Prolegomena on the Spanish American Political Tradition

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IT IS THE PURPOSE of this essay to raise some questions about a central dogma held by many writers on Latin American politics. A typical interpretation asserts that "there is little doubt that the Latin American ideal of government for more than a century and a half has been that of political democracy."[1] This is largely taken for granted. While few members of the intellectual community now engaged in Latin American research are specifically studying political ideology, it appears to me that many of us, whether beginning with a consensus or a conflict model, implicitly assume Latin American approval of democracy.[2] In this we are following a long academic tradition, albeit with new methods.

Most North Americans tend to believe that a stable, viable Latin America would be a democratic Latin America. They derive that conviction from scholarly perceptions of early nineteenth-century political thought in Latin America. And this democratic argument is based upon two propositions: that Latin Americans borrowed the form and substance of their government; and that they failed to implant the alien system because they lacked political preparation. Writers who make these assumptions see the United States and French polities evolving out of their past despite certain foreign borrowings of an ideological and institutional nature. By contrast they often portray

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[1] Charles O. Porter and Robert J. Alexander, *The Struggle for Democracy in Latin America* (New York, 1961), 4. While using here a generalized terminology, my research and my conclusions are confined to *Spanish* America.

[2] See for example, Seymour Martin Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," *The American Political Science Review*, LIII (March 1959), 69-105; W. W. Pierson (ed.), "The Pathology of Democracy in Latin America: A Symposium," *The American Political Science Review*, XLIV (March 1950), 100-149; Russell H. Fitzgibbon, "A Statistical Evaluation of Latin-American Democracy," *Western Political Quarterly*, IX (September 1956), 607-619; John J. Johnson, *The Military and Society in Latin America* (Stanford, 1964), 100: "But even in their more radical moments, the leaders of the middle sector always kept within the framework of western representative democracy. . . ."

Latin American political leaders as having not merely repeated the words of their late-eighteenth-century teachers, but as having actually plagiarized from their fellow students on both continents.[3] Overwhelming scholarly opinion credits France and the United States as the ideological source of both the structure and the substance of Latin American government since 1810, while the influence of Spain, the mother country, is minimized or ignored.[4]

This belief is so extensively accepted that it would be difficult to find a textbook on Latin America in which the thesis is not somewhere stated. For example, one writer speaks of the independence movement as sweeping through Latin America "under ideological banners borrowed from the United States and France."[5] Another notes that the Wars for Independence were "fought in the name of the same ideals and aspirations that accompanied the American and French revolutions."[6] A historian summarizes this theme: "The political ideals of liberty, natural rights, equality before the law, and popular sovereignty, which were developed in England, given irresistible literary expression in France, and first put into practice in the United States . . . constituted the great spiritual force back of the heroic struggle of Spanish America for emancipation."[7]

Latin American nations are charged with having similarly borrowed the structure and organization of their new governments. A modern author asks: "What, then, are the sources of the material embodied in most of the written constitutions of the area?" "The answer," he says, "is that much of this material is derived, not from Spanish or Latin American experience as one would expect, but rather from the constitutional norms and practices of France and the United

[3] In part, this concentration on borrowed aspects of Latin American ideology may be attributed to the success of such works as Arthur P. Whitaker (ed.), *Latin America and the Enlightenment* (Ithaca, 1961), and J. T. Lanning, *The Eighteenth-Century Enlightenment in the University of San Carlos de Guatemala* (Ithaca, 1956). In demonstrating the impact of enlightenment philosophy in Hispanoamerica prior to the revolution these works have contributed to a historical oversimplification. They have shown essentially the presence of forbidden books and ideas in Latin America. But these writings have not demonstrated what the Latin Americans did with these ideas. It is one thing to have the complete writings of Marx in your bookcase; it is another to be a Marxist.

[4] A notable exception is the discussion by Woodrow Borah, Charles Gibson, and Robert A. Potash in separate articles on "Colonial Institutions and Contemporary Latin America," *HAHR*, XLIII (August 1963), 371-394.

[5] Kalman H. Silvert, *The Conflict Society: Reaction and Revolution in Latin America* (New Orleans, 1961), 12.

[6] R. A. Gomez, *Government and Politics in Latin America* (New York, 1960), 20.

[7] J. Fred Rippy, *Historical Evolution of Hispanic America* (New York, 1932), 133.

States."[8] One textbook holds that "most of the states drew up liberal republican constitutions based upon that of the United States or that of the defunct French Republic,"[9] while another declares that "many of the earlier constitutions were copied after that of the United States . . . and frequently the French pattern was followed."[10] A leading sociologist writes: "The new South American nations, looking around for models to follow, found ready at hand the philosophies of the French and American revolutions,"[11] and an economist holds that "the constitutions which were adopted by the new Latin American states were largely inspired, if not copied, from that of the United States, while the 'generous ideas of the French Revolution' served as the ideological foundation for the new republics."[12] The implication is that Latin America is running upon a borrowed ideology and borrowed institutions. In addition, it is usually observed that the ideology and institutions so appropriated were democratic, in contrast to Spanish authoritarian colonial tradition.

The second assumption usually made by scholars is that the initial failure of borrowed democracy in Latin America can be traced to the men who tried to implement this alien type of government. Such scholars hold that the leaders of the revolutionary era were politically naïve, inexperienced, and untutored in government. This idea is at least as old as Lord Bryce. Regarding the revolutionary upper class he observed that none of them had "any experience in civil administration."[13]

The belief was carried forward by leading historians during the first half of this century. "Except for his membership in the com-

[8] George I. Blanksten, "Constitutions and the Structure of Power," in *Government and Politics in Latin America*, ed. by Harold E. Davis (New York, 1958), 228. "The republicanism of the constitutional arrangements which the new nations now made was largely spurious and existed in form only, having no roots in the political experience of the people." Donald M. Dozer, *Latin America: An Interpretive History* (New York, 1962), 237.

[9] Mary W. Williams, *The People and Politics of Latin America* (New York, 1945), 337. "They wrote constitutions fashioned chiefly on the model of the United States. . . ." Hubert Herring, *A History of Latin America* (New York, 1961), 295.

[10] A. Curtis Wilgus, *A History of Hispanic America* (Washington, 1931), 508.

[11] Kingsley Davis, "Political Ambivalence in Latin America," in *Readings in Latin American Social Organization and Institutions*, ed. by Olen E. Leonard and Charles P. Loomis (East Lansing, 1953), 112.

[12] Albert O. Hirschman, *Latin American Issues* (New York, 1961), 5. William Rex Crawford observes that "borrowed constitutions seemed impotent to solve these problems." *A Century of Latin American Thought* (Cambridge, Mass., 1961), 5.

