

Independence(s): What Is a Revolutionary Law?

TAMAR HERZOG

Like all revolutionary processes, those that led to Latin American independence were highly volatile and experimental in nature. If the French revolution is noteworthy for having produced several, radically different constitutions in only a few years, no less dramatic were the upheavals that in Latin America accompanied the search for a new consensus regarding what the process of emancipation from colonial domination should lead to. Often accompanied by extreme violence, even open warfare, the formation of the new Latin American states in the early nineteenth century required imagining what form and shape the new entities would take, what their citizen body and territory would be, and what their institutions and laws.¹ The need, often urgency, to transform colonial domains into various independent units often coincided with the desire to end (or at least modernize) the *Ancien régime*. Yet, the wish to supersede the past did not guarantee rupture. Instead, it initiated a period of questioning more often than answering, of experimenting more often than finding solutions.

For many years, analysis of this period was mostly geared toward justifying the breakup with Spain and Portugal and the formation of new polities. This political motivation produced standard accounts that sought to demonstrate the pre-existence of communities, mostly identified as “nations,” which naturally and logically fought against the injustices of imperial rule by outsiders. For the independent Latin American states, this way of telling their history supplied both a narrative of origins (that explained how the states came to be) and a confirmation of previously prevailing identities (that vindicated their creation). In the last decades, however, most historians have

1 J. Adelman, “Ritos de estado: Violencia y soberanía en Hispanoamérica, 1789–1821,” in M. Irurozqui and M. Galante (eds.), *Sangre de ley. Justicia y Violencia en la institucionalización del estado en América Latina, siglo XIX* (Madrid: Polifemo, 2011), 25–63, discusses some of these issues.

gradually abandoned these teleological accounts. Instead, they have started to present Latin American independence as the outcome of a long and complex process, the results of which were neither natural, nor could they have been foretold.² Rather than attributing the independence movements only to internal pressures, many historians now look to external developments, and ask important questions about the larger contexts in which Latin American independence took place.

The Larger Contexts

The complex unfolding that eventually led to the independence of Latin American states began with imperial crises in both the Spanish and Portuguese monarchies. In 1807, Napoleon invaded the Iberian Peninsula, forcing actors in Portugal, Spain, and their overseas territories to decide how they should react. Some were willing to collaborate with the new French regime, either because they believed it would improve their societies by modernizing them, or because they feared the consequences of a confrontation.³ Yet many others rejected the French-imposed governments that were instituted in Portugal and Spain and proceeded to imagine new political arrangements. The first to do so was the Prince Regent of Portugal who, acting for his mother the queen, sailed in 1807 with his family, members of his entourage, and his ministers – a total of some 10,000, perhaps even 15,000 people – to Rio de Janeiro. He left Portugal in the hands of a regency, whose members he instructed to conserve the traditional laws and structures of government, yet without antagonizing the French occupiers.⁴ In the Spanish territories, news regarding the forced

- 2 See for example, the survey by H. Sábato, “La ciudadanía en el siglo XIX: Nuevas perspectivas para el estudio del poder político en América Latina,” in H. J. König, T. Platt, and C. Lewis (eds.), *Estado-nación, comunidad indígena, industria. Tres debates al final del milenio* (Cuadernos de Historia Latinoamericana 8) (s.l.: Ahila, 2000), 49–70, at 49–51.
- 3 J. R. Aymes, “Españoles al servicio de Napoleón,” *Historia* 16(20) (1977), 49–60; L. Barbastro Gil, *Los afrancesados: primera emigración política del siglo XIX español (1813–1820)* (Madrid: CSIC, Instituto de Cultura Juan Gil-Albert, 1993); J.–B. Busaall, “Los afrancesados: el estado como modernidad política,” in M. A. Cabrera and J. Pro (eds.), *La creación de las culturas políticas modernas, 1808–1833* (Historia de las culturas políticas en España y América Latina 1) (Madrid: Marcial Pons Historia, 2014), 347–73; and A. C. Araújo, “Confluencias políticas en el trienio liberal: el proceso de la revolución portuguesa de 1820 y el modelo constitucional gaditano,” *Historia y política* 45 (2021), 53–83, at 56–58. On how the French-led government tried to sway Spanish Americans in its direction, see M. Artola, “Los afrancesados y América,” *Revista de Indias* 9 (1949), 541–67.
- 4 V. Alexandre, *Os sentidos do império. Questão nacional e questão colonial na crise do antigo regime português* (Porto: Afrontamento, 1993); K. Schultz, *Tropical Versailles: Empire, Monarchy, and the Portuguese Royal Court in Rio de Janeiro, 1808–1821* (New World in the Atlantic World) (New York: Routledge, 2001); M. Halpern Pereira, “Crown, Empire,

abdication of the Spanish king and the coronation of Napoleon's brother as the new monarch of Spain led municipal actors on both sides of the Atlantic to constitute local committees (*juntas*) that were to act as sovereign entities in the absence of the legitimate monarch (on the sovereignty of *pueblos*, see also Sections 5.1 and 5.3).⁵ Back in Portugal, after the French dissolved the regency and instituted their own (1808), many municipalities also moved to form *juntas* that either collaborated with the regency or acted autonomously. As in Spain, these municipal *juntas* claimed jurisdiction over their district or province.

