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**The Liberal Cloak:
The Constant-De Pradt Controversy on
Bolívar's Last Dictatorship**



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The Liberal Cloak: The Constant-De Pradt Controversy on Bolívar's Last Dictatorship

José Antonio Aguilar Rivera

Abstract. - This paper examines the 1830 polemic between Benjamin Constant and the Abbé de Pradt over Simón Bolívar's last dictatorship. I argue that in the debate a key flaw of liberal constitutionalism was evidenced: the lack of a theory of emergency powers. The new nations of Latin America drafted constitutions following Constant's ideas regarding emergency provisions. Constant had argued forcibly against broad emergency provisions. While Bolívar was an admirer of Constant, he deviated from his constitutional thinking regarding temporary emergency provisions.

Key words: Emergency Powers, Dictatorship, Liberalism, Constitutions, Polemic.

Resumen. - Este ensayo explora la polémica entre Benjamin Constant y el Abate de Pradt sobre la última dictadura de Simón Bolívar. Se argumenta que dicho debate hizo luz sobre una falla clave en el aparato del constitucionalismo liberal: la ausencia de una teoría respecto a los poderes de emergencia. Las nuevas naciones de América Latina escribieron constituciones siguiendo los lineamientos de del teórico Benjamín Constant sobre no incluir poderes de emergencia. Aunque Bolívar era un admirador de Constant no siguió sus prescripciones sobre poderes de emergencia temporales.

Palabras clave: emergencias, dictadura, liberalismo, constitución, polémica.

The independence of Spanish America in the early nineteenth-century provided Europeans with an immense laboratory where different and contending political theories were put to test. Success or failure of particular ideas and institutions in the setting of the new republics of South America confirmed or disaffirmed claims made by liberals and conservatives on the best ways to organize political authority.

Liberals enthusiastically supported the political experiments implemented in that part of the world. They saw America both, as an embodiment of a new society based upon their own ideas of liberty, individual rights and constitutional government and, at the same time, as a challenge to the wave of conservatism that the second Restoration had brought about. Simón Bolívar, the Creole patrician, along with Washington, was the hero par excellence of European liberals. His campaigns against the Spanish monarchy gave him a mythical character. The romance between the republican hero and the European liberals in Paris seemed to be unassailable at the time. Yet, very soon after the Spaniards had been expelled from South America, the infatuation of the French liberals with Bolívar ended. In the midst of a constitutional impasse, Simón Bolívar assumed for the last time in his life the dictatorship of the Great Colombia in 1828. When this event came to be known in Europe, one of the luminaries of the Liberal party, Benjamin Constant, wrote a fulminating indictment against Bolívar in the liberal *Le Courrier Français*. Suddenly, the Libertador had turned into an usurper. Another liberal, the Abbé de Pradt, replied to Constant's accusations and defended Bolívar in those same pages.

The polemic between De Pradt and Constant on Bolívar's last dictatorship has been, for the most part, disregarded by scholars.¹ The question that I will address here is: what is the significance of this debate for liberalism and liberal constitutional ideas? My hypothesis is that the controversy evidenced the existence of a critical flaw in the political edifice of constitutional liberalism. I will argue that the French Revolution had led Constant and other liberals to the unqualified rejection of the idea of constitutional emergency provisions. Therefore, they removed these measures from their constitutional political lexicon. In doing this, Constant was following Montesquieu's reading of Roman constitutional history. The author of *The Spirit of the Laws*, depicted roman dictatorship as the agency of oligarchic rule. An instrument that was to be blamed for the final downfall of the Roman republic.² The ideas on

¹ Other illustrious critics of Bolívar have received more academic attention. For instance, Karl Marx wrote a fierce indictment against him in the *New American Cyclopaedia*.

² According to David A. Brading, the source of Bolívar's horror for the reputation of Sulla is probably Montesquieu's "Le dialogue de Sylla et d'Eucrate": *Considérations sur les causes de la grandeur des Romains et de leur décadence*, Paris: Garnier, 1954. David

dictatorship of Montesquieu and Constant constitute what I will call here the "Liberal Cloak", a veil cast upon a previously accepted line of constitutional thinking, which had been designed to allow governments to deal with emergencies.

Some scholars have pointed to the unsuitability of Constant's conceptual framework on constitutionalism for the political and social circumstances that Bolívar faced in the newly independent countries. They criticize what they see as "rigidity"³ and extreme "formalism"⁴ in the political thought of Constant. According to them, the French liberal theorist had misjudged Bolívar. However these scholars have not pressed their case to its ultimate consequences. They have limited themselves to the task of exculpating Bolívar and have not called into question the general validity of Constant's theory on dictatorship. Here, I intend to explore the broader theoretical relevance of the arguments expounded in the debate in order to draw attention to those aspects of the Bolivarian circumstance that in general terms show the inadequacy of liberal theory to deal successfully with contingency. The historical and theoretical importance of the controversy in question - and hence its remarkable public notoriety at the time - is precisely that it struck right into the heart of the dispute between political authority exercised in the name of public interest and the rights of the individuals.

The polemic over Bolívar's dictatorial powers conveys as well significant implications for a reinterpretation of the political history of early republican Spanish America. Cultural explanations of instability have usually stressed that imported liberal constitutional ideas were not fit for backward and, politically underdeveloped, Spanish Americans. Many authors also contend that the political legacy of Spanish authoritarianism prevented liberal ideas from flourishing in Latin America.⁵

A. Brading, "Classic Republicanism and Creole Patriotism. Simón Bolívar and the Spanish American Revolution": Idem, *Prophecy and Myth in Mexican History*, Cambridge: Cambridge University Press, 1984, p. 109 of the Spanish edition.

³ See: Víctor Andrés Belaúnde, *Bolívar and the Political Thought of the Spanish American Revolution*, Baltimore: The John Hopkins Press, 1938, p. 389.

⁴ See: Alberto Filippi, *Instituciones e ideología en la Independencia Hispanoamericana*, Buenos Aires: Alianza, 1988, p. 119.

⁵ For both cultural interpretations and historically-determined views of Spanish-American political disorder during the nineteenth century see: Lionel Cecil Jane, *Liberty and Despotism in Spanish America*, London: Cooper Square, 1929; Richard Morse, "Toward a Theory of Spanish American Government": *Journal of the History of Ideas*, 15 (1954), pp. 71-93; Richard Morse, "The Heritage of Latin America": Louis Hartz, *The Founding of New Societies. Studies in the History of the United States, Latin America, South Africa, Canada and Australia*, New York: Harcourt, Brace & World, 1964; Glen C. Dealy, "Prolegomena on the Spanish American Political Tradition": *Hispanic American Historical Review*, 48: 1 (1986), pp. 37-58; Glen C. Dealy, *The Public Man*.