[13] James Bryce, *South America: Observations and Impressions* (New York, 1912), 571.

paratively unimportant *cabildos*, or local councils, the Spanish American creole, or native-born white, had almost no participation in the government of the colonies," says one of these works.[14] In another essay one reads of the post-independence period that "the turbulence was due to political inexperience."[15] "From the political viewpoint, what was the heritage left to these new states by Spain?" asks still another writer. He answers that "in the first place, there was the negative condition of political inexperience."[16] And a textbook published in 1950 states: "The political inexperience of the ruling classes was another great obstacle to republican government."[17] A contemporary political scientist agrees: "Latin American politics lacks an adequate theory or rationale drawn from experience."[18] Finally, one may cite one of the more influential books on Latin America to appear in recent years: "The intellectuals had little more than a theoretical understanding of what they proposed to achieve. They had been so effectively excluded from participation in government by Spain and Portugal, in collaboration with the Catholic Church, that nearly all their knowledge of the art of government and politics was academic."[19]

Assuming that the revolutionaries lacked political experience, historians have often exculpated them for not having established a functioning democracy: "It was unreasonable to expect that the Spanish Americans, with no schooling in self-government, exhausted and brutalized by twelve years of warfare . . . should at once have understood the successful operation of free institutions."[20]

Thus there is widespread agreement over the Latin American preference for democratic government as well as the cause for its initial failure in that area. These two beliefs are at the center of present interpretations of Latin American politics. The conclusion which follows from these assumptions is that for the last century and a half there has existed a constant ambivalence between the "real" Latin

[14] Charles E. Chapman, *Republican Hispanic America: A History* (New York, 1933), 16.

[15] Herbert Eugene Bolton, "The Epic of Greater America," reprinted in Lewis Hanke (ed.), *Do the Americas Have a Common History?* (New York, 1964), 85. Hutton Webster, *History of Latin America* (Boston, 1941), 141, notes that "the Creoles who carried through the revolution lacked political experience."

[16] Rippy, *Historical Evolution*, 168.

[17] Dana Gardner Munro, *The Latin American Republics: A History* (New York, 1950), 153.

[18] Harold E. Davis, "The Political Experience of Latin America," in Davis, *Government and Politics*, 17.

[19] John J. Johnson, *Political Change in Latin America* (Stanford, 1958), 16.

[20] Herman G. James and Percy A. Martin, *The Republics of Latin America* (New York, 1923), 106.

American government somehow rooted in the colonial tradition, and the "unreal" governmental superstructure based upon borrowed constitutions and ideologies.[21] Thus constitutional government grounded in democratic principles is the persistent aspiration, the "unreal." But the "real" Latin America continually comes to the fore in the form of rigged elections, caudillos, and the general repression of individual rights.

In contemplating the dualisms of "real" and "unreal," fact and theory, achievement and aspiration, scholars as well as political figures directly concerned with Latin America tend to agree that the hiatus between adopted democratic theory and contrary practices must be filled in. They have assumed that it is possible to join the "real" (the sordid reality of Latin American politics) with the "unreal" (the adopted democratic ideology) and that this juncture will inevitably lead toward democracy.[22]

This essay will examine some of these assumptions as they pertain to Spanish America. It will develop the thesis that there exists but a single Spanish American tradition, and that this tradition exhibits a rather close unity between theory and practice. While scholars may certainly have differing interpretations of just what comprises the tradition, they cannot seriously maintain that Spanish American governments are any more schizophrenic than are those of the United States, France, or any other nation of the Western world. Spanish Americans in 1810 did not sever themselves from the ideals and practices of their colonial past or reject three hundred years of Spanish colonial institutions. The assumption that the patriot leaders bor-

[21] One must agree with Albert Hirschman that "this permanent and painful 'collision between theory and practice, between words and action, between content and form' has been described by virtually all observers of the Latin American scene. . . ." *Latin American Issues*, 6. Blanksten is possibly the most precise exponent of this view in his contrast of the "real" constitutions and their written constitutions arguing that "the real constitutions of the various states of the area originated in their own experiences, not only during the colonial period but also since the achievement of independence. Yet few aspects of this experience have been written into Latin American constitutions." Blanksten, "Constitutions," 228. The same theme, with a slightly different vocabulary, is developed by J. Lloyd Mecham, "Latin American Constitutions: Nominal and Real," *The Journal of Politics*, XXI (May 1959), 258-275.

[22] Scholars in this country in large part owe this hope to a judgment which they make about the proclivities of Latin American authors. As an example one might cite the United States political scientist who states that Latin American constitutions "contain provisions expressing faith in the theory of political democracy," and adds "from independence to the present time, Latin American writers, mainly lawyers, have produced literally thousands of volumes recognizing the theory of political democracy. Every country has so many such books that it would require a bibliography of many pages to list them." William S. Stokes, *Latin American Politics* (New York, 1959), 269-270.

rowed the bulk of their ideological concepts is subject to question. Many scholars hold that they primarily reflected French or North American liberal thought, despite what Spanish Americans themselves asserted in the early 1800s. Political tracts of the independence era show that their authors possessed a remarkable genius for adopting the language, style, and enthusiasm of the age while retaining their own non-democratic heritage almost intact. Although some of the ideas utilized by the republicans had their genesis in French and North American eighteenth-century political thought, these foreign sources provided the patriots with a great catalog of ideas from which to choose. One may readily admit that the Spanish Americans referred extensively to these sources. Through selection, deletion, and rewriting it was quite possible, however, to appropriate a considerable amount of non-democratic ideology from this ideological pool. An analysis of twenty-seven of the first constitutions written throughout Spanish America from 1810 through 1815 will demonstrate the discrepancy between Spanish American political thought and allegedly borrowed ideas.[23]

[23] Provincial as well as national constitutions have been referred to in the belief that such a broad scope would give the best perspective upon the Spanish American mind during the formative years. Sources used for this study are as follows: On Argentina, "Reglamento orgánico de 22 de octubre de 1811"; "Estatuto provisional del gobierno superior de las Provincias Unidas del Río de la Plata a nombre del Sr. D. Fernando VII (1811)"; and "Estatuto provisional para dirección y administración del estado (1815)," all of which are found in Faustino J. Legón and Samuel W. Medrano, *Las constituciones de la República Argentina* (Madrid, 1953). The three Chilean constitutions: "Reglamento de la autoridad ejecutiva (1811)"; "Reglamento constitucional provisional (1812)"; and the "Reglamento para el gobierno provisional (1814)"; are contained in *Sesiones de los cuerpos legislativos de la República de Chile, 1811 a 1845* (Santiago, 1887), I. Colombian documents referred to are: "Constitución de Cundinamarca (1811)"; "Acta de federación de las Provincias Unidas de la Nueva Granada (1811)"; "Constitución de la República Tunja (1811)"; "Constitución del Estado de Antioquia (1812)"; "Constitución de la República de Cundinamarca (1812)"; "Plan de reforma o revisión de la Constitución de la Provincia de Cundinamarca (1815)"; "Constitución del Estado de Mariquita (1815)"; and "Constitución provisional de la Provincia de Antioquia (1815)." These documents are collected in Manuel Antonio Pombo and José Joaquín Guerra, *Constituciones de Colombia* (Bogotá, 1951), I and II. Four Colombian charters referred to but not found in this work are: "Acta de Constitución del nuevo gobierno de la Provincia del Socorro," in Horacio Rodríguez Plata, "10 de Julio de 1810," *Boletín de historia y antigüedades*, XXVIII (December 1941), 1073-1077; *Constitución del Estado Libre de Neiva, 1815* (Bogotá, 1914); *Reglamento para el gobierno provisorio de la Provincia de Pamplona* (Tunja, 1815); and "Proyecto de la Constitución de la Provincia de Popayán (1814)," reprinted in *Boletín histórico del Valle*, No. 49 (1938), 35-60. On Ecuador: "Artículos del pacto solemne de sociedad y unión entre las provincias que forman el Estado de Quito," reprinted in *Museo histórico*, IX (1957), 85-103. The Mexican "Constitución de Apatzingán, 24 de octubre de 1814," is located in *Constituciones:*

