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# LIBERAL CONSTITUTIONALISM IN THE AMERICAS: THEORY AND PRACTICE

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21 MARCH 2012, INSTITUTE FOR THE STUDY OF THE AMERICAS

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## SUMMARY

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The “Liberalism in the Americas: A Digital Library” project, hosted by the Institute for the Study of the Americas, has given rise to a series of events intended to survey and explore the major historiographical debates regarding liberalism in nineteenth-century Latin America in a comparative context. A series of research workshops, involving focused discussion amongst a selected group of specialist scholars and advanced graduate students, have examined themes in the history of liberalism through comparative case studies on Mexico, Peru, Argentina, the United States, and elsewhere. The third workshop in our Liberalism in the Americas series, on 21 March 2012, created a real dialogue between North American and Latin American specialists in discussing histories of liberal constitutionalism.

The workshop was organised by the project leaders, Deborah Toner (ISA), Paulo Drinot (ISA) and Maxine Molyneux (ISA), and attended by 14 participants, of whom a full list can be found at the end of this report. Written working papers were submitted by six paper presentations in advance of the workshop for registered participants to read, and there were no spoken presentations made during the workshop in order to facilitate maximum discussion and debate. On each panel, a commentator discussed three papers for ten to fifteen minutes, suggesting areas for clarification and further comment, before opening the floor for general questions and discussion.

## AIMS AND OBJECTIVES

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This workshop aimed to focus a comparative perspective on constitutional traditions across the Americas since the late eighteenth century, and to explore the national and transnational influences upon constitution-making in the region. The participants sought to establish what liberal concepts and institutions were prioritized at different times and in different national constitutions, and what the intellectual, political, economic and other influences were that shaped these decisions and debates from the late eighteenth to the early twentieth century. Moreover, the workshop aimed to explore how

constitutional laws were interpreted and practiced in different contexts at different levels of government: executive, judicial, and legislative; national, state and local.

The discussion-based format of the workshop was designed to facilitate maximum discussion and to provide critical feedback on the working papers submitted by the participants. Several of these working papers will be deposited in ISA's institutional repository SAS-Space and several will be revised for future publication.

**PANEL 1: PAPERS BY DR MARTA IRUROZQUI (IN ABSENTIA, CCHS-CSIC, MADRID), DR NATALIA SOBREVILLA PEREA (UNIVERSITY OF KENT), DR GABRIEL NEGRETTO (CIDE, MEXICO).**

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Dr Adrian Pearce, from King's College, London, opened the discussion of panel one, which featured papers on constitution-making in Peru and Argentina, and another on the actions of "armed citizens" in defence of the Bolivian constitution. In discussing Natalia Sobrevilla Perea's paper, "Liberalism and Constitution-Making in Peru (1812-1860)", Pearce observed a broad division into three eras of Peru's constitutions: in the first era, roughly 1812 to 1834, constitutions were in the main very liberal, although the extent of implementation of constitutional provisions varied widely, due to the ongoing state of war in the country. With the establishment and collapse of the Peru-Bolivia Confederation in 1836 and 1839 respectively, there was a certain degree of de-liberalisation of Peru's constitutions, with greater central government authority, stronger presidential powers, and the reintroduction of taxes specifically for the indigenous population. Thirdly, from the early 1850s to 1860, a more radical liberalism shaped Peru's constitutions, with the abolition of slavery and the Indian taxes, the implementation of direct elections and universal male suffrage, the abolition of special legal courts for military and church officials, and the reduction in presidential authority.

Although many of these liberal changes proved enduring, especially the abolition of the military and clerical courts, the 1860 charter created a more moderate, consensus set of constitutional laws that remained in place for decades. Throughout this period then, there appears to have been a broad liberal hegemony shaping constitutional design, and Pearce queried what contestation, conflict and negotiation lay beneath this narrative of liberal hegemony. In response, Sobrevilla highlighted that her paper also pointed to an accompanying narrative about the continual struggle to achieve and project the legitimacy of Peru's multiple constitutions in the first half of the nineteenth century, thus destabilising the image of a "liberal hegemony".

The extent of contestation underlying a broad liberal hegemony was also an area for discussion regarding Gabriel Negretto's paper, "Between Shared Understandings and Strategic Conflicts: The Making of a Presidential Republic in Argentina, 1853-1860." Negretto's argument was made in two

broad points that stressed a narrative of consensus on one level, but conflict, contestation, and negotiation at another level. In the constitution-making processes of the 1850s, a broad consensus position - a conservative, or “state-building” version of liberalism - shaped general features of the constitution, such as the creation of a republican versus monarchist state, a presidential versus parliamentary system, and the general division of powers into different branches of government. However, there was a much greater degree of conflict regarding the details of political organisation and institutional design, such as the rules of representation, electoral procedures, and the distribution of powers and economic resources between different levels of government and between the government and the opposition. These aspects of constitutional design were heavily shaped by a protracted bargaining process in which different provincial and groups interests sought to protect and advance their own strategic interests.

