

Some constitutional aspects of integration in the Americas

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Three distinct phases are evident in the creation of constitutions in the Americas. During the first, which began with Independence, emerging nations approved constitutions strongly influenced by European Enlightenment.

That ideology, whose feudal components took four centuries to modernize, found fertile ground in the Thirteen Colonies, the majority of which were on the verge of modernity, but was harder to implement in countries where colonial administrations were unable to complete the modernization of the feudal aspects of the Conquest. From this point on, the processes began to differ.

In Latin America and the Caribbean, many of these constitutions did not correspond entirely to political reality, nor did they entirely fulfill expectations as instruments by which to govern nations. This marked the beginning of a second stage, which might be called para-constitutional, during which constitutions were respected as

symbols but not always obeyed. This was in many cases a period of dictatorships and constitutional instability, accompanied by the awareness that it was transitory and that greater efforts were required to attain judicial stability.

The para-constitutional period was followed by an idiosyncratic period, during which constitutions were sought in accord with a country's characteristics, socio-economic reality and current needs.

At the same time, the United States began an uninterrupted constitutional period of more than 200 years duration, unequalled at any time in history. If the 1776 Declaration of Independence and the later Bill of Rights are included in the US's constitutional corpus, as indeed they should be, the influence of European Enlightenment is again clear, but without organic effect on the Constitution.

In Latin America and the Caribbean, efforts tend to focus on technical creation of formulae appropriate to national characteristics and current necessities. At present, it

may be assumed that intense efforts in Brazil, Canada, Colombia and Mexico will be followed by others seeking to respond to the accelerated pace of history.

These three periods may now be followed by a fourth, devoted to the search for compatibility in the interest of integration, a challenge that must be faced sooner or later. To achieve this, it is vital to insure that minimal constitutional common denominators respect national peculiarities rooted in a country's environment, historical traditions and diverse indigenous and immigrant characteristics.

It should also be remembered that compatibility does not mean uniformity and is only intended to facilitate the convergence of different systems, and that a basic concept that fulfills all needs will always have to be defined. This concept can only be democracy, but it must be transformed, from nothing more than an attractively labeled receptacle, acceptable only when everyone can put into it what he wills, into a system with an unequivocally defined content.

It is essential, then, to define a concrete concept of dynamic

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democracy, restating that its components shall not be merely cult objects but effective instruments always subject to improvement.

True democracy must recognize a heterogeneous citizenry without limitations of sex, race or religion, able to express its informed choice by free and responsible means, in elections whose fairness is guaranteed by the secrecy of the ballot.

A definition of principles and rights must follow, as well as guarantees to protect them from any abuse of power, regardless of its source, even if it come from a perverted majority trampling the legitimate rights of minorities.

This definition should, at the very least, recognize the right to life, security, religious observance, equality of opportunity, judicial stability, due process, protection of legal private activity, respect for legitimately acquired rights, freedom of expression, assembly and movement, inclusion of the rights defined under diverse treaties and the United Nations Declaration of Human Rights, and all others inherent in human nature.

The core of democratic constitutions tends to strengthen these guarantees through a Representative System and the Separation of Powers, whereby the Executive branch, endowed with ample powers to rule, is controlled by a preferably bicameral Legislature, with the functions of a comptroller, both being answerable to an independent Judiciary, which safeguards the Constitution.

The resulting checks and balances are further strengthened by natural territorial representation in the Federal States and, under certain circumstances, by the stipulation of special majorities and the fulfillment of prior conditions of outstanding experience in public or private endeavor for the holding of positions of public trust.

The system of checks and balances may also be used to limit modern means of abuse of power, such as scientific manipulation of public opinion, the modern version of demagoguery. The institution of the "ombudsman" as a self-regulatory mechanism, which some information media have already incorporated into their

organizations, might be more widely adopted, since the ombudsman is often able to reconcile opposing claims of freedom and responsibility.

Finally, a Constitutional Council, charged with drafting constitutional reforms and submitting them for ratification, would complement the structural minimum necessary to build this dynamic concept of democracy.

The above attempts at definition can only provide rough guidelines for reconciling diverse processes of integration, since it is the responsibility of every State to undertake its own constitutional reforms. If studies of the field are begun now, they may minimize future constitutional difficulties, such as those currently delaying the final integration of the European Community.