Eighteenth-century political liberalism was almost uniformly and overwhelmingly rejected by Spanish America's first statesmen. Though there is wide variety in the form and content of the early charters, not one could be construed as embodying constitutional liberalism, however loosely that term may be defined. Spanish American constitutions of this early period all began with a view of human nature which paralleled that of our founding fathers. Man was seen as essentially Hobbesian. Experience had taught that one must "protect the public and individual liberty against the oppression of those that govern." Upon this premise they built their constitutional order. Essentially pessimistic, they sought to regularize men's activities and to eliminate the vicissitudes and uncertainties of politics.

The answer which they gave to the problem of order, however, was vastly different from that of Anglo-Saxon constitutionalists. Unlike them the Spanish Americans had no faith whatever in the possibility of neutralizing evil through institutional arrangements. At the heart of our own constitutionalism is the conviction, stated by Kant, "that it is only necessary to organize the state well (which is indeed within the ability of man) and to direct these forces against each other in such wise that one balances the other in its devastating effect, or even suspends it. Consequently the result for reason is as if both selfish forces were nonexistent. Thus man, although not a morally good man, is compelled to be a good citizen."[24] This assertion presupposes a confidence in the instrument which one has created, a belief that a particular type of organization or deployment of men will actually neutralize evil.

The Spanish Americans displayed none of this confidence. Their constitutionalism is identified with both Greek and Christian thought and separated from Machiavelli and from those who followed in one crucial respect—it was based upon a fundamental relationship between state-craft and soul-craft. The drafters of Spanish American constitutions were unable or unwilling to make a distinction between external conduct and the goods of the soul. Thus, at the center of

a Collection of Constitutions of Mexico and Spain, 1811-1843 (Bancroft Library, University of California). Venezuelan provincial charters: "Constitución de la Provincia de Caracas (1812)"; "Constitución de la Provincia de Mérida (1811)"; "Constitución de la Provincia de Barcelona (1812)"; "Constitución de la Provincia de Trujillo (1811)"; and the "Plan de gobierno para la Provincia de Barinas (1811)." These are found in Biblioteca de la Academia Nacional de la Historia, *Las constituciones provinciales* (Caracas, 1959). The "Constitución Federal de 1811" of Venezuela may be referred to in José Gil Fortoul, *Historia constitucional de Venezuela* (3rd ed. Caracas, 1942), II, 370-415.

[24] From "Eternal Peace" in Carl J. Friedrich (ed.), *The Philosophy of Kant* (New York, 1949), 453.

these documents is the conviction that only the morally good man could be a good citizen. "Consequently, he who is not a good son, good father, good friend, good husband, good master, good servant, cannot be a good citizen."[25] They could not perceive politics as the satisfaction of interests in the style of Locke. Politics to them was the achievement of the common good. And this, in the tradition of Aquinas, had no automatic connection with private interest.

Subscribing to such a view, as one might suspect, they were also necessarily committed to other conclusions. If the rules and procedures of constitutional government could not be trusted to defeat self-interest, it seemed to follow that good government depended upon the recruitment of good men. The province of Barinas, Venezuela, provided in its *Plan de Gobierno* that officials must be of "known virtue, talent, and patriotism, proven in the community."[26] In Argentina, for another example, we find that the election of the executive "will fall of necessity on a person of known patriotism, integrity, public repute, good habits, and aptitude for the office."[27]

But of course, there could be no surer means of obtaining good men than by sanctifying the electoral process itself. Thus in order to thrust self-interest out of men's minds and thereby ensure the moral purity of the newly elected, some constitutions went so far as to provide that midway in the elections all of the voters should go as a group to attend Mass and hear a sermon: "For the success of the elections, divine help must be sought, and to this effect, the electors united in cabildo before voting will proceed to the church. They will hear a Mass of the Holy Spirit conducted by the priest, who will then intone the hymn *Veni Creator*, and will briefly exhort the electors to justice and impartiality in the election."[28] By such electoral procedures, it was hoped that "those that are to vote will put aside all passion

[25] *Mérida* (1811), Capítulo 11, Art. 10. See also *Trujillo* (1811), Título I, Cap. 1; *Estatuto* (Argentina, 1815), Capítulo VI, Art. V; *Constitución Federal de 1811* (Venezuela), Capítulo VIII, Art. III, par. 4; *Antioquia* (1812), Título I, Sec. 3, Art. 4; *Antioquia* (1815), "Deberes del Ciudadano," Art. 4; *Cundinamarca* (1811), Título XIII, Art. 4; *Cundinamarca* (1812), "De los Derechos . . . ," Art. 28; *Mariquita* (1815), Título II, Art. 6; *Neiva* (1815), "Deberes del Ciudadano," Art. 37; *Pamplona* (1815), Art. 147; *Tunja* (1811), Sec. I, Cap. II, Art. 3.

[26] *Barinas* (1811), Art. 9.

[27] *Estatuto* (1815), Sec. 3, Cap. I, Art. 2.

[28] *Cundinamarca* (1812), Título XI, Art. 11. The Mexican Constitution of Apatzingán, Sec. II, Cap. V, Art. 69, provides: "The citizen electors and the president together, will pass to the principal church where there will be a solemn mass of the Holy Spirit, and the priest or other ecclesiastic will give a discourse relevant to the circumstances." Most constitutions, however, only asked that the clergy be on hand to supervise the elections.

and interest, friendship, etc., and will choose persons of honesty, of the best possible education, and of good public repute.''[29]

Since most of the charters begin with a declaration of rights, commentators have assumed the existence of premises similar to those held in the United States and France. However, there is reason to suspect this conclusion. Spanish Americans, through a confusion in terminology, seem to have equated modern natural right doctrine with their own natural law tradition. The apparent similarities, perhaps coupled with a proclivity to perceive only those principles which the commentators wished to underscore, tended to hide from view the quite different assumptions underlying each constitutional system.

The most striking example of this confusion is the fact that a number of the constitutions provided that in their schools children should be taught the fundamentals of Roman Catholicism and some version of The Rights of Man and of the Citizen.[30] The writers do not seem to have recognized that the first presupposed a hierarchical view of society, the second an egalitarian view. They wished, at the same time, to preserve the past and to embrace the new. In this they saw no conflict. Thus, in framing their bills of rights, they found no contradiction in almost uniformly establishing Catholicism as the state religion and prohibiting the free exercise of all other ''cults'';[31] abridging, if not abolishing freedom of speech and of the press;[32] and in some cases even denying the right of peaceable assembly[33] or

[29] *Mérida* (1811), Cap. II, Art. 10.