In terms of explaining how the larger consensual position of conservative liberalism came about, Negretto clarified that this occurred largely because of the failure of previous attempts to create a workable and stable political system – both more conservative, and more liberal attempts – and that by the mid 1850s after several decades of territorial fragmentation and conflict, competing interest groups agreed that political order and government stability had to be prioritised. The prioritisation of arriving at a compromise position was evidenced in the design and make-up of the constitutional convention that was formed in 1853, which featured a simple decision-making process, equal representation for all provinces, diminished bargaining power for opposing minorities, and the absence of ratification procedures. Although there were some ongoing sources of disagreement between more conservative and more liberal voices in the convention - especially regarding religious freedom, restrictions on internal trade, and the location of the capital in Buenos Aires – the prioritisation of reaching an agreement was evident even after further military conflict, in the reforms of 1860, which agreed to creating a more favourable situation for Buenos Aires than had been laid out in 1853.

Adrian Pearce noted that both Sobrevilla’s and Negretto’s papers were heavily focused on elite debates and activities regarding constitutional design, and asked if popular sectors had any role in the histories of constitution-making outlined in the two papers, or if popular liberalism could only be observed in how constitutions were later “used” and interpreted, in electoral processes for instance. Although both Sobrevilla and Negretto agreed that the formal processes through which constitutions were formulated were largely elite-driven in the first half of the nineteenth century, both pointed to the contemporary press as a source for understanding how constitutional issues were debated and received in wider society.

Marta Irurozqui's paper, "La justicia del pueblo. Ciudadanía armada y movilización social", meanwhile, focused extensively on the actions of the popular sector, and artisans in particular, in invoking and defending the Bolivian constitution in 1861. When Comandante General of La Paz, Plácido Yáñez, ordered the summary execution of 55 political prisoners being held on spurious grounds, his actions were widely conceived as having violated the Bolivian constitution. As dissatisfaction with the inaction of institutional authorities to punish Yáñez mounted, a violent popular reaction broke out that resulted in the General's death. Irurozqui's paper demonstrated how this violent action by ordinary people was conducted with a high degree of organisation, rather than happening spontaneously as a result of popular anger. Moreover, the campaign was allied to artisans' attempts to improve their socio-economic standing and helped to create a pro forma concept of "armed citizenship" and "armed democracy," where popular violence was legitimised if it was conducted as a means of safeguarding constitutional law. In the context of this workshop, two key questions arose from this paper. Firstly, Pearce queried whether, and how, the events recounted in Irurozqui's paper impacted on subsequent moments of liberal constitution-making in Bolivia, particularly those promulgated by Melgarejo (1868) and Morales (1871) which concentrated executive authority, before the 1880 constitution rebalanced the division of powers to a greater extent.

Secondly, it was clear from Irurozqui's work that popular sectors of society were actively involved in seeking to shape and change political culture. But the corporatist nature of the actions and aims of the artisans that protested against the *Matanzas de Yáñez* in 1861, complicates the issue of whether their actions can be considered liberal, even if acting in defence of a liberal constitution. Indeed, this question goes to the heart of the wider historiographical concept of "popular liberalism," considering that corporate forms of organisation and protest had shaped popular politics throughout Spanish America for centuries, and undoubtedly affected the way in which popular sectors engaged with liberal principles and institutions in the nineteenth century.

The Liberalism in the Americas research network aims to return to these issues regarding popular liberalism in a planned future conference on "Indigenous and Popular Liberalisms in the Americas" (prov. date, late 2013/early 2014), which will explore commonalities and differences in the political strategies and identities developed by a whole range of non-elite actors – including indigenous populations, peasants, urban workers, slaves and freedmen - in their engagement with liberal ideas and practices.

In remaining more focused on constitution-making, the workshop participants used the three papers on panel one to discuss whether constitution-making should be considered an inherently liberal practice. The initial question on this issue came from Tom Cutterham, who, speaking from the perspective of a North American specialist, queried why Latin American conservatives would engage

with constitution-making in general. Natalia Sobrevilla and Gabriel Negretto offered comprehensive comments in response, in particular noting the importance of constitutions for investing governments with legitimacy in the independence era in Spanish America, given the absence of accepted legitimate rule following the deposition of the Spanish monarch, Ferdinand VII, by Napoleon in 1808. In this original sense, the participants agreed that the constitutional impulse was inherently liberal, providing explicit rules designed to prevent arbitrary or discretionary systems of rule.

However, constitution-making became important to conservative as well as liberal governments in the post-independence era in Spanish America as constitutions had quickly become very important to the creation of legitimacy, in the absence of the Spanish Crown, and in terms of achieving international recognition for the newly established nations. Important to this discussion was a recognition that the term “conservative” can be misleading when referring to Latin American politics in the early nineteenth century: in this era, “liberals” and “conservatives” were generally not diametrically opposed, or particularly coherent, political groupings. Negretto noted that one fairly consistent distinguishing element between liberals and conservatives was that conservatives wanted to create a strong presidency, with long, even life-long, terms, and considerable veto powers - in other words, to make the president as similar to a monarch as possible – whereas liberals were generally concerned to create a greater balance between executive, judicial, and legislative branches of government.