The most important theme in the political history of Spanish America in the first half of the nineteenth century is the construction of political systems that could command effective and enduring authority. The formidable wave of political disintegration of the colonial structures was the result not only of the wars of Independence and the subsequent civil conflicts but also of the dominant liberal ideology.⁶ Ideas, "were weapons if nothing else, and in that respect the choice of weaponry provided not few links between the Spanish American revolution and the emerging liberal-democratic currents of western Europe."⁷ The internal contradictions and shortcomings of liberal theory are important to understand its performance in Spanish America.⁸

In the remainder of this essay I will proceed as follows. In the first section I present a historical summary of Bolívar's last dictatorship, then I introduce the arguments advanced by Constant and the Abbé de Pradt in their controversy. In the second part of the paper I discuss two key concepts: Constant's monistic mode of operation of the constitution and his theory of self-defeating dictatorships. In the third section I explore the circumstances that made of the Spanish American experience an empirical challenge to the liberal paradigm. This experience, I will contend, conveys a significant theoretical relevance for nineteenth century liberalism and constitutionalism, since it exposed its flaws.

The Primacy of Circumstance

In this section I will proceed first by providing a brief overview of the historical background of the 1829 controversy over Bolívar's last dictatorship. The second part of the section accounts for the arguments advanced by Constant and De Pradt in their polemic.

An Interpretation of Latin American and Other Catholic Countries, Amherst: University of Massachusetts Press, 1977. For a critique of cultural approaches see: Frank Safford, "Politics, Ideology and Society in Post-Independence Spanish America": *The Cambridge History of Latin America*, vol. 3, From Independence to c. 1870, Cambridge: 1985, pp. 416-421.

⁶ Frank Safford, "Politics, Ideology and Society", p. 350. On the independence of the Spanish colonies see also: John Lynch, *The Spanish American Revolutions*, New York: Norton, 1973.

⁷ David Bushnell, "The Last Dictatorship. Betrayal or Consummation?": *Hispanic American Review*, 63: 1 (1983), pp. 65-105.

⁸ One of the few scholars who has studied liberalism in Spanish America is Charles A. Hale, *Mexican Liberalism in the Age of Mora*, New Haven: Yale University Press, 1968.

Historical Background

Once the independence of the Gran Colombia republic (now the states of Venezuela, Ecuador and Colombia) was secured, Bolívar departed for Peru to continue the campaign against Spain in 1823. While Bolívar liberated Peru, in Colombia political strife was growing in intensity. The 1821 Cúcuta constitution was questioned by virtually every party. A reform to the constitution was required, but the 1821 text contained a clause that prohibited its amendment during the first ten years after its enactment, that is in 1831. Pressed by turmoil in Colombia, Bolívar started back from Peru in 1826. As soon as he reached Colombia, the local authorities of Guayaquil presented him with an Act drafted by the local authorities appointing him dictator of Colombia. Bolívar, however, refused to accept dictatorial authority (he still was the constitutional president). Some of his aides convinced him that the emergency clause of the 1821 Cúcuta constitution granted him quasi-dictatorial powers anyhow. Bolívar believed that only the 1826 Bolivian constitution could provide for order and peace. He hoped that Colombia would adopt it.⁹

On November 23 1826, Bolívar assumed emergency powers under article 128 of the 1821 Cúcuta constitution. A Spanish fleet was in Cuba, and a Spanish expedition was expected any moment and civil war was ravaging Venezuela. In the November 23 decree, Bolívar attested that most of the nation's departments had expressed their desire that the president would assume extraordinary powers.¹⁰ Under article 128 authority Bolívar decreed, above all, fiscal policies to collect taxes. However, the emergency powers of the 1821 constitution were not enough to suppress the feuding of factions. The constitutional powers of the executive were a matter of hot dispute among the contending parties, finally a chaotic situation forced the Congress in 1827 to call for an extraordinary Great Convention that would amend the 1821 Cúcuta constitution. The Convention summoned in the village of Ocaña in April 1828. Bolívar in his opening address pointed out the deficiencies of the 1821 constitution. The executive was vested with broad powers in some areas, but at the same time it was deprived of its fundamental faculties. The result was, according to Bolívar, that the government was not able to: “repeal foreign

⁹ Fabio Puyo Vasco / Eugenio Gutiérrez Cely, *Bolívar día a día*, Bogotá: Procultura S.A., 1983, pp. 114-115.

¹⁰ Simón Bolívar, *Decretos del Libertador. 1826-1827*, vol. 2, Caracas: Imprenta Nacional, 1961, pp. 26-27.

invasion neither to contain seditious attempts within the country, unless it was vested with the authority of dictatorship.”¹¹

The Ocaña Convention was unable to reach an agreement over the necessary amendments to the constitution (besides, there was no legal way to amend it, because of the ten year ban). There was a deadlock between bolivaristas and santanderistas, and the convention finally dismissed itself. After the failure of the convention Bolívar returned to the capital, Bogota, where he was urged to proclaim himself dictator. On June 24, 1828, Bolívar stated in a toast offered in his honor:

“The prosperity of Colombia cannot rely on the odious dictatorship, but rather it must rely on wise laws, on public calmness, on the love of the citizens [for prosperity] and on the horror inspired by anarchy. Dictatorships are glorious when they close the abyss of revolutions, but a people that becomes accustomed to live under dictatorial domination is a disgraced people.”¹²

The political impasse was finally broken by Bolívar, who in August 28 1828 suspended the 1821 constitution. In a decree, Bolívar attested that: “The people who, in this situation, using the essential rights that always reserves for itself in order to free itself from the wreckage of anarchy and to advance its preservation and future prosperity, has entrusted me with the Supreme Magistracy, in order to foster the unity of the state, to reestablish internal peace and to make the necessary reforms.”¹³ It is worth mentioning that Bolívar explicitly avoided the use of the term “dictator” in the August 28th decree. He denominated himself President-Liberator. The 1828-1830 period is what is usually known as Bolívar’s “Dictatorship”. Bolívar then called for a Congress to be summoned by 1830, which would give the country a new constitution.¹⁴

In spite of the distance between Paris and Bogota, Benjamin Constant, as well as other Europeans of the time, were reasonably well informed by the newspapers about the latest events taking place in South America. Moreover, a translation of the 1826 Bolivian constitution was published in the *Revue Américaine* in which Constant and Lafayette served as editors.¹⁵ Hence,

¹¹ Address of Bolívar to the Ocaña Convention, May 1, 1828, in Simón Bolívar, *Proclamas y discursos del Libertador*, Caracas: Gobierno de Venezuela, 1939, p. 364.

¹² José Joaquín Guerra, *La Convención de Ocaña*, vol. 2, Cali: Banco Popular, 1978, p. 514.

¹³ Simón Bolívar, *Decretos del Libertador. 1828-1830*, vol. 3, Caracas: Imprenta Nacional, 1961, pp. 137-146.

¹⁴ On Bolívar’s idea of dictatorship see: José Antonio Aguilar Rivera, *En pos de la quimera*, Mexico City: FCE, 2000.