The resulting fragmentation, with each *junta* claiming to be fully sovereign, led to the search for alternative solutions. In northern Portugal, the *junta* of Porto, having achieved the allegiance of a series of municipalities located north of the river Douro, declared itself *Junta Suprema do Governo do Reino*, as did the *junta* of Faro in the Algarve. In the Spanish territories, the search for a coordinated government produced first an organ that was to coordinate the distinct *juntas* (the so-called *Junta Central*), then a regency (that stood for the absent king), and eventually a meeting of the parliament, the *Cortes*, that declared itself a constituent assembly and that, in 1812, adopted the Constitution of Cádiz. During this period, Spain was *de facto* divided into a French-controlled territory, where a French-inspired (and -imposed) constitution (the Constitution of Bayonne, 1808) and government prevailed, and a so-called free territory, controlled by *juntas*, the regency, and the *Cortes*.⁶

and Nation (1807–1834),” *e-Journal of Portuguese History* 11(1) (2013), 43–60; and A. C. Araújo, “Confluencias políticas,” 53–83, at 56–88. On how locals reacted to the royal decision, see A. C. Araújo, “O ‘reino unido de Portugal, Brasil e Algarves’ 1815–1822,” *Revista de História das Ideias* 14 (1992), 233–61. A general description of the transfer of the court to Rio, the ensuing debate about its return, and the resulting constitutional changes in both Portugal and Brazil can be found in G. Paquette, *Imperial Portugal in the Age of Atlantic Revolutions: The Luso-Brazilian World, c.1770–1850* (Cambridge: Cambridge University Press, 2013).

- 5 B. R. Hamnett, *La política española en una época revolucionaria, 1790–1820* (Mexico City: Fondo de Cultura Económica, 1985); F.-X. Guerra, *Modernidad e independencias. Ensayos sobre las revoluciones hispánicas* (Mexico City: Fondo de Cultura Económica, 1993); F.-X. Guerra, “The implosion of the Spanish American Empire: Emerging Statehood and Collective Identities,” in L. Roniger and T. Herzog (eds.), *The Collective and the Public in Latin America: Cultural Identities and Political Order* (Brighton: Sussex Academic Press, 2000), 71–93; J. E. Rodríguez O., *The Independence of Spanish America* (Cambridge: Cambridge University Press, 1998); J. E. Rodríguez O., “We Are Now the True Spaniards.” *Sovereignty, Revolution, Independence, and the Emergence of the Federal Republic of Mexico, 1808–1824* (Stanford: Stanford University Press, 2006); and J. E. Rodríguez O., *La revolución política durante la época de la independencia. El Reino de Quito, 1808–1822* (Quito: Universidad Andina, 2006).
- 6 On what transpired under the French government of Spain, see for example., C. Muñoz de Bustillo Romero, *Bayona en Andalucía: El estado bonapartista en la prefectura de Xerez* (Historia de la Sociedad Política) (Madrid: Centro de Estudios Constitucionales, 1991).

Portugal was similarly ruled by several governments: the military government first of France and then of Britain, whose troops either invaded or liberated (depending on whom was speaking) the country, a regency, and various *juntas*. The king in Rio de Janeiro also tried to control the Peninsula by issuing a series of orders to local officials, though his success in doing so was limited.

In 1814, as the power of Napoleon was waning, the Spanish king, Fernando, returned to Spain, where he declared the Cádiz Constitution, and all that was enacted by the *Cortes* of Cádiz, void. A liberal uprising in 1820 forced the king to reinstall the constitution, but in 1823 it was again repealed. Meanwhile, the Portuguese Prince Regent remained in Brazil where, crowned as King João VI in 1815 after the death of his mother, he declared the formation of the United Kingdom of Portugal and Brazil. Under enormous pressure, probably linked to fears that Brazil would colonize Portugal, and after an uprising in Porto in 1820 that protested “the status of a colony to which Portugal in effect is reduced,” the regency in Portugal agreed to call a meeting of a constituent *Cortes*. Threatened by these developments, João VI returned to Portugal in 1821, leaving his heir behind as regent. As he was departing, crowds in Rio de Janeiro forced him to swear allegiance to the Spanish Constitution of Cádiz, which they believed would ensure that the United Kingdom of Portugal and Brazil would become a constitutional monarchy that would protect equal relations between the Portuguese territories on both sides of the ocean.⁷

The Portuguese *Cortes*, which met from 1820 to 1822, in 1822 adopted a new constitution for the United Kingdom of Portugal and Brazil. Yet, in response to these developments as well as pressures from locals, the heir to the throne, Dom Pedro, who remained in the Americas, declared Brazilian independence in 1822. He convoked a constituent assembly in 1823 but, ignoring most of its work, proceeded to impose a new constitution on Brazil in 1824. In Portugal, João VI began purging Portuguese liberal legislation of elements that according to him did not conform to the customs and will of the nation and, in 1824, declared the return to the *Ancien régime*, that is, all which existed before the imperial crisis.