PANEL 2: PAPERS BY DR MAX EDLING (LOUGHBOROUGH UNIVERSITY),  
PROF. KENNETH MAXWELL (HARVARD UNIVERSITY, VISITING PROFESSOR),  
MR TOM CUTTERHAM (ST HUGH'S COLLEGE, OXFORD).

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The second session of the workshop turned to discussing issues of continuity and change in the political culture of the United States and the Atlantic World, interrogating the moment of the American Revolution, the process of constitution-making, and the importance of liberalism to that process. Dr Erik Mathisen, from the University of Portsmouth, opened the panel by discussing Max Edling's paper, “A More Perfect Union: The Framing and Ratification of the Constitution”. Mathisen observed that Edling's paper marked a historiographical shift in studies of the US constitution away from internal issues to highlight the importance of intra-union relations, international concerns, and the broader geo-political context in which the constitution was drafted. Key to this argument was Edling's contention that the Articles of Confederation had already created a division of responsibilities between state governments and the federal government, with the former being responsible for economic activities and the welfare of citizens, and the latter being responsible for foreign affairs, managing disputes between different states within the Union, and creating a common market within the Union. The Constitution of 1787, meanwhile, did not change the nature of the powers of the federal government, but enhanced the federal government's capacity to enforce law and policy as laid out in the Articles of Confederation.

In making this argument, Edling therefore rejected the historiographical interpretation, as advanced by Gordon Wood amongst others, that the US constitution was a “failure” because it failed to counter the democratisation of politics at the state level: he argued that this had never been its intention. In a different sense, however, Mathisen queried whether Edling’s emphasis on the centrality of intra-union conflict resolution to the making of the constitution actually supported an interpretation of the constitution as a “failure,” given the descent of intra-union disputes into civil war by the 1860s. In response, Edling highlighted the protection afforded to sectionalist and state interests in the constitution, and argued that the Civil War was not simply a constitutional issue.

In discussing Tom Cutterham’s paper, “Society and Property at the American Founding: The Role of Public Welfare in the Rhetoric of Liberalism”, Mathisen noted an evident ambivalence regarding property rights in relation to revolutionary ideals that centred on the concept of the public good. Although central aspects of liberal political economy – the principal of protection of property, credit and contract by the government, for instance – were clearly important features of revolutionary discourse, Cutterham argued that the concept of public welfare was not entirely displaced by the concept of liberal individualism, and that property rights, in particular, were viewed as extremely important in terms of their contribution to the public good, not to private interest. According to this perspective, property rights derived their legitimacy from the benefits to public happiness and public wealth they would create. Mathisen queried whether such debates, about property and public versus private interests, which were latently visible in the constitutional documents and debates, predated the constitution-making process, speaking more generally to the question of historical continuities through the revolutionary period. Cutterham clarified that in terms of property-related discourse, there were considerable continuities from Lockean and Smithean ideas and that he did not view the revolutionary and constitution-making era as a major breaking point in the emergence of economic liberalism.

Kenneth Maxwell’s paper, “The Influence of the Constitutions of the North American States (1776-1789): An Atlantic History”, meanwhile, examined the transatlantic movement of a French publication that collected together the constitutional documents written by the different North American states with the American Declaration of Independence and the Articles of Confederation: the *Recueil des Loix Constitutives des colonies angloises, confederées sous la denomination D’État-Union de l’Amérique-Septentrionale*. Mathisen noted the importance of this document as a propaganda piece in France, designed to attract French support for the American states in their war against the British and, moreover, how the presentation of the individual documents together as a whole sought to represent as a unified, coherent movement, the fractious process of independence and nation-formation of the United States. More unusual and remarkable was Maxwell’s detailed charting of the correspondence between Thomas Jefferson and a would-be Brazilian revolutionary in the late 1780s

and the circulation of the *Recueil* amongst plotters of an armed revolution against Portuguese rule in the Minas Gerais province of Brazil in 1788-89.

Of particular interest to the overall aims of the workshop, Mathisen highlighted how Maxwell's account showed the malleability and portability of liberal ideas and constitution-making practices in the late eighteenth and early nineteenth century and invited the group of participants as a whole to dwell on the reasons behind the malleable and portable nature of liberal constitutions in this historical moment. Maxwell, Edling, Cutterham, Sobrevilla and Negretto all discussed the political fluidity brought about by war during these formative periods. The pressing financial demands caused by war, in particular, brought into sharp focus the need for state-building apparatus, in collecting taxes and raising militias. Moreover, the earlier discussions about the urgency of establishing legitimacy for new systems of government, both to domestic and foreign audiences, were clearly important in explaining this phenomenon. Together the need for legitimacy of institutions, the fiscal and military demands of war, and the political fluidity of the period, helped to explain the emergence and then rapid spread of liberal constitution-making processes.

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