¹⁵ Constant had a fair knowledge of the events of the South American independence. That became evident in the detailed recollection of Bolívar’s endeavors that he made in his reply to De Pradt in *Le Courrier Français* of January 15, 1829. Translations of the Bolivian constitution were published almost simultaneously in London, as well. See:

Constant's disapproval of Bolívar was not due to a lack of information. As his texts in the debate show, the French thinker had a reasonable good idea of what was happening in America, it was only that he had powerful reasons to reprobate Bolívar's suspension of the 1821 constitution and the ensuing dictatorship.

The Controversy

Dominique Defour De Pradt, ex-archbishop of Malines, was a well known publicist in early nineteenth-century France. De Pradt had served under Napoleon and he had also written on history and politics. Since he had published extensively on Spanish America, De Pradt was widely recognized as an authority on the subject.¹⁶ At the time of the polemic (under the reign of Charles X) De Pradt, like Benjamin Constant, was a liberal member of parliament. The liberals had energetically opposed the efforts of the Villèle-Martignac-Polignac governments to impose censorship. The political milieu towards the end of the second Restoration was one of continued encroachment of the state on civil liberties, such as the freedom of the press. It was in the midst of a climate of political unrest that the controversy between Benjamin Constant and the Abbé de Pradt took place.¹⁷

Hernando Valencia Villa, "Roma en los Andes. Aproximación al constitucionalismo bolivariano": Simposio Italo-Colombiano. Pensamiento constitucional de Simón Bolívar, Bogotá: Universidad Externado de Colombia, 1983, p. 87.

¹⁶ Besides his *Les Trois âges des colonies, ou de leur état passé, présent et à venir* (1801), de Pradt had published another book on the Congress of Panama. He was an open supporter of Bolívar right from the beginning of Independence, he corresponded with him and Bolívar offered him a life pension in gratitude for De Pradt's work on behalf of the American insurgents. On De Pradt see: Manuel Aguirre Elorriaga, *El Abate de Pradt en la emancipación hispanoamericana (1800-1830)*, Caracas: Texto, 1983.

¹⁷ The debate is mentioned in passing, both by scholars on Bolívar and in books dealing with Constant. In spite of the importance of the two characters involved, the polemic has received very little systematic attention. There are two brief and mainly descriptive essays on the subject: G. F. Pardo de Leygonier, "Bolívar, l'Abbé de Pradt et Benjamin Constant": *Revue de L'Institut Napoleon*, 87 (1963), pp. 62-68, and Eléonore Coen, "Constant et Bolívar": Pierre Cordey (ed.), *Benjamin Constant. Actes du Congrès de Lausanne (Octobre 1967)*, Geneva: Droz, 1967, pp. 69-73. The letters of Constant and De Pradt — without the rejoinders of the *Ultras* and the Royalists in *La Gazette de France* — were partially published by Aguirre Elorriaga, *El Abate de Pradt*, appendix 6. The most recent and comprehensive study on the controversy is: Alberto Filippi, "Legitimidad, instituciones jurídico-políticas y formas de gobierno en la polémica entre monárquicos y republicanos de Gran Colombia y de Francia (1828-1831)": Alberto Filippi (ed.), *Bolívar y Europa en las crónicas, el pensamiento político y la historiografía*, Caracas: Presidencia de la República, 1995, pp. 288-309.

An article written by Benjamin Constant was published in the liberal *Le Courier Français* on January 1, 1829 (the article was the second of a three-part delivery by Constant to the newspaper). In it, Constant advocated the desirability of open, but respectful, discussions and debates among the "friends of liberty" regarding contentious issues. As an example, Constant mentioned the case of South America:

"[...] It seems to me that it is due to the memory of the great services rendered to some oppressed peoples and to the unyielding battle against an insensible metropolis that many of the friends of liberty judge with indulgence the man that, even today, carries the nickname of Liberator of Middle America; may they forgive me if I, for my part, see him as the man who has dissolved the national representation because his followers were in the minority, if I see him as the man who, with the banal pretext that his fellow citizens were not enlightened enough to rule themselves, has taken over all powers and has sanctioned his dictatorship with executions and assassinations, in that man I only see, purely and simply, an usurper. [...] There is nothing that legitimates an unlimited power. Dictatorship is the nefarious heritage of those oligarchic republics that were based on slavery, where proletarians were oppressed and deprived of their goods and of their rights. In our present organization dictatorship is a crime. If a people is not enlightened enough to be free, it is not tyranny the one that will deliver them to freedom."¹⁸

Eleven days after this article was published in *Le Courier Français*, the editor of that daily presented a reply to Constant's argument by the Abbé de Pradt. The defender of Bolívar pointed to the unevenness of conditions between Europe and America:

"[...] To begin with, on what grounds are all social varieties leveled? How can completely different situations be equally judged: prius est esse quam tale esse : existence must precede the mode of existence itself. One must not examine in the same terms those societies that are already formed and those other societies that are being formed; regular and legal societies as irregular societies, where passions utilize the laws to destroy freedom, where one finds oneself in a constant state of war and conspiracy. Is it not true that these societies suffer these crises, these moments of delirium, these clashes among the factions that confound them, that tear them apart or that expose them to destroy themselves with their own hands? Is it to usurp to separate blind or sanguinary combatants and to seize from their hands those weapons of which they make such a nefarious use for freedom itself? If going ahead of his time and of his own age, Napoleon would have had his 18 Brumaire on the dawn of January 21, if he had prevented the erection of the guillotines of 1793, or if he had abolish them, so tell me, would France had vacillated between him and the tribunate? In order to assault liberty it is necessary, above all, for liberty to exist in the first place."¹⁹

De Pradt mocked the "sybarites of the European civilization" who dared to pass judgment on people and events placed far away from their own

¹⁸ *Le Courier Français*, January 1, 1829: Filippi, "Legitimidad", p. 315. My translation.

¹⁹ *Le Courier Français*, January 12, 1829: Filippi, "Legitimidad", pp. 322-325.

comfortable normality. At this point the Royalists and Ultras exacted political profit from the public disagreement between the two prominent liberal politicians. A writer in *La Gazette De France* acknowledged, that if Bolívar was or not an usurper that was of little relevance for him. Yet, the controversy had elicited another question: "what is better: power or anarchy?"²⁰ De Pradt, they argued, in defending Bolívar, had inadvertently made the case for absolute monarchy in France. In another article published in *La Gazette* a writer pointed to the fact that Constant had supported the government when it had used its power to fight the "enemies of liberty": the Jesuits and the clerical party. Thus, Constant had "implicitly recognized that the application of the liberal doctrines depended on circumstances of time and place" and this in turn constituted a formidable argument in support of the "dictator Bolívar and his French paladin" and against Constant who claimed that constitutional principles should be independent of circumstances. The writer concluded that "the liberal doctrines that tend to destroy political power could only survive by drawing from that same power."²¹

Constant replied by writing two more articles. The first rejoinder was published in the *Courrier Français* on January 15, 1829. "I read in your paper," Constant addressed the editor, "the apology in which one writer noted for his talent and for his courage, opposes my judgment over the latest events that have imposed on the nascent republics of middle America the dictatorship. I will not hang on to a controversy that would distract the attention of the readers of more important issues. I would be afraid of serving our enemies by fixing over ill-known and distant conspiracies an attention that the faction that conspires in France deserves exclusively. However, since the reasoning alleged by my illustrious opponent justify, in my opinion, all the endeavors that tyranny undertakes in the name of public salvation, I will answer to him with one or two letters..." In his response, Constant criticizes Bolívar for imposing on Bolivia his 1826 constitution. According to Constant the Bolivian constitution was "very defective" as well as "very little in agreement with true liberty," he then accused Bolívar for violating the 1821 Colombian constitution. Later Constant states:

"[...] The eloquent and clever defender of Bolívar should have, it is my belief, taken another route, he should have avoided the discussion of detailed events of which we know, I repeat, only imperfectly, and to prove us, with an encompassing view of Middle America, that it is only Bolívar's dictatorship that can save her. He has said it so, but I can find no evidence compelling enough. The devouring torridness of the Ecuador, the Spanish boiling blood; they are images more than arguments: the question remains unanswered: would Middle America

²⁰ *La Gazette de France*, January 14, 1829: Filippi, "Legitimidad", pp. 325-327.