[30] See as examples the following: *Popayán* (1814), Art. 193; *Antioquia* (1812), Título IX, Art. 1; *Cartagena* (1812), Título XII, Art. 2; *Tunja* (1811), Cap. VI, Sec. 6, Art. 1; *Cundinamarca* (1811), Título XI, Art. 3; *Cundinamarca* (1812), Título X, Art. 3.

[31] *Estatuto* (Argentina, 1815), Cap. II, Art. 1 and 2; *Reglamento* (Chile, 1812), Art. 1; *Acta de Federación* (Colombia, 1811), Art. 4 and 42; *Antioquia* (1812), Título I, Sec. I, Art. 1, Título III, Sec. I, Art. 8; *Antioquia* (1815), Título I, Art. 7; *Cartagena* (1812), Título III, Art. 1 and 2; *Cundinamarca* (1811), Título I, Art. 1, Título II, Art. 1 and 2; *Cundinamarca* (1812), Título I, Art. 1 and 4; *Mariquita* (1815), Título III, Art. 1 and 2; *Neiva* (1815), Título III, Art. 1 and 2; *Popayán* (1814), Art. 1 and 12; *Tunja* (1811), Sec. I, Cap. III, Art. 7; *Artículos* (Ecuador, 1812), Art. 4; *Apatzingán* (1814), Sec. I, Cap. I, Art. 1; *Constitución Federal de 1811* (Venezuela), Cap. I; *Barcelona* (1812), Título 14, Art. 1; *Barinas* (1811), Art. 16; *Caracas* (1812), Art. 304; *Trujillo* (1811), Título I, Cap. 1 and 2.

[32] *Estatuto* (Argentina, 1811), Art. 2-10; *Reglamento* (Chile, 1812), Art. 23; *Antioquia* (1812), Título X, Art. 12-15; *Cartagena* (1812), Título II, Art. 14; *Cundinamarca* (1811), Título I, Art. 16; *Cundinamarca* (1812), Título II, Art. 8; *Mariquita* (1815), Título I, Art. 9 and 10; *Pamplona* (1815), Art. 115; *Popayán* (1814), Art. 174; *Artículos* (Ecuador, 1812), Art. 20; *Constitución Federal de 1811* (Venezuela), Cap. 8, Art. 2, par. 31; *Apatzingán* (1814), Sec. I, Cap. V, Art. 40.

[33] *Antioquia* (1812), Título X, Art. 13; *Cartagena* (1812), Título I, Art. 26,

of presenting collective petitions to the government.[34]

But the contrast with modern Western constitutionalism is perhaps sharpest when we consider the matter of limitations upon power. Carl Friedrich defines a constitutional government as one based upon "the establishment and maintenance of effective restraints upon political and more especially upon governmental action."[35] And he considers these restraints to be rooted primarily in a division of power —between legislative, executive, and judicial and/or between central and local government. The notion of a limitation upon power was not new to the eighteenth century, but was firmly rooted in the medieval tradition. Yet, as Charles H. McIlwain has affirmed, there is no medieval doctrine of a separation of powers as the basis for limitation.[36]

Spanish Americans in 1810 were clearly thinking more in medieval terms. Limitation for them was not equivalent to separation of powers, although the constitutions formally provided for separation. A close reading shows that almost without exception overwhelming power was finally vested in one body. While others were more subtle, a Colombian constitution states with amazing frankness: "Only the Legislative Power has the authority to interpret, amplify, limit, or comment on the laws, always adhering, however, in these matters to the formalities that are required and which are prescribed for their establishment. The Executive and Judicial Powers must follow them to the letter and consult the Legislative Body in case of doubt."[37]

Restraints were not procedural but moral. Following the Romans,

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Título XIII, Art. 10; *Cundinamarca* (1812), Título XII, Art. 6; *Pamplona* (1815), Art. 161; *Popayán* (1814), Art. 186; *Mariquita* (1815), Título XXIII, Art. 11 and 13; *Neiva* (1815), "Deberes del Ciudadano," Art. 43; *Constitución Federal de 1811* (Venezuela), Cap. 9, par. 15 and 17; *Barcelona* (1812), Título 14, Art. 14; *Mérida* (1811), Cap. 12, Art. 14; *Mérida* (1811), Cap. 12, Art. 9 and 12; *Trujillo* (1811), Título 9, Cap. 10.

[34] *Cartagena* (1812), Título XIII, Art. 11, Título I, Art. 27; *Cundinamarca* (1811), Título XIV, Art. 6; *Mérida* (1811), Cap. 12, Art. 10; *Constitución Federal de 1811* (Venezuela), Cap. 8, Art. 2, par. 32-34, Cap. 9, par. 16.

[35] Carl J. Friedrich, *Constitutional Government and Democracy* (New York, 1950), 123.

[36] Charles H. McIlwain, *Constitutionalism: Ancient and Modern* (Ithaca, 1958), 142.

[37] *Cundinamarca* (1811), Título VI, Art. 20. Similar views are expressed in the Mexican constitution of *Apatzingán* (1814), Sec. II, Cap. VIII, Art. 106; *Reglamento* (Argentina, 1811), Sec. 3, Art. 5; *Antioquia* (1815), Título III, Sec. I, Art. 10, Título XV, Art. 10; *Antioquia* (1812), Título III, Sec. I, Art. 11; *Cartagena* (1812), Título VI, Art. 15; *Cundinamarca* (1811), Título VI, Art. 4; *Neiva* (1815), Título IV, Art. 5; *Tunja* (1811), Sec. I, Cap. III, Art. 10 and 22; *Pamplona* (1815), "Del Cuerpo Legislativo," Art. 21; *Reglamento* (Chile, 1811), Art. 1.

the makers of Spanish American constitutions were charmed by the possibility of establishing a government based upon virtue. In some cases they provided for a body of moral censors to interpret this principle: "there will be a Senate of censure and protection . . . in order to sustain this Constitution and the rights of the people, to the end that either officially or through requirement by any citizen, any infraction or usurpation of all or each one of the three Powers—Executive, Legislative and Judicial—that is against the tenor of the Constitution may be claimed."[38] In other constitutions it was left to moral education, sermons before elections, and elaborate tattle-tale procedures to hold men to a virtuous course of action.[39]

Political responsibility in a constitutional democracy is primarily exacted through the electoral process. These early constitutions by contrast demonstrated their distrust of elections by turning to a colonial practice, the residencia. Under this system government officials were subjected to a judicial inquiry at the end of their term of office. Anyone could make a charge, and it would be duly investigated. The sweeping breadth of possible accusation is suggested by the Mexican constitution of 1814 which provided prosecution "for the crimes of heresy and apostasy, and for crimes of state, especially for those of misfeasance, extortion, and the squandering of public funds."[40] Thus

[38] *Cundinamarca* (1811), Título I, Art. 9. In addition see especially *Estatuto* (Argentina, 1815), Sec. VII, "Estatuto Provisional de la Junta de Observación," Art. VII, *Barinas* (1811), Art. 1. In many of the constitutions a *Senado Conservador* was established to carry out this censorial function.

