judges appointed to consider the subject of punishment for crime in the federal courts and to report to the Judicial Conference of Senior Circuit Judges. United States Government Printing Office, Washington, 1942. Pp. 126.

YOUTH CORRECTION AUTHORITY ACT. A Model Act Creating a Youth Correction Authority Prescribing Its Powers and Duties and Providing for Commitments Thereto of Convicted Persons Under Twenty-one Years of Age at Time of Their Apprehension. The American Law Institute, Philadelphia, June 22, 1940. Pp. 42.

Much consideration has been given in recent years to methods of improving the administrative machinery for determining the proper treatment of persons found guilty of crime. Particular attention has been given to the youthful offender. The report of the Committee on Punishment for Crime proposes a new plan for dealing with all offenders in the federal courts while the Youth Correction Act sets forth a model law which has been proposed by the American Law Institute for adoption by the states. Both laws are based on the realization that the punitive method of dealing with offenders has failed and that treatment following conviction should look primarily to rehabilitation.

The problem of sentencing in the federal courts has been thoroughly studied by the Judicial Conference of Senior Circuit Judges. In 1940 the Conference recommended that an indetermi-

---

\* Visiting professor of law and government from the University of Havana.