²¹ *La Gazette de France*, January 16, 1829: Filippi, "Legitimidad", pp. 329-331.

be lost if Bolívar's power were not unlimited? Is it possible for a man, with the exception of the case of a battle that hands an empire over to a foreign power, to save a people unable to save itself? Does dictatorship, that supersedes storms with slavery, not immobilize the progresses of intelligence, that are the only ones capable of providing a permanent and happy tranquility? To conclude, is there a single example in which despotism has given a nation, notwithstanding her moral state, the education necessary to relish liberty?"²²

In the second part of his reply to De Pradt, Constant elaborated on several points. He addressed one of De Pradt's previous contentions: "If going ahead of his time and of his own age, Napoleon would have prevented the erection of the guillotines of 1793, or if he had abolished them, would France had vacillated between him and the tribunate?" No, certainly, Constant responds, but he objects: "But, what was necessary to prevent this heinous crime and to avoid terrible plagues? An uprising, not a dictatorship."²³ It is only in the absence of dictatorship, Constant asserted, that "our constitutional education has begun." He then goes on:

"[...] a dictator appears, the nation is enslaved; it dies and everything the dictatorship had suppressed reborn more terrible. Dictatorships are not only guilty of the evils they inflict during their lives; they are responsible of the evils to come, of the evils that break out after they pass away. They have debased the generation that is under its sway, they habituate it to bear all kinds of yokes. Caesar is held accountable by history for the crimes of Tiberius and the horrors of Nero [...] No, dictatorship is never a good; the dictatorship is never licit. Nobody is enough above of his time and his country in order to have the right to disinherit his fellow countrymen, to humiliate them under his pretended superiority, a superiority of which he is the only judge, a superiority that every ambitious can invoke in turn; it is impossible to go against the stupider if he has the force in his hand and this becomes the banal pretext of all oppressions in all times and in every nation."²⁴

Constant reproached De Pradt's apology of dictatorship: "The excuse that you allege for dictatorship in a nascent republic, is the same one that our common enemies allege on behalf of absolute power in a monarchy which, they claim, is decrepit and corrupt." The controversy between Constant and De Pradt was, in effect, been exploited by the Ultras and the Royalists, whom chanted:

"Is Bolívar a hero? / Yes, says the Abbé in a lyric tone/He is the god Mars of America! / No, Constant says, on the subject / He is the assassin of the republic! / And everyone with its reply divides the stubbornly. / To whom must we believe? I ask you / Everything is good in this anarchy, says an insolent Jacobin. / Against legitimacy / Everything is valid, the deliriant gown / The sophism of the deputy / The Empire of liberty / And the liberty of the Empire".²⁵

²² *Le Courrier Français*, January 15, 1829: Filippi, "Legitimidad", pp. 331-333.

²³ *Le Courrier Français*, January 17, 1829: Filippi, "Legitimidad", p. 334..

²⁴ Filippi, "Legitimidad", p. 335.

²⁵ *Le Quotidienne*, January 17, 1829: Filippi, "Legitimidad", pp. 336-337.

Letters and articles attacking both, Constant and De Pradt, appeared in *La Gazette de France*. Ultras and Royalists pointed to Constant's strategy of evading the discussion of fundamental issues, while dwelling on the particular events taking place in Colombia. By doing this, his conservative critics asserted, Constant was implicitly giving in to De Pradt's contention that there were circumstances under which the suppression of a constitution was warranted by the interest of society.²⁶ What was relevant to the French public, they contended, were the following two questions: first, are constitutions based on the popular will above or under the circumstances? Secondly, is it a crime or a duty to use the supreme power in order to guarantee order, protection of property and the rights of citizens when society is threatened by anarchy?²⁷ The writers of *La Gazette* had touched on a crucial matter. Constant's alternative to dictatorship, popular insurrection, was only feasible against unarmed governments. When a sanguinary faction holds power, both, insurrection and liberty become only theoretical alternatives and slavery remains in practice, just as it happens under tyranny. With the insurrection theory, the Royalists maintained, the feuding of factions was perpetuated, since every one of them decided when it was legitimate to rebel, just as in the theory of dictators every individual could invoke any personal ambition to seize absolute power.

On February 23, 1829 the Abbé de Pradt gave a last reply to Constant in *Le Courier Français*. He entitled his text "A matter of social order". After referring to the recent events of Mexico (the latest coup) he went right to the heart of the matter:

"[...] Where is usurpation when society has fallen in dissolution and when what it is intended is to unify the parties? Is not this one of those extreme cases when, above all, it is necessary to preserve the existence, life? Dictatorship, as it must be called in the absence of some other term, is the last resource that society has. And it is admissible to use it only when public salvation demands it."²⁸

After the last reply of the Abbé de Pradt was published in *Le Courier*, there were two more articles published in the royalist and Ultra press regarding the liberal controversy.²⁹ When the news of the polemic reached America, Bolívar was deeply hurt by Constant's articles. Constant had been one of his most important constitutional teachers, he had read his *Cours de politique constitutionnelle* and had incorporated some of Constant's ideas in his own

²⁶ *La Gazette de France*, January 21, 1829: Filippi, "Legitimidad", pp. 340-342.

²⁷ *Ibid.*, pp. 340-342.

²⁸ *Le Courier Français*, February 23, 1829: Filippi, "Legitimidad", pp. 342-343.