[39] One method of holding the executive in check was to appoint two "advisors" to stand at his elbow. Like the little boy's admonition that "I'll tell if . . . ," when the advisors "note that the president wishes to take or is taking measures subversive to this Constitution, it is not enough simply to cover their responsibility by a contrary opinion, but under this very responsibility they are obliged to declare that they will give an account to the Chamber of Representatives, and if the president does not desist, they will present it at the earliest moment if the legislature is in session." *Antioquia* (1812), Título IV, Sec. I, Art. 4. Another procedure used was to direct the executive to watch over all members of the three branches of government "in order that each one may fulfill the obligations of his position. In case of notorious infraction, he will accuse the members of the powers before the Senate. . . ." *Mariquita* (1815), Título XI, Art. 14.

[40] *Apatzingán* (1814), Sec. II, Cap. III, Art. 59. See also *Reglamento* (Chile, 1811), Art. 16; *Reglamento* (Chile, 1812), Art. 11; *Antioquia* (1812), Título III, Sec. 2, Art. 34-37, Título IV, Sec. 2, Art. 2; *Antioquia* (1815), Título III, Sec. 3, Art. 1; *Cartagena* (1812), Título VIII, Sec. I, Art. 12; *Cundinamarca* (1811), Título I, Art. 10, Título V, Art. 39; *Cundinamarca* (1812), Título II, Art. 5 and 31, Título VII, Art. 1-12; *Cundinamarca* (1815), Art. 118 and 119; *Mariquita* (1815), Título XI, Art. 9, Título XIX, Art. 1; *Neiva* (1815), Título VI, Art. 1-14; *Pamplona* (1815), Art. 35 and 79; *Popayán* (1814), Art. 62; *Tunja* (1811), Sec. I, Cap. II, Art. 9 and 10; *Artículos* (Ecuador, 1812), Art. 11 and 26; *Barinas* (1811), Art. 15; *Mérida* (1811), Cap. III, Art. 36; *Trujillo* (1811), Título 2, Cap. 8, Título 4, Cap. 6.

not the hope of reelection but the fear of legal action was believed to keep men moral while they exercised political responsibility.

Constitutional government in early Spanish America can be set in relief by a consideration of *Federalist* paper No. 10. Madison had declared that "there are two methods of curing the mischiefs of faction. The one, by removing its causes; the other, by controlling its effects." But only a brief examination of the proposition led him to conclude that the "*causes* of faction cannot be removed; and that relief is only to be sought in the means of controlling its *effects.*" The Spanish Americans soon came to the opposite conclusion—they believed that political diversity could be checked only by dealing with its causes. In pursuing this assumption to its logical conclusion, they fulfilled Madison's requisites amazingly well. He had suggested two methods by which the causes of faction might be removed, "the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests."

Certain provisions which tended to destroy liberty have already been described. For example, the establishment of a state church and the eradication or curbing of some basic political freedoms have been noted. But at the very core of the early constitutions was the attempt to achieve a uniformity of opinion, an attempt grounded in the belief that similar passions and interests were not only desirable but possible. The basis of this assumption was derived from a near unanimity in religious matters: "Since there can be no happiness without civil liberty, nor liberty without morality, nor morality without religion, the government is to look upon it (religion) as the strongest bond of society, its most precious interest, and the first law of the Republic."[41] This unanimity in religion was held to be a natural course of affairs and one which could be readily extended to other parts of the socio-political order. In the negative sense, no freedoms were allowed which might be contrary to good customs, either public or private.[42] On the positive side, a concerted effort was made to achieve unity through an active policy of political education. In Argentina, by way of illustration, a weekly news-sheet, the *Censor*, was to be established. Its principal object was "to reflect on all the procedures and unjust acts of the public functionaries and abuses in

[41] *Neiva* (1815), Título III, Art. 3. The Mexican constitution of *Apatzingán* (1814) stated: "The quality of citizenship is lost for crimes of heresy, apostasy, and *lesa-nación.*" Sec. I, Cap. III, Art. 15.

[42] See for example *Artículos* (Ecuador, 1812), Art. 20; *Caracas* (1812), Art. 187 and 282; *Tunja* (1811), Sec. I, Cap. III, Art. 8; *Trujillo* (1811), Título 5, Cap. 1; *Barcelona* (1812), Título 7, Art. 6, par. 9.

the country, showing the people their rights and true interests."[43] No private educational institutions were allowed, and state schools were usually to be minutely supervised by the national congresses. Finally, the concluding statements of a constitution itself were often an injunction toward political unanimity: "Read it, study it, and make your children learn it. May the Constitution be your second catechism. Sustain it with your zeal and vigilance. . . ."[44]

Although one might continue to enumerate these rather startling constitutional provisions, perhaps enough has been said to bring into question the conventional view that Spanish America engaged in wholesale borrowing of a liberal foreign ideology in its early governance. No attempt has been made to give a consistent outline of the political philosophy of Spanish America during the independence period. Rather, the goal has been to demonstrate that the preponderate weight of its political thought was derived from sources other than modern Western constitutional philosophy, broadly construed. The purpose has been to cast doubt upon the current notion that Spanish America lives as a split personality, ever striving to unify itself in the direction of its democratic superstructure adopted in 1810. This is a prescriptive myth. Democratic theory was not embraced at that time. The forms of government bore certain similarities to other constitutional democracies, and at times the language even sounded familiar, but the content was in many basic ways at the opposite pole.

The second argument—that the men who attempted to implant this allegedly alien type of government failed because they lacked political preparation—is also open to question. The founding fathers did have wide political experience prior to their wars for independence. During the first five years of the movement for independence in northern South America approximately twenty constitutional charters were drawn up in the provinces and capitals of the old viceroyalty of New Granada—present-day Ecuador, Colombia, Venezuela, and Panama.[45] A list of the men who signed these fundamental documents may be representative of all Spanish America. Extensive research in the colonial archives of New Granada indicates the degree to which these men were politically active prior to the independence movements.[46] Of the 468 men who signed these early charters, no few-

[43] *Estatuto* (1815), Sec. 7, Cap. II, Art. VI.

[44] *Cartagena* (1812).

[45] For constitutional sources see the appropriate countries in footnote number 23.

[46] A complete listing of the documentation is not feasible. I cite here only some of the more important published works. Concerning the signatories of Ecuador see the following: Camilo Destruge, *Álbum biográfico ecuatoriano*

er than 303 had served in the Spanish colonial government before the wars of independence began. Among these were 92 lawyers, 100 members of cabildos, 107 in lesser bureaucratic positions, 28 militiamen, and 104 clergymen.[47]

Not only lawyers, but clergymen and militiamen as well were politically influential in colonial politics. To appreciate the import of the clerical figures one should recall that colonial Spanish America had operated under an integrated church-state governmental bureauc-

(Guayaquil, 1904); Roberto Andrade, *Historia del Ecuador* (Guayaquil, n.d.); Gustavo Arboleda, *Diccionario biográfico y genealógico del antiguo Departamento del Cauca* (Bogotá, 1962); Manuel de Jesús Andrade, *Ecuador. Próceres de la independencia* (Quito, 1909); Gustavo Arboleda, *Diccionario biográfico de la República del Ecuador* (Quito, 1910); B. Pérez Marchant, *Diccionario biográfico del Ecuador* (Quito, 1928); I. Toro Ruiz, *Más próceres de la independencia* (Latacunga, 1934).

