THE LASA MAGAZINE
FORUM

Constitutional Aspirations and Frustrations

Republican Aspirations and Democratic Frustrations*

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Introduction

Citizens make constitutions and constitutions make citizens. Therein lies a paradox: whereas Enlightenment thinkers like Kant argued that the republican form of government was the only kind of constitution that could be derived from an agreement among equal citizens, social critics pointed out that such an agreement assumed the very condition of equality to which the constitution aspired.[1] Nowhere is the tension between egalitarian constitutional aspirations and the frustrating intractability of social inequality more acute than in postcolonial societies.

In calling attention to the contributions of Latin America and the Caribbean to the spread of constitutionalism, we situate struggles for independence in the context of the social and political processes unleashed by Atlantic revolutions. Republican ideas challenged monarchist theories of sovereignty and led to new ways of thinking about representation, the rule of law, the separation of powers, constituent power, and the rights and liberties of citizens (Skinner 2012). The republican conception of popular sovereignty entailed the exercise of legal rather than personal or patrimonial rule, which required the internal differentiation and specialization of state apparatuses, including public procedures for legislation and adjudication. Republican rule was based on building lawful states no longer subject to the personal edicts of a prince or monarch.

In Latin America, republican principles were embraced enthusiastically as an alternative to monarchy (Sabato 2018, 2025). The new republics contributed to what Chris Thornhill in this issue describes as the first wave of revolutionary constitution making, including the French and American Revolutions. Yet New World republics were forged in the particular "global constitutional conjuncture" of an expanding Eurocentric inter-state system, and Latin American republicanism was anti-colonial. The post-independence leaders who sought to "reconstruct political authority on the basis of popular sovereignty" did so in the ruins of empire and the disruption of internal relations of domination (Sabato 2018, 3), making Latin

American republics early adopters of democracy. As Thornhill notes, "many constitutions created following the independence period in Latin America were more democratic than those constitutions (limited in number) that persisted in Europe after 1815. The nexus of constitutionalism and democracy, which later acquired *sine qua non* status in constitutional theory, was originally more pronounced in Latin America than in Europe."

The greatest governance challenge in the new republics was not too much democracy but too little state capacity. In theory, sovereignty implied a state capable of monopolizing coercion within a given territory (to use Max Weber's terms). Whereas centuries of warfare contributed to the accumulation and concentration of state power in Europe (Tilly 1990, 19, 29; Spruyt 1996), Latin American states were formed through a process of anti-colonial struggle involving several rebellions, starting with the Bourbon reforms, followed by a victorious but costly and destructive armed struggle against Spain (Chaguaceda and Camero 2021). The persistence of armed citizen militias and standing armies resulted in revolutions and uprisings that prevented states from monopolizing coercion (Sabato 2018, 112-121). Anarchy and *caudillo* or personal rule by strongmen followed independence in most countries.

Internal colonialism was another factor weakening the sovereign state in Latin America and the Caribbean. Racial, gender, and class hierarchies undermined inclusive citizenship, reinforcing oligarchic tendencies that consolidated in the latter half of the 19th century, truncating liberal republicanism's revolutionary potential. 19th-century constitutionalists often justified limiting citizenship to protect precarious states against the threat of democratic Caesarism (the rule of popular *caudillos*), and liberalism was often associated with authoritarian rule. As Armando Chaguaceda and Ysrrael Camero (2021, 59) put it: "The incomplete construction of the republican order eventuated in oligarchic representative republics and in the presence of strongmen or *caudillismo.*"

In the early 20th century, populist movements and parties challenged oligarchic governments, (Collier and Collier 1991), yet patrimonialism and personalist rule persisted. The extension of universalistic citizenship did not incorporate popular sectors as much as corporatism and clientelism did, making Mexico a crucial case of 20th-century constitutionalism. [2]

Post-Revolutionary Politics in Mexico

John M. Ackerman writes appreciatively of the value of revolutionary change—in the broadest sense—as a path to the political resolution of the tension we posed at the outset: namely, that citizens make constitutions and constitutions make citizens. The Constitution of 1917, he argues, combines a commitment to juridical and political equality with substantive rights and social justice. As such, it is "the source of an innovative, self-confident grammar for articulating the struggle for social justice," which, he notes, "mends the great rift of the twentieth century between liberal democracy and social revolution." The 1917 Constitution and the revolutionary struggle that preceded it have, for more than a century, informed ongoing struggles for justice. Mexico offers a model of democratic revolution that creatively combines socialist, liberal, and—we would add—republican values. As Ackerman writes, "popular sovereignty and individual rights have always already been imbricated with the dismantling of the economic power of oligarchy."