²⁹ *La Gazette de France*, January 24, 1829 and *Le Quotidienne*, January 24, 1829: Filippi, "Legitimidad", pp. 343-347.

constitutional projects.³⁰ In a letter dated July 22, 1829 he wrote to an unknown corespondent: “My name is already part of history; it is history who will vindicate me. You, my good friend, do not worry in defending me of those accusations of Benjamin Constant that could have soiled my glories. He would judge me better if he knew more about the events of our history. I love my country no less than Camillus did; I love liberty no less than Washington and nobody can take away from me the honor of having humiliated the Lion of Castille from the Orinoco to the Potosí.”³¹ De Pradt, Bolívar asserted, had defended him with “compliments but not with reasons and solid arguments.”³²

Many historians have argued, following Bolívar, that Constant was not properly informed about the Colombian political situation of the time. They point to the fact that Bolívar did carry out elections and soon after he surrendered to the elected Congress his dictatorial authority. The last dictatorship of Bolívar had been after all, and in spite of Constant's allegations, temporary. Defenders of El Libertador have also argued that the 1821 Cúcuta constitution was no longer in vigor at the time Bolívar assumed dictatorial powers. However these arguments are unpersuasive, since the constitution barred its amendment until 1831, even the Ocaña convention of 1828 was unconstitutional, let alone the suspension of the constitution itself.³³ However, both defenders of Bolívar and scholars point to the fact that Constant did not understand the profound political and social conditions that prevailed at the time in Spanish America.³⁴ A reality where, according to Bolívar, revolutions were as common as waves in the sea.

However, my main point here is not a historical one. I am not principally concerned in establishing the indisputable truth about the events that led to the suspension of the 1821 constitution. If that particular crisis in Gran Colombia warranted Bolívar's action or not is by no means as relevant to my argument as the general theoretical possibility it implied. It was the hypothetical possibility of the existence of such a degree of political turmoil as to prevent

³⁰ Such as the idea of a “moderating power.” Eduardo Rozo Acuña, *Bolívar y la organización de los poderes públicos*, Bogotá: Temis, 1988, p. 67.

³¹ Vicente Lecuna (ed.), *Cartas del Libertador*, vol. 3, Caracas: Banco de Venezuela, 1929, pp. 228-229.

³² “Es lamentable, sin duda, que el señor Constant se arrogue el derecho de juzgar sin conocimiento de datos ni de causa.” Bolívar, *Obras*, pp. 260-261.

³³ On this subject see: Filippi, “Legitimidad”, pp. 357-358. Filippi points to the fact that Constant was insensitive to social and economic matters. Constant, Filippi argues, was never able to reconcile political and civil liberties in a new conception of political society. See also: Hermann Petzold Pernia, *Bolívar y la ordenación de los poderes públicos en los Estados Emancipados*, Caracas: Fundación Premio Internacional Simón Bolívar, 1986.

³⁴ Petzold, *Bolívar y la ordenación*, pp. 278-279.

normal governance that concerned Constant in the first place and it is there were the main thrust of my argument lies. Neither Constant nor Bolívar had much time to re-examine their views and personal beliefs on the subject, because both men died in 1830.

Constant's Monistic Mode of Operation of the Constitution

The liberal argument against dictatorship has been a formidable one. It has prevailed in many of the most important constitutions of the world. If Montesquieu had provided in his *Considérations sur les causes de la grandeur des Romains et leur décadence* a historical basis for the rejection of dictatorial authority Constant, in turn, developed a full-fledged theory on the inadmissibility of emergency provisions. The Revolution produced a deep distrust of political power, especially of unlimited political power. As Guy Dodge asserts: "Constant as well as Madame de Staël always thought that one of the most dangerous maxims ever coined was that ancient one, *Salus populi suprema lex esto*."³⁵ The logic underpinning this distrust was that, "the constitutional powers existing only under the constitution cannot suspend it. [...] everytime constitutions have been violated it is not the constitutions that are saved but the governments."³⁶

The rejection of emergency powers as constitutional provisions was based on a theory of self-defeating dictatorships. Constant rejected what can be conceived as the "dualistic mode of operation" of the constitution. This is, that the constitution functioned differently under normal and extraordinary circumstances. Constant contended that there was one and only one mode of operation of the constitution. No right warranted by the constitution to the individuals could be legally suspended for any length of time. Constant

³⁵ Guy H. Dodge, *Benjamin Constant's Philosophy of Liberalism. A Study in Politics and Religion*, Chapel Hill: The University of North Carolina Press, 1980, p. 103. On Constant, see also: Stephen Holmes, *Benjamin Constant and the Making of Modern Liberalism*, New Haven: Yale University Press, 1984; Etienne Hofmann, *Les «Principes de politique» de Benjamin Constant*, 2 vols., Geneva: Droz, 1980; Marcel Gauchet (ed.), *Benjamin Constant. De la liberté chez les modernes*, Paris: Le Livre de Poche, 1980.

³⁶ Benjamin Constant, "De la suspension et de la violation des constitutions": idem, *Réflexions sur les constitutions, la distribution des pouvoirs et les garanties dans une monarchie constitutionnelle*, Paris: H. Nicolle, 1814, pp. 372-380, quoted by Dodge, *Constant's Philosophy*, p. 102. Constant elaborated on this argument: "Give to the holders of executive authority the power to infringe individual liberty and you annihilate all those guarantees which are the conditions and the unique aim of the union of men under the empire of laws." See his *Principles of Politics Applicable to all Representative Governments*: Benjamin Constant, *Political Writings*, Cambridge: Cambridge University Press, 1993, p. 292.

criticized extraordinary measures as myopic, short-term responses, to political upheaval. Eventually, Constant asserted, these actions would only make things worse than they were. The evils that they intended to suppress would reappear even stronger than before. As he put it: "There is no public safety but in justice, no justice but in laws, and no laws without open forms".³⁷

According to Constant, no coup d'état had ever preserved a people or a family from ruin: "the execution of the accomplices of Catiline without a judgment was the coup d'état of Cicero, who saw the republic fall which he wanted to save."³⁸ It is easy, Constant asserted, in the midst of a political crisis to "talk about the usefulness of illegal measures and of that extra judicial expedition which, by leaving no time for the seditious to rally, reestablishes order and maintains peace." Because this temptation existed, the classical examples had to be revisited:

"The Gracchi, we are told, put the Roman republic in jeopardy. All legal procedures were impotent against them. The Senate resorted twice to the terrible law of necessity and the republic was saved! That is to say: it is from that time that we can date its fall. All rights were disregarded, every form of constitution subverted. The people had merely demanded equal rights: it swore to punish the murderers of its defenders, and the ferocious Marius came to preside over its revenge."³⁹

Constant's criticism of Bolívar was completely consistent with the ideas of *The Spirit of Conquest and Usurpation and their Relation to European Civilization*: when governments employ emergency provisions to prevent a conspiracy from breaking out, Constant states, "the evil which has been postponed for a few hours returns more terrible, aggravated by the evil which has now been committed."⁴⁰

Delayed consequences of emergency measures are explicitly embedded in Constant's fatalistic theory of self-defeating dictatorships. This "mechanism" bears some similarities with Tocqueville's conception of political society as responding to a sort of hydraulic logic. What explains the perverse effects of dictatorships is a consonant theory of how political learning comes about in society. In criticizing the advocates of emergency powers, Constant provided the crispest formulation of this argument:

³⁷ Benjamin Constant, "Principes de politique", p. 72, quoted by Dodge, *Constant's Philosophy*, p. 110.

³⁸ Benjamin Constant, "Coups d'état", *Le Temps*, 1830, quoted by Dodge, *Constant's Philosophy*, p. 102.