On Colombian signatories see José María Restrepo Sáenz, *Neiva en la independencia* (Bogotá, 1919); José Restrepo Sáenz, *Gobernadores y próceres de Neiva* (Bogotá, 1941); Gustavo Arboleda, *Diccionario biográfico y genealógico*; Joaquín Ospina, *Diccionario biográfico y bibliográfico de Colombia* (Bogotá, 1927-1939); José P. Urueta, *Los martires de Cartagena* (Cartagena, 1886); M. Leonidas Scarpetta and Saturnino Vergara, *Diccionario biográfico de los campeones de la libertad de Nueva Granada, Venezuela, Ecuador i Perú* (Bogotá, 1879); José María Baraya, *Biografías militares* (Bogotá, 1874); Roberto Jaramillo Aragón, *El clero en la independencia* (Antioquia, 1946); Ramón C. Correa, ... *Monografías* (Tunja, 1930); José Joaquín García, *Crónicas de Bucaramanga* (Bogotá, 1896); José María Restrepo Sáenz, *Biografías de los mandatarios y ministros de la Real Audiencia, 1671 a 1819* (Bogotá, 1952); Ricardo Castro, *Páginas históricas colombianas* (Medellín, 1912); José P. Urueta, *Cartagena y sus cercanías* (Cartagena, 1912); José María Restrepo Sáenz, *Gobernadores de Antioquia, 1579-1819* (Bogotá, 1931); José María Restrepo Sáenz, *Constituyentes de Tunja en 1811* (Bogotá, 1913); Roberto María Tisnes J., C.M.F., *Capítulos de historia zipaquireña, 1480-1830* (Bogotá, 1956).

On Venezuelan signatories see Ramón Armando Rodríguez, *Diccionario biográfico, geográfico e histórico de Venezuela* (Madrid, 1957); Héctor García Chuecos, *Estudios de historia colonial Venezolana* (Caracas, 1937); Héctor Parra Márquez, *Historia del Colegio de Abogados de Caracas* (Caracas, 1952); Vicente Dávila, *Próceres trujillanos* (Caracas, 1921); M. Leonidas Scarpetta, *Diccionario*; Manuel Landaeta Rosales, *Sacerdotes que sirvieron a la causa de la independencia de Venezuela, de 1797 a 1823* (Caracas, 1911); Antonio Ramón Silva, *Recuerdo histórico. Patriotismo del clero de la diócesis de Mérida* (Mérida, 1911); Andrés F. Ponte, *La Revolución de Caracas y sus próceres* (Caracas, 1918); *Calendario manual y guía universal de forasteros en Venezuela para el año 1810* (Caracas, 1959); Ramón Azpurúa, *Biografías de hombres notables de Hispano-América* (Caracas, 1877); Vicente Dávila, *Próceres meridenos* (Caracas, 1918).

[47] Because of overlapping of functions the numbers given add up to more than 303. I do not pretend that such totals are complete. For example, no information whatever regarding the background of some seventy-eight of the original 468 men has been found. One may be certain, however, that the information is on the conservative side—further research could only show further involvement. It would be an impossible task to read all of the relevant documents available on Spanish colonial administration in the years immediately preceding the Wars for Independence in the three nations.

racy. Because of certain papal bulls, Spanish kings near the beginning of the sixteenth century were granted the patronato real in perpetuity. Thus the clergy came to serve at the pleasure of the kings of Spain rather than directly under the papacy. They soon became perhaps the most politically minded body of men in the Spanish bureaucracy.[48]

Almost by definition lawyers were part of the political structure of Spanish colonial government. In order to practice law before the royal audiencia, they must have first received a degree in law from one of the state administered colleges. Here they were educated in Roman civil law and canon law as well as the *Leyes de Indias*. In addition, they were obliged to serve a four-year apprenticeship to another lawyer. This training gave them a thorough grounding in the intricacies of colonial public administration. At the end of the designated period of preparation they were required to pass an oral examination and then more often than not they became an integral part of the Spanish bureaucracy.[49] Frequently those following a military career were also deeply involved in political matters. It was by no means uncommon for them to be named to civil as well as military posts. Although as a group they tended to be less educated than the lawyers and clergy, normally they too had some formal education. Training in the *colegios* was geared toward the creation of future political elites, and those who chose a military career felt themselves to be a part of that elite group much as the lawyers and the clerics. Obviously the founders were experienced in the philosophy and intricacies of colonial government. The question is not only *how much* experience but *what kind* of experience they had. It is possible that the "failure" of Spanish American governments in 1810 as in 1966 is really not a failure to achieve democracy, but a triumph for the ideals and aspirations which were theirs since colonial days.

One must conclude, then, that neither lack of prior experience nor a borrowed political ideology can explain the failure of Spanish Americans to establish viable democracy as we know it. Rather, it would seem that they consciously chose to implement a system of government which

[48] However, I do not wish to convey the impression that clerical and secular officials always worked together harmoniously during the colonial days. A bibliography of the colonial church-state relationship may be found in Fredrick B. Pike, *The Conflict Between Church and State in Latin America* (New York, 1964), 233-235.

[49] Read, for example, the "Primeros estatutos del Colegio de Abogados de Caracas," in Héctor Parra Márquez, *Historia del Colegio de Abogados* (Caracas, 1952) 337-360; or "Constituciones y Estatutos que se han de observar por el Ilustre Colegio de Abogados de esta Ciudad de Lima," in Aníbal Gálvez, *El Colegio de Abogados de Lima* (Lima, 1915), 179-217.

in both theory and practice had much in common with their tradition. If this is the case, one may well hesitate before discarding contemporary Spanish American constitutionalism and philosophy as irrelevant to the "real" political process. We cannot operate upon the facile assertion that Spanish Americans have long suffered from the effects of their vain aspirations toward liberal constitutionalism. The revised premises raise many questions. Central to our consideration, however, is whether those peoples still aspire to the type of "democracy" envisaged in 1810.

A brief glance at contemporary Spanish American constitutions elicits some striking parallels to those first charters of 1810—and some amazingly non-liberal, non-democratic propositions. As constitutions have come and gone during the past century and a half, the philosophic beliefs of the documents have become at times clouded and less explicit. Nevertheless, the direction of thought has maintained a most significant continuity since 1810. Throughout these years the vision has been essentially non-democratic; it still is.

For convenience let us assume the widest possible definition of democratic theory—that it "is concerned with processes by which ordinary citizens exert a relatively high degree of control over leaders."[50] Applying this definition to contemporary Spanish American constitutions, one can not help concluding that they are essentially concerned with the opposite—that is, the processes by which leaders may exert a relatively high degree of control over ordinary citizens. From this generalization it follows that there is a direct relationship between theory and practice in contemporary Spanish America, not a dichotomy of "real" and "unreal." The reality of Spanish American politics is supported at every step by very real constitutional provisions which authorize, legitimize, and enshrine undemocratic processes and continue the tradition of 1810. Each of the present-day constitutions denies the proposition that men have certain unalienable rights. Instead rights in Spanish America are constitutionally qualified and relative—that is, no right is allowed to stand as a point of unvarying reference. Necessity of State is a recognized doctrine.