The Mexican Revolution can be read as a process of destruction of the oligarchic state, superseded by a stronger, more interventionist state. Although its outcomes remain disputed, it made possible a national-popular project under Lázaro Cárdenas. Ackerman is surely right to

dismiss the Mexican Revolution as merely a civil war or a "simple attempt of peasants to return to the past or as a chaotic struggle between powerful *caciques.*" The Revolution's leaders, he argues, "left a legacy of revolutionary institutionalism which joins together the defeat of royal despotism with the struggle for social justice and popular power."

The progress of the Mexican Revolution, however, came at a price. "The centripetal tendencies of the Revolution, the politics of co-optation of the post-revolutionary regime, and a protracted democratization process reinforced the tendency of political actors to mobilize primarily for access to office rather than for policy change," writes Agustín Goenaga. The revolution culminated in one of Latin America's most robust corporatist systems, "a dense network of unions, peasant leagues, and professional associations that distributed state benefits across a cross-class coalition of supporters."

Mexico emerged from revolution with one of the most expansive states in Latin America, based on "the exchange of loyalty for rewards, creating a vertically integrated system of patronage. Over the following decades, this system distributed extensive benefits to members and supporters of the ruling party" (Goenaga, this issue). Focusing on the opposition within, Goenaga describes "a distinctive form of electoral authoritarianism: regular voting under a system whose rules and resources were controlled by the ruling party." This resulted in a specific way of excluding opponents from power, while including them within an institutionalized system.

Mexico's 1917 Constitution survived the transition to a more competitive democracy in the late 1990s and early 2000s, providing the framework for that transition. Key authoritarian features of the Mexican party-state system persisted nonetheless; as Goenaga concludes, "the quality of democracy remains limited" in Mexico, "as the representation of citizens' substantive interests repeatedly takes the back seat to political elites' struggles for power."

In low-quality democracies, states tend to be absent when needed by citizens and present in ways that oppress citizens (Munck and Luna 2022, 416). Violence is inescapable. The massacre of 43 school students in Ayotzinapa in September 2014 shocked Mexicans, and many marched in the streets to voice a perceptive slogan: "¡Fue el Estado!" It was the state. It was the state in two senses—the absence of protection for citizens and the collusion between officials and nonstate armed groups, particularly drug traffickers.

Alexander Dawson's piece picks up where Goenaga leaves off by identifying the Ayotzinapa massacre as a point of inflection for the Mexican political system, thereby creating space for the rise of the *Movimiento de Regeneración Nacional* MORENA. Andrés Manuel López Obrador (AMLO) won the presidency with more than 53 percent of the vote in 2018. His immense popularity, and that of his successor Claudia Sheinbaum, who won an even more impressive 61 percent of the vote in 2024, allowed for reforms, including the controversial popular election of judges (also discussed by Ramiro Álvarez Ugarte in this issue).

For Dawson, Ayotzinapa was another reason for the pivot away from closer integration between Mexico and the United States, which began under President Carlos Salinas de Gortari. Mexicans were exhausted by a drug war—for which they had not been adequately prepared—and eager to embrace an alternative that would bring relief from the astonishing levels of violence that the war unleashed. Whether Mexico is backsliding under AMLO and his successor Claudia Sheinbaum, or simply continuing the revolutionary program of a "robust defense of sovereignty, a foreign policy that de-emphasizes Mexican dependence on the US in favor of closer ties to other Latin American, European, and Asian states, and a first opening in decades

for policies that seek to directly confront the country's persistent inequality" will long be debated.

What is not in doubt, Dawson argues, is that the era of U.S. soft power is over. Hard power is back—with gunboats again prowling Caribbean waters and the CIA deployed in Venezuela. The Western Hemisphere is being reassigned as a U.S. sphere of influence by the so-called "Trump Corollary" to the Monroe Doctrine. For all its flaws, the original Monroe Doctrine was conceived as a defence of republicanism against the interference of European monarchies. With Theodore Roosevelt's corollary, the United States appointed itself as the police of the Western Hemisphere. Trump has revived this posture, making visible the uneasy coexistence of republican ideals and power politics in U.S. foreign policy.

Current Constitutional Dilemmas

Chris Thornhill argues that we are entering a new global constitutional conjuncture defined by increasingly aggressive autocracies and the erosion of the rules-based international order. In this context, Latin America and the Caribbean remain, notably, the most democratic region in the world outside of the wealthy capitalist countries of the Global Northwest. And yet, the quality of democracy is persistently low, and several countries have experienced backsliding or the breakdown of democratic regimes. Here, again, we emphasize the importance of centering the state in our analysis.

A growing literature seeks to explain why democracies seem trapped in a vicious circle of poor performance and public disenchantment, unable to break through to high-quality democratic functioning. This "medium quality trap" is attributed by many scholars to low or medium state capacity (Munck and Luna 2022; Mazzuca and Munck 2020; Mazucca 2021). Dysfunctional states provide fertile soil for delegative democracies that celebrate strong leaders even as they trample on constitutional guarantees (O'Donnell 2010). There can be little doubt that a major threat to democracy—perhaps *the* major threat—arises from the public's frustration with the failure of democratic governments to deliver the goods.