³⁹ Benjamin Constant, "The Spirit of Conquest and Usurpation and their Relation to European Civilization": *Political Writings*, p. 133.

⁴⁰ Constant, "The Spirit of Conquest", p. 137.

“Liberty, they argued, had to be postponed until factions died down; but factions only die down when liberty is no longer postponed. Violent measures, adopted dictatorially in advance of a public spirit, prevent that spirit from coming into being. It is a vicious circle.”⁴¹

Here is another similarity with the toquevillian idea that the evils of democracy can only be cured by more democracy.⁴² Constant explicitly acknowledged the existence of emergencies. His quarrel, however, was with the responses that governments gave to these events:

“There are, no doubt, for political societies, moments of danger that human prudence can hardly conjure away. But it is not by means of violence, through the suppression of justice, that such dangers may be averted. It is on the contrary by adhering, more scrupulously than ever, to the established laws, to tutelary procedures, to preserving safeguards. (...) Any moderate government, any government resting upon regularity and justice, is ruined by every interruption of Justice, by every deviation from regularity. As it is in its nature to soften sooner or later, its enemies wait until then to take advantage of memories armed against it. Violence seemed for a moment to come to its rescue, instead it has made its fall the more inevitable, since, by delivering it* from some of its opponents, it has generalized the hatred that these opponents felt for it.”⁴³

Dictatorial measures will inevitably cause, in the long run, the downfall of the regime. It is only in liberty that citizens can learn to make good use of political freedom. According to Constant:

“it is only when a constitution is old, observed for a long time, known, respected and cherished that it can be suspended for an instant, if a great emergency requires it. But if a constitution is new and not in practice nor identified with the habit of a people, then every suspension, either partial or temporary, is the end of that constitution. Habeas corpus can be suspended in England because in that country the institutions, the corps, the prerogatives, the rights have a stability guaranteed by 150 years of existence.”⁴⁴

In this apparent contradiction Constant seems to accept, in some cases, the principle of suspension. He appears to recognize that under certain extraordinary circumstances it would be useful to suspend the rights granted by the laws for a brief span of time in order to preserve the constitution. Moreover, even if he did not spelled it out, it seems that Constant thought that there were no safe institutional procedures that could be devised in order to prevent the potential abuse of emergency powers. He trusted more in habits

⁴¹ Constant, “The Spirit of Conquest”, p. 111.

⁴² Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence, vol. 1, New York: Harper & Row, 1969, p. 195.

* “It” here refers to the government that has deviated from the path of regularity.

⁴³ Constant, “The Spirit of Conquest”, p. 136.

⁴⁴ Benjamin Constant, “De la liberté des brochures”, p. 471, quoted by Dodge, *Constant’s Philosophy*, p. 101. But in general, Constant asserts, “Presented initially as a last resort, to be used only in infinitely rare circumstances, arbitrary power becomes the solution to all problems and an everyday expedient” (“The Spirit of Conquest”, p. 135).

and old liberal uses brought about by time than in the constitution itself. In between the lines we can read that Constant believed that society's true safeguard against tyranny were toquevillian "mores." This underestimation of procedures—the "tutelary deities of societies"—and of institutions is utterly surprising in a thinker regarded as the "constitutional apostle" of his time. So, it seems that emergency provisions *were* useful after all; it was only that the laws could not make them fool-proof. There was no safeguard that could be a hundred percent safe against the possibility that these powers might be misused and that a new Terror might ensue. Therefore, Constant tacitly implied, society was better-off if the lid of this Pandora's box was kept on. Perhaps, the procedures existed after all - in the Roman constitution - although they were cloaked by the liberal tradition and its historical interpretation of the republican experience.

The problem of how constitutions become stable in the first place is not addressed by Constant. It is a significant omission, however. Yet other fundamental assumptions of the theory are questionable. Since any present event can be explained as the result of some delayed backlash of a past occurrence, there is no way for ruling out causal spuriousness in Constant's theory, and some of its claims of inevitability may appear to be rather ludicrous.

The Bolivarian Moment

Bolívar's last dictatorship posed an incisive challenge to Constant's theory on the inadmissibility of dictatorships. As it was mentioned before, the new republics of Spanish America were seen in Europe as liberal experiments. Simón Bolívar was a respected figure, a republican hero, in the eyes of many French liberals.

Filippi states that Constant was not able to understand the problems of "constitutional engineering" that Bolívar faced at the time.⁴⁵ But what does that mean precisely? If it means that dictatorship was employed to solve the institutional crisis of the Great Colombian republic, then it is not that Constant did not understand the situation, but that he openly and consciously rejected that recourse as a legitimate political option. This rejection was not essentially due to a lack of information — something that was certainly missing — but it was rather caused by more profound reasons.

The image of necessity that Bolívar's dictatorship had in the eyes of many liberals was something that deeply disturbed Constant. He understood that the

⁴⁵ Filippi, "Legitimidad", p. 301.

Bolívar case had important theoretical as well as practical, implications for Europe. In a way, it was a “hard case” for his ideas on dictatorship. What are the key theoretical assumptions that the South American experience challenged?

The word “anarchy” had often been abused by authoritarian rulers before, and during, the nineteenth century. Alleged social and political disorders were used as pretexts for the suspension of political liberties. The ills of political freedom, Constant and other liberals contended, could only be cured by allowing individuals to experience more liberty. The “order” that despotism provided was only a façade, a fragile illusion that sooner or later would give way to repressed anarchy.

Only an extreme case of political and social turmoil, of such magnitude as to make “political learning” impossible, could call this assumption into question. Early nineteenth-century Spanish America furnished that case. Simón Bolívar himself compared the independence of the colonies from Spain to the collapse of the Roman empire. The attempt to establish viable new states after the separation from the metropolis was obstructed by a formidable wave of political disintegration: formal constitutions were a dead letter,

“no political group believed its adversaries would abide by them. Those who held power bent constitutional principles and often harshly repressed those in opposition in order to retain the government. Those out of power believed, generally correctly, that they could not gain possession of the state by the means formally prescribed by the constitutions, because those who held the government controlled the elections.”⁴⁶

The dispersion of authority made impossible the process of political learning advocated by Constant. Thus the “lack of normality” was one of the main arguments that the Abbé de Pradt's used in the defense of Bolívar. Constant's “virtuous circle” would not operate in all cases. Furthermore, under *certain circumstances*, it could even have perverse effects. In a political environment where revolutions occurred very often, if the governments showed strict restraint in the face of conspiracies, the vast majority of the people would not feel reassured, as Constant claimed, but on the contrary, they would regard authority as weak and incapable of providing for their security. It is paradoxical that in the “Age of Revolutions” the instauration of liberal principles entailed the violation of those same principles. As Safford states:

“...at least in some cases, the violation of constitutional principles was inherent in the task of the educated elite. Their effort to overthrow Spanish social, economic and political institutions

⁴⁶ Safford, “Politics”, p. 350.

and to implant new ones based on British, French and other foreign models was, in effect, revolutionary.⁴⁷

For instance, liberals, who advocated a limited role of the state, needed a strong state in order to destroy the power of the church, of local bosses and of the army.