One of the major qualifications to individual rights is that of public order: "The free exercise of the rights which this Constitution establishes is guaranteed, without other limitations than those which may derive from the necessity of maintaining public and social order."[51] Another qualification of basic rights, often directed at the

[50] Robert A. Dahl, *A Preface to Democratic Theory* (New York, 1956), 3.

[51] The constitutions cited below are those in effect as of June, 1966. *Guatemala,* Art. 44. See also *Bolivia,* Art. 6.c; *Chile,* Art. 10, par. 2; *Colombia,* Art. 42

practice of religion, is that of good morals, or good customs. Costa Rica will not impede worship that "is not opposed to universal morality or good customs," Panama demands of all religions "respect for Christian morality," while the constitution of Nicaragua insures the free exercise of all religions that are "not opposed to morality, good customs, or public order."[52]

One may see in these qualifications the need for some body with the authority to define these relative rights in practice. Spanish Americans have provided such a body in Congress. Indeed, this is perhaps the major function of their legislative bodies.

The bastion and safeguard of rights of religion, speech, and press guaranteed by the First Amendment in our Constitution is not the statement of these rights *per se*, but the words: "Congress shall make no law . . . respecting . . . , prohibiting . . . , or abridging. . . ." them. With this prohibition the rights take on a fundamental, unchangeable personality. The law-making body is forbidden to make rules in this area. A key to understanding Spanish American government by contrast is the recognition that there is nothing in the way of rights or privileges that may not be constitutionally abridged by passage of a law. The constitution of Chile states, for example: "Only by virtue of a law is it possible to restrain personal liberty and freedom of the press or to suspend or restrict exercise of the right of assembly. . . ."[53] An accepted view is that "everyone has the right of association for lawful ends, in conformity with the law."[54] In place of the word "association," one might equally well substitute "religion," "petition," or "free speech" without misconstruing the philosophy of these constitutions.[55] Most significant is that these rights must be exercised "in conformity with the law." Hence, contrary to our contention that "Congress shall make no law" is the Spanish American view that Congress *must* make laws on these matters. A short review of the congressional debates in those countries would show just how often

and 44; *Costa Rica*, Art. 28; *Ecuador*, Art. 168; *Honduras*, Art. 87; *Dominican Republic*, Art. 8, par. 7; *México*, Art. 6 and 7; *Panamá*, Art. 38 and 40; *Paraguay*, Art. 3; *Nicaragua*, Art. 110; *Venezuela*, Art. 65.

[52] *Costa Rica*, Art. 76; *Panamá*, Art. 35; *Nicaragua*, Art. 110. Essentially the same proposition is stated in the following: *Chile*, Art. 10, par. 2; *Colombia*, Art. 53; *Dominican Republic*, Art. 8, par. 5; *Ecuador*, Art. 168; *El Salvador*, Art. 158; *Guatemala*, Art. 66; *Honduras*, Art. 88; *Paraguay*, Art. 3; *Venezuela*, Art. 65.

[53] *Chile*, Art. 44.

[54] *Venezuela*, Art. 70.

[55] By way of example see: *Chile*, Art. 10, par. 3; *Costa Rica*, Art. 29; *Ecuador*, Art. 187, par. 11; *Guatemala*, Art. 65; *Honduras*, Art. 85; *Nicaragua*, Art. 113; *Paraguay*, Art. 31; *Perú*, Art. 63 and 66; *Uruguay*, Art. 29; *Venezuela*, Art. 66; *Argentina*, Art. 14; *Panamá*, Art. 39.

these questions arise and how much time is devoted to discussing the relations between church and state, the right of groups to assemble, the right to form associations, and the extent to which free speech will be guaranteed. Truly, these rights are a relative matter in that area of the world.

To recapitulate: first, rights are not unalienable in Spanish America; and second, congressional bodies are charged with the definition and qualification of these rights. Yet a third premise must be mentioned—the constitutional provision whereby the basic rights may be set aside altogether, usually by the chief executive. For example, in the Dominican Republic a state of siege may be declared "in the event of disturbance of the public peace or public disaster," and power is granted "to suspend, wherever the foregoing exist and for their duration, the human rights proclaimed. . . ."[56] Similar provisions appear in the other Spanish American constitutions. Again, it may be noted, public order or reason of state is an organizing concept for these governments. Rights are constitutionally qualified by their effect upon public order and may be entirely abridged when there is a threat to that order. We have here a clear indication of the possibilities for our "reverse" theory of democracy, i.e., the process by which leaders exert control over ordinary citizens. When rights of speech, assembly, and press are curtailed, the right of political opposition is in effect being quashed. For this reason the "ins" dominate the "outs": the constitution justifies the procedure.

Spanish American governments also differ from that of the United States in the matter of restraint upon power. As in the colonial and independence eras, the concept of limitation upon power is clear, while the notion of a separation of power to achieve this limitation is not a viable doctrine.[57] The General Assembly of Uruguay is competent "to interpret the Constitution"; and the Bolivian Legislative Power may "enact laws, repeal, amend, or interpret them." The charter of Ecuador is more explicit: "Congress alone has jurisdiction to declare whether a law or legislative decree is or is not unconstitutional."[58] Thus do congresses move within the judicial sphere. But the President's sweeping powers under the state-of-siege doctrine dem-

[56] *Dominican Republic*, Art. 38, par. 7.

[57] Four of the constitutions suggest that the branches of government "collaborate harmoniously in the realization of the aims of the State." *Nicaragua*, Art. 13; *Panamá*, Art. 2; *Colombia*, Art. 55; and *Venezuela*, Art. 118.

[58] *Uruguay*, Art. 85; *Bolivia*, Art. 57, par. 1; and *Ecuador*, Art. 189. See also *Colombia*, Art. 76, par. 1; *Ecuador*, Art. 53, par. 21; *El Salvador*, Art. 47, par. 14; *Costa Rica*, Art. 121, par. 1; *Honduras*, Art. 181, par. 4; *Perú*, Art. 26 and 123, par. 4.

onstrate that, as in the charters established soon after independence, these contemporary constitutions do not seriously contemplate a restrained use of power through the concept of tripartite government.

How then may limitation upon power be attained? Here Spanish Americans also rely on their colonial and independence traditions. They attempt to recruit qualified men in the hope, often vain, that good government will result. Spanish Americans are gradually turning from this emphasis to a more up-to-date focus upon the recruitment of men with education, training, and capacity. In practice, however, the traditional and the modern approach are almost indistinguishable in that they subordinate the supposed internal merits of the individual to public, external restraint.

Illustrating the more traditional Spanish American view of restraint, the Paraguayans seek a president who can "meet the moral and intellectual requirements of his office"; El Salvador requires its presidents to be "of well known morality and education." Nicaragua looks for a candidate for General Treasurer who is "of good reputation." Venezuela seeks school teachers "of recognized morality."[59]

The present Spanish American theory of limitation upon judicial power also clearly fits the definition of Latin American "democracy" suggested in this essay. Contemporary constitutions perpetuate a favorite practice of colonial and independence governments—they provide for the exclusive recruitment of judicial officials from among the educated and professional minorities, thus preventing the ordinary citizen from sharing or restraining that power.