The attractiveness (and dangerousness) of Nayib Bukele's model, ably described by Manuel Meléndez-Sánchez, lies precisely in the public perception that El Salvador's self-proclaimed "cool dictator" brought a decisive and swift end to generalized violence—in other words, he created the spectacle of a strong state. The imagery of prisoners shackled and penned like livestock is part of a fascist aesthetic that exploits a desire for order despite (or even because of) the abuse of human rights it entails. But troubling as this may be, within democracy some desire strong leaders and have no problem delegating to those leaders the power to make decisions on their behalf. Bukele, as Meléndez-Sánchez notes, enjoys strong approval. There will always be those who see in a strongman a higher form of representation, a purer expression of the will of the people. One of democracy's greatest conundrums is that few "guardrails" or norms matter when the demos itself no longer wants its rulers to govern democratically. When the supporters of a strongman reach critical mass, democracy's days are numbered: this is called Caesarism in republican thought.

In republican thought, constitutions are not merely constraints on the demos; they are integral to the process by which the demos is constituted. They not only impose checks and balances on governments—although power checking power is necessary to guarantee moderation in the actions of governments—but also to ensure that governments enact the will of the people through the interplay of legislative, executive, and judicial branches. It is through that interplay that citizens get representation, the rule of law, and efficient government. Yet the notorious lack

of representation, the persistent unrule of law, and the inability of governments to get things done lead to the current crises of democracy. This facilitates leaders' appeal to the necessity of exceptional measures.

One version of the politics of exception is the idea of constituent power. We can contrast Nancy Vidal's essay on Peru's 1978-1979 Constituent Assembly and Manuel Antonio Garretón's account of recent constitutional reform efforts in Chile. The Peruvian constitution-making process unfolded during the Cold War at a time of social movement activism, with the participation of both mass-based and elite parties, and under the aegis of a non-aligned but increasingly beleaguered military regime. The process was remarkably pluralistic and deliberative, resulting in a compromise document that reflected a wide range of ideological influences. The 1979 Constitution, dissolved by Alberto Fujimori after his 1992 *autogolpe,* was replaced with an authoritarian, neoliberal charter—one revered by few, yet extraordinarily difficult to dislodge by constitutional means.

Chile's experience was almost the exact opposite, yet both countries have ended up in respective constitutional limbos. Chile's democratic transition left Augusto Pinochet's authoritarian Constitution of 1980 in place. When a massive social explosion occurred in 2019, the constitution became a natural focus of attention. This led to a pact to convene a constituent assembly by universal vote, in which parties played a secondary role. Yet the constitution was rejected in a plebiscite in 2022. Garretón sees this as a reflection of social movements lacking organization, articulation with parties, and a project for an alternative society—in short, a political subject.

Similar observations are made in "Más nubes en el horizonte," by Ramiro Álvarez Ugarte, who compares Argentina, Chile, and Mexico. He finds persistent hyper-presidentialism—"un ejercicio desmesurado de una facultad de excepción"—in Argentina, despite efforts to uphold constitutional guardrails. In Chile, the overburdening of the constituent power with excessive aspirational content without sufficiently robust representation culminated in two unsuccessful plebiscites. Mexico overused and routinized the exercise of constituent power, reforming the judiciary through elections with mediocre participation, which, Álvarez Ugarte argues, rather than contributing to self-government, undermined it.

In his conclusion, Álvarez Ugarte takes up the problem we posed above: "el sistema de representación no puede ser nunca una consecuencia del poder constituyente, sino que debe ser una condición. Con eso, sin embargo, no alcanza: también es necesario que el momento constitucional tome conciencia de sí mismo como algo excepcional, en el que se afronta un desafío importante de cara al futuro que vuelve necesario alcanzar acuerdos extraordinariamente extendidos y transversales." Venezuela, Ecuador, and Bolivia show the dangerousness of constituent power, where strong executive leaders fashioned constitutions to their partisan ambitions. But this danger is matched by the risk of ossified constituted power that cannot adapt enough to respond to the urgent needs and public demands.

Regarding this tension, Maximiliano Reyes Lobos calls for *phronesis* or practical wisdom, and *epieikeia,* or a spirit of equitable justice, in the design of constitutions. Borrowing from Aristotelian ethics and politics, Reyes Lobos suggests that constitutions must be written and interpreted not as static and rigid documents, but as aspirational texts offering possibilities for justice and democracy. In other words, we need constitutions that foster citizenship, and citizens who are committed to constitutionalism, which requires more than a literal approach to interpretation. Democracy is always under construction, and always perfectible. As such, the argument in favor of education for democracy is indefeasible. The aspiration to preserve