Nineteenth-century Spanish America is above all an example of extraordinary political disintegration. After the independence, power reverted to local chieftains in the regions. The fragmentation of a previously hierarchical political order was followed by chaos. Under such conditions, as the case of Venezuela in 1814 shows, any constitution that limited the powers of constituted authorities in a significant way prevented the government from facing legitimately internal uprisings, external threats and other emergencies. Even if it is granted that the conditions of that part of the world at the time were anomalous, its mere singularity called into question the generality - and hence the intrinsic validity - of Constant's ban on dictatorship.

Constant seemed to accept the principle of suspension in some cases (as in England) but not in others. Constant's admonition to political leaders that: "...if you cannot govern with justice, even with injustice you would not govern for long," provided little comfort — or guidance — to those men who held a heavily contested power in Spanish America.⁴⁸ An unending succession of governments and coups provoked in society a deep distrust of public authority. State building was a complex and non-linear process. When order was finally established for a brief period of time, it was because governments had ignored the constitutions. In most occasions, it was a no-win situation for the governments in power. Political actors pondered on the causes of the failed attempts to establish stable governance. These reflections produced some truly original ideas. Some Latin American thinkers questioned the universal validity of political dogmas and established institutions.⁴⁹

The Liberal Cloak

On his February 23 reply to Constant, De Pradt had finally retorted to the forbidden argument: dictatorship was a last instance resort at the disposal of

⁴⁷ Safford, "Politics", p. 370.

⁴⁸ Constant, "The Spirit of Conquest", p. 136.

⁴⁹ For example Manuel Lorenzo de Vidaurre, Lucas Alamán and Vicente Rocafuerte. On original political ideas in Nineteenth-century Latin America see: José Antonio Aguilar Rivera, *Ausentes del Universo. Reflexiones sobre el pensamiento político latinoamericano en la era de la construcción nacional, 1821-1850*, México: Fondo de Cultura Económica, 2012.

society to preserve itself. The appeal of the idea was powerful. Constant himself at some point of his political career had succumbed to its pull, although he later regretted this “weakness.”⁵⁰

According to Constant, the glamour of the Dictator Bolívar was made possible only by the political and moral confusion that the revolution had created and which had exposed the people to all sorts of ideological vices and authoritarian temptations.⁵¹ For in Spanish America, just as in Europe, the collapse of the absolute monarchy had reopened the question of the foundations of sovereignty and the social contract.

Some scholars have argued that the idea of Rousseau that there is in the state no fundamental law that cannot be revoked, not excluding the social compact itself, if all the citizens agreed to, had in America “its most profound impact.”⁵² The concept of the General Will, they contend, played a prominent role in the political theory of the leaders of the new republics of America. That was an unfortunate development according to Constant, for whom the subtle metaphysics of the Social Contract “only served today to supply weapons and pretexts to all kinds of tyranny, that of one man, that of several and that of all, to oppression either organized under legal forms or exercised through popular violence.”⁵³

However, scholars have failed to note that at least in Spanish America the ideas of Rousseau were significantly tempered by post-revolutionary liberalism, such as the one espoused by Constant. It is no exaggeration to say that Constant’s sway on Spanish American rebels was as important — if not more so — than Rousseau’s influence. That is not surprising, since Spanish American insurgents were not, to say the least, socially progressive. The result was a singular — frequently contradictory — amalgamation of theories regarding the limits of the sovereignty of the people. Therefore Bolívar, who had read Constant, did not have a pure rousseauian conception of sovereignty. He recognized that “the sovereignty of the people is not unlimited because justice is its base and perfect utility sets its limits. This is the doctrine of the constitutional apostle of the day.”⁵⁴

⁵⁰ Dodge, *Constant’s Philosophy*, p. 9.

⁵¹ Constant, “The Spirit of Conquest”, pp. 55-56.

⁵² Rousseau, *The Social Contract*, book 3, quoted by Martyn P. Thompson, “The History of Fundamental Law in Political Thought: From the French Wars of Religion to the American Revolution”: *American Historical Review*, 91: 5 (1986), pp. 1103-1129.

⁵³ Constant, *The Spirit of Conquest*, p. 106.

⁵⁴ Bolívar’s note of December 31, 1823 — which was addressed to the vice-president — congratulated the General Congress for the promulgation of the new 1821 Cúcuta constitution. In it, Bolívar referred to both Rousseau and Constant. Petzold, *Bolívar y la ordenación*, p. 157. Emphasis added.

Bolívar was familiar with the idea of natural rights, he knew well what Constant had written in his *Course*: “The will of an entire people cannot make just what is unjust. The representatives of the nation have no right to do what the nation itself has no right to do.” The people, Constant asserted, “have no right to strike a single innocent, nor to treat as guilty a single accused, without legal evidence. Consequently, it cannot delegate such a right to anyone.”⁵⁵ These conceptions were readily embraced by many Spanish American liberals of the time. Yet, the idea that public interest could never collide with the interest of all and every one of the individuals of a political community, was far from being widely accepted. Thus, Rousseau prevailed in that Bolívar also believed that under pressing circumstances “an administration that follows ordinary rules, would not be able to destroy its enemies, neither to preserve itself from new aggressions.” Extraordinary measures were necessary to save the *Patria*.⁵⁶

El reconciliador, a newspaper of nineteenth-century Caracas, published on May 29, 1827 the full translation of chapter VI (the one dealing with dictatorship) of the *Social Contract*. “Bolívar,” the daily asserted in the “reflections” that preceded Rousseau’s translation, “has learned from the history of the Roman republic to save the patria.”⁵⁷ The revival of the idea of classical dictatorship in America was brought about by the coincidence of two developments: post-independence chronic political turmoil and the theories of the sovereignty of the people. The circumstances of Spanish America called for the establishment of some sort of emergency provisions. The problem was to give them not only a practical justification but a theoretical foundation. When the new republicans looked at the recourses that liberal constitutional thought had to offer, they found very little there. A contending line of European political thought maintained, on the contrary, that the idea of the “safety of the people” was a legitimate conception, that dictatorship had saved the Roman republic in the past. During the wars of independence Bolívar had been invested with dictatorial powers to fight the Spaniards. He had devised a theory in which dictatorship was legitimate, but only in disrupted societies. Constant had no objections to that: “no authority which is established by national will can be suspected of usurpation. Washington was certainly no usurper.”⁵⁸

⁵⁵ Constant, *Principles of Politics*, pp. 82-83.

⁵⁶ Simón Bolívar, letter to Manuel Antonio Pulido, Valencia, December 10, 1813, quoted by Lecuna, *Cartas del Libertador*.

⁵⁷ Pierangelo Catalano, “Conceptos y principios del derecho público romano de Rousseau a Bolívar”: *Costituzionalismo latino I*, Turin: Istituto Universitario di Studi Europei, 1991, p. 48.

⁵⁸ Constant, *The Spirit of Conquest*, p. 158.