Most constitutions of Spanish America look for the following characteristics in their judicial candidates: specialized education, an academic degree, experience, and (if possible) capability. With slightly elaborated details a majority of these documents resemble Article 166 of the constitution of Panama, which specifies that a magistrate of the Supreme Court be required: "to be a law graduate and to have completed a period of ten years in the practice of the profession of law or the position of magistrate, Attorney General of the Nation, attorney (fiscal) of a superior court, circuit judge, or professor of law in a public educational institution." One may question whether this is intrinsically an undemocratic provision. It is beyond debate, however, that when one adds to this concept of judicial office the lack of jury trial and the general absence of the doctrine of stare decisis, the way is open for the few to control the many, with precious little legal restraint.

[59] *Paraguay*, Art. 46; *El Salvador*, Art. 66; *Nicaragua*, Art. 251; and *Venezuela*, Art. 81.

Political responsibility in a constitutional democracy is primarily exercised through the electoral process. By contrast, contemporary Spanish American constitutions show a distrust of elections as a means of control. Most countries have specific constitutional provisions against the reelection of the president.

Present-day constitutional government in Spanish America can also be understood as the opposite of Madison's conclusions in *Federalist* No. 10. It presumes that diversity can be checked by dealing with its causes, i.e., by destroying the liberty which is essential to its existence and by giving to every citizen the same opinions, the same passions, and the same interests.

There are other ways of destroying liberty in most Spanish American countries than those already mentioned in the discussion of individual rights. Although it is no longer usual to establish an exclusive state church as in colonial and independence times, it would be an error to assume that people of different religions have the same degree of liberty in contemporary Spanish America. For example, the preamble of the Colombian constitution, added in 1957, begins: "In the name of God the supreme source of all authority, and for the purpose of strengthening the national unity, one of whose bases is the recognition by the political parties that the Apostolic and Roman Catholic Religion is that of the Nation, and that as such the public powers shall protect it and see that it is respected as an essential element of the social order. . . ."

Thus Latin American constitutions check diversity by assigning to every citizen the same opinion. Nowhere is this sort of restriction more obvious than in the field of education. Beginning with the assumption that moral education and the advancement of culture are proper spheres of the government, these charters soon reach the conclusion that all education, both private and public, must be controlled by the state. As one of them puts it, "education in all its degrees shall be subject to the guardianship of the State, exercised through the Minister of Education."[60]

At the heart of these charters is the endeavor to gain a uniformity of opinion premised upon the belief that similar passions and interests are both desirable and possible. Although the thesis is seldom stated

[60] *Bolivia*, Art. 198. The constitution of Colombia says: "The State shall have . . . the supreme inspection and supervision of institutions of learning, public and private, in order to ensure the fulfilment of the social purposes of culture and the best intellectual, moral, and physical development of students." Art. 41. See *Chile*, Art. 10, par. 7; *Costa Rica*, Art. 79; *Ecuador*, Art. 171; *Guatemala*, Art. 95; *México*, Art. 3, pars. 2 and 3; *Nicaragua*, Art. 99 and 106; *Panamá*, Art. 79; *Paraguay*, Art. 20; *Venezuela*, Art. 79.

clearly, there exists in Spanish America the medieval presumption that (as stated by Aquinas) "we differ in our particular interests and it is the common good that unites the community."[61] Modern Spanish America implements this tradition by asserting that in the event of conflict "the private interest must yield to the public or social interest."[62] Here again is an opportunity for those who govern to exercise constitutional restrictions over the governed. Politics is the achievement of the public good, which is in constant opposition to private interest. Hence the injunction that "the members of both houses represent the whole Nation, and must vote only in the interest of justice and the public good,"[63] or that deputies "represent the entire Nation, are not subject to any mandate, and obey only the dictates of their conscience."[64] Actually, this theory of representation closely reflects the reality of Spanish American politics. Deputies do in fact focus primarily upon the nation as a whole rather than their own districts, and it is obvious that in most cases they are listening to some voice other than that of their constituents.

Relevant to any consideration of popular control are the procedures for ratification and amendment of the constitution itself. Of the constitutions now in effect, it appears that only those of Venezuela and Uruguay were referred to the people. The Venezuelan Constituent Assembly submitted its constitution to the states, while Uruguay called for a plebiscite. The others were decreed. In this regard it is interesting to note the absence of a conception of fundamental law. While some of these documents were drawn up by constituent assemblies and others by congresses, there are almost no distinguishing differences between the character of this law and ordinary law in terms of popular sanction.[65]

This is also the case in the matter of amendments. Except for Mexico, Uruguay, and Venezuela, these documents may be amended almost as easily as ordinary laws are passed. By such means Spanish

[61] *Selected Political Writings*, ed. by A. Passerin D'Entrèves (London, 1959), 5.

[62] *Panamá*, Art. 47. *Uruguay*, Art. 7. "El interés público primará sobre el interés privado." *El Salvador*, Art. 220. Also note *Colombia*, Art. 30; *Paraguay*, Art. 13.

[63] *Colombia*, Art. 105.

[64] *Panamá*, Art. 107. See *El Salvador*, Art. 44.

[65] Latins have an old saw: "We have hundreds of laws but no law to obey the laws." Their constituent assemblies must have been listening. Five countries, Nicaragua, Bolivia, Guatemala, Ecuador, and Venezuela, now have constitutional provisions directing their citizens to obey the law. Ecuador (Art. 159) and Venezuela (Art. 52) even have constitutional provisions directing their citizens to obey the constitution.

American countries can alter their constitutional charters with ease. In most cases the process has no relationship to the popular will, for by custom constitutions are not originally referred to the people, and by constitutional provisions amendments need not be so referred.

Finally, we might note that in some countries the armed forces have been placed in the position of defending the constitutional order. In a sense this regularizes the "higher law" position which Spanish American armed forces have long exercised. An armed force charged with ensuring "respect for the Constitution,"[66] "maintenance of constitutional order,"[67] or "defense of this Constitution,"[68] surely has some reason to intervene when it feels that a threat to the constitution exists.

In conclusion, Spanish America does not appear to suffer from a chronic pathological condition brought on by a fruitless aspiration toward democratic goals. Should this assertion be taken seriously, the ramifications are many. Yet the central issue is this: If they have not been the unfortunate losers in a vain struggle to achieve liberal constitutionalism, exactly what sort of government do they prefer? However one phrases the question, it is not clear at present whether Spanish American government has been a tremendous success or a dismal failure during the last 150 years of independence. The consensus is that it has been a failure, but those who hold to this position assume that Spanish Americans generally aspired then and aspire now to democratic goals. One may more cogently argue that this was, and still is, not the case.

[66] *Venezuela*, Art. 132.

[67] *Ecuador*, Art. 153.

[68] *Paraguay*, Art. 18. By Art. 92 of the Dominican Republic's constitution, her armed forces are charged "to maintain public order, the Constitution, and the laws." El Salvador created her armed forces "to see that the laws are fulfilled, to maintain public order, and guarantee constitutional rights. The armed forces will especially watch to see that the norm of presidential alternation is not violated." Art. 112.