Independence complicated things, however, since if the Spaniards were gone, political strife did not disappear from the political scene of Spanish America. Not only did the new nations suffer from political dissolution, economic stagnation and many other problems, which made the rule of law problematic, but liberal constitutions did not provide them with answers on how to deal with emergencies. In those countries where social and political conditions were stable (where constitutions were not subject to extreme ordeals) this omission went unnoticed. That was the case of the United States, where the only constitutional provision for emergencies was the English suspension of the habeas corpus. However, it was Spanish America that proved to be a litmus test for liberal constitutionalism. The fact that Spanish America did not live up to liberal theory attests not only to the presence of powerful centrifugal forces in that part of the world, but also to the existence of a serious flaw in the edifice of liberal constitutional thought.⁵⁹

The omission of emergency provisions — the Liberal Cloak — had significant consequences. One of them was that nineteenth-century Spanish American constitution-makers had to devise alternative — not always legitimate — ways to solve this vacuum. Some of the early constitutions of the new republics were drafted after the federal American pattern and the Cádiz Constitution.⁶⁰ However, there was a significant difference between the American constitutions and the Cádiz model: unlike the Spanish constitution, some of the American charts included provisions that granted to the executive extraordinary faculties in cases of emergency.⁶¹ The Spanish Americans had offset the omission of emergency provisions in liberal constitutions by, perhaps unconsciously, reviving not dictatorship, but another Roman institution: the *senatus consultum ultimum*. To empower the president in critical situations was the simplest recourse. However with this mechanism it was easier for the executive to abuse the extraordinary powers entrusted to him and to become an usurper, exactly what Constant feared.⁶² In a way, the Spanish American constitution-makers were back to square one in the task of designing mechanisms that would allow states to confront emergencies without throwing the country in the arms of despotism. In this respect classical

⁵⁹ See: José Antonio Aguilar Rivera, *El manto liberal*, Mexico City: UNAM, 2001.

⁶⁰ On constitutionalism in Latin America see the contested account of Roberto Gargarella, *The Legal Foundation of Inequality. Constitutionalism in the Americas, 1776-1880*, Cambridge: Cambridge University Press, 2010. On political thought see Joshua Simon, *The Ideology of Creole Revolution. Imperialism and Independence in American and Latin American Political Thought*, Cambridge: Cambridge University Press, 2107.

⁶¹ Safford, "Politics", p. 362.

⁶² See Brian Loveman, *The Constitution of Tyranny*, Pittsburgh: University of Pittsburgh Press, 1994.

dictatorship provided more safeguards than the *senatus consultum ultimum*, because it was not the president but an extraordinary magistrate who was invested with broad powers. Since the body that declared the emergency (the senate) was not the same body that exercised the dictatorial power, there was no incentive for "threat inflation." An important difference was that although the consuls were entrusted with the responsibility of designating a dictator, they could not appoint themselves, and after having appointed the dictator, they eclipsed from the political scene. In a rational-choice scheme, if the senate had no incentive to declare an emergency and the consuls had no particular interest in nominating a dictator, then emergencies would only be declared when truly critical circumstances arose.

According to Pierangelo Catalano, there is an indirect influence of Constant - mediated through Hegel - on the historian Mommsen. Catalano suggests, among other things, that it is due to Constant that Mommsen, in his interpretation of Roman institutions, downplayed the role of the non-permanent and extraordinary magistracies (dictatorship and censorship) by assimilating their power to the power of ordinary and permanent magistracies. That is, Constant contributed to the historical underestimation of the role of the extraordinary magistracies during the Roman republic.⁶³

Conclusion

In Spanish America, emergency provisions were abused up to the point that the Latin American dictator became a hallmark of that part of the world.⁶⁴ Constant's worse fears were proven right. The question is: why? Was it because the American constitutions had stubbornly included emergency provisions? I do not think that the political disorder of nineteenth century Spanish America from 1820 to 1870 was due principally to the fact that the Spanish American countries had defective constitutions. As some scholars have noted, that rather formalistic view was very much in vogue in Spanish

⁶³According to Catalano, Constant's influence is also important over Fustel de Coulanges and his "Ancient city." Mommsen's notion of "Staatsrecht," as well as his elimination of the tribunes and the priests from the power scheme of the republic were also influenced by Constant. Catalano's assertion is very suggestive. Catalano, "Conceptos y principios," p. 48.

⁶⁴On this respect see: Alain Rouquié, "Dictadores, militares y legitimidad en América Latina": Julio Labastida Martín del Campo (ed.), *Dictaduras y dictadores*, Mexico City: Siglo XXI, 1986; A. Curtis Wilgus (ed.), *South-American Dictators during the First Century of Independence*, New York: Russell & Russell, 1963; Hugh M. Hamill (ed.), *Caudillos. Dictators in Spanish America*, Oklahoma: University of Oklahoma Press, 1992.

America during the nineteenth century, hence the repeated rewriting of constitutions.

However, we are left with the problem of assessing the impact, if any, of constitutions on political stability. Did constitutions matter at all? While it is true that we cannot attribute the political disorder that ravaged the Spanish American countries solely to their constitutions, it is also true that such constitutions did have a limited effect on the governance of those political systems. My aim is not to demonstrate that certain constitutional provisions (or the absence of them) were the key variables to explain the existence of political order — or disorder — in those countries. The chaos of early nineteenth-century Spanish America had many extra-constitutional causes: geographic, economic and social structural factors played a significant role in destabilizing the political systems. Rather, I have two main claims to make. Firstly, that the Spanish American experience is important because it exposed the shortcomings of the monistic mode of operation of the constitution advocated by Constant. While it is not likely that adequate emergency provisions would have delivered those countries to ideal political stability, probably they would have made, at least, those constitutions less inadequate for the political circumstances that prevailed there.

My second point is that what I have called the “liberal cloak” limited the stock of institutional tools at the disposal of Spanish Americans, by casting a veil upon a previously accepted line of constitutional thought—the one concerning emergency provisions. We know that the omission or inadequacy of emergency provisions in liberal constitutions produced problems in other historical settings. For instance, in the first half of the twenty-century liberal constitutions were not able to survive fascist onslaughts, and democratic governments were seen by many as weak regimes with little chance of political survival.

Bolívar’s last dictatorship was brief. A year after he had assumed dictatorial powers, he surrendered his authority to a newly elected Congress. He had suffered an assassination attempt and once he had left power, the Gran Colombia collapsed into three different states. Bolívar was embittered and, above all, disappointed: “There is no good faith in America, nor between nations. Treaties are pieces of paper; constitutions mere books; elections open combat; liberty is anarchy and life itself a torment.” A few months before his death, Bolívar stated: “He who serves the revolution ploughs the sea.” Constant would have agreed with him on this. Yet, in the political imagination of European liberals, Bolívar remained for a long time as a republican hero. That was made evident when during the weeks of the July revolution in 1830 the people chanted, as they marched onto the Hôtel de Ville: “Le feu sacré des

republiques / Faillit autour de Bolívar / Les rochers des deux Amériques / Des peuples sont boulevard.”