These European events greatly affected developments in Latin America. In Spanish territories, while some remained loyal to the captive king despite his deposition in 1808 and refused to adopt any measure that might amount to innovation, others formed local *juntas*, which, although swearing allegiance

7 M. R. Berbel, “Os sentidos de Cádiz em Portugal e no Brasil,” in A. Annino and M. Ternavasio (eds.), *El laboratorio constitucional iberoamericano: 1807/1808–1830* (Estudios AHILA de Historia Latinoamericana 9) (Madrid and Frankfurt am Main: Ahila, Iberoamericana, Vervuert, 2012), 119–235.

to the deposed Spanish monarch and claiming to use the traditional powers of local communities, did not necessarily form part of the traditional political repertoire (on traditional claims to sovereignty as voiced during the monarchical crises by local communities, see Section 5.1).⁸ After the Spanish *Cortes* had passed the new liberal constitution in 1812, the populations of the Spanish American territories were called upon by the *Cortes* to express their adherence to it. In many places, the constitution was joyfully received in public ceremonies, and, obeying its instructions, elections to a variety of representative bodies took place.⁹ The constitution was also welcomed by many indigenous communities, where the constitutional text was read and discussed during church services as well as translated into local languages.¹⁰ In Portuguese America, the 1822 Portuguese constitution was accepted, but because of the declaration of independence, it was soon replaced by the Brazilian constitution of 1824.¹¹

As one historian put it, like Humpty Dumpty in the famous English nursery rhyme, after the pre-Napoleonic political order had fallen and broken to pieces, “all the king’s horses and all of the king’s men” could not put it “together again.”¹² Or, as another historian has shown, the imperial crisis itself was transformative. It was an opportunity for Latin American actors – both elites and

8 On royalists, see for example, S. Chambers, “Rewarding Loyalty after the Wars of Independence in Spanish America: Displaced Bureaucrats in Cuba,” in A. Forrest, K. Hagemann, and M. Rowe (eds.), *War, Demobilization and Memory: The Legacy of War in the Era of Atlantic Revolutions* (New York: Palgrave Macmillan, 2016), 238–53; and M. Echeverri Muñoz, *Indian and Slave Royalists in the in the Age of Revolution: Reform, Revolution, and Royalism in the Northern Andes, 1780–1825* (Cambridge Latin American Studies 102) (New York: Cambridge University Press, 2016). On royalist political ideas, see J.-P. Luis, “La construcción inacabada. Una cultura política realista,” in M. A. Cabrera and J. Pro (eds.), *La creación de las culturas políticas modernas, 1808–1833* (Historia de las culturas políticas en España y América Latina 1) (Madrid: Marcial Pons Historia, 2014), 319–45.

9 M. Rodríguez, *El experimento de Cádiz en Centroamérica, 1808–1826* (Cuadernos de Historia 7) (Mexico City: Fondo de Cultura Económica, 1984); M. Chust (ed.), *Doceañismo, constituciones e independencias. La Constitución de 1812 y América* (Madrid: Mapfre, 2006); and S. Eastman and N. Sobrevilla Perea (eds.), *The Rise of Constitutional Government in the Iberian Atlantic World: The Impact of the Cádiz Constitution of 1812* (Atlantic Crossings) (Tuscaloosa: University of Alabama Press, 2015). On some of these questions, see also T. Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America* (New Haven: Yale University Press, 2003), 141–63.

10 G. Chiaramonti, *Ciudadanía y representación en el Perú (1808–1860). Los itinerarios de la soberanía* (Lima: Universidad Nacional Mayor de San Marcos, 2005), 117.

11 For the types of questions facing Brazilians at that time, see for example, I. Jancsó, “Brasil e brasileiros – Notas sobre modelagem de significados políticos na crise do Antigo Regime português na América,” *Estudos Avançados* 22(62) (2008), 257–74.

12 F. Fernández-Armesto, *The Americas: A Hemispheric History* (New York: The Modern Library, 2003), 5. The Humpty-Dumpty metaphor had already been used earlier in the context of the historiography of the British empire by D. Fieldhouse, “Can Humpty-Dumpty be Put Together Again? Imperial History in the 1980s,” *Journal of Imperial and Commonwealth History* 12(2) (1984), 9–23.

non-elites – Spaniards, Portuguese, indigenous and Afro-Latin Americans, to engage with politics. At the end of the imperial crisis, they emerged as very different political actors than they had been before it took place.¹³

According to this interpretation, in the period between 1807 and 1823, different actors in Latin America had to respond to unfolding events as the war situation in the Iberian Peninsula deteriorated and political upheavals intensified. In Spanish America, some disliked the *Junta Central*, others the regency. Yet another group criticized the *Cortes* of Cádiz for not including a sufficient number of Latin American representatives, or for enacting a constitution either too liberal or insufficiently liberal, or they agreed or disagreed with King Fernando who, after his return to Spain in 1814, sought to reinstitute the pre-crisis status quo, or they agreed with or refused to follow the liberals who, in 1821, had obtained from Fernando an oath of allegiance to the 1812 Cádiz constitution, or they advocated for or disliked the second annulment of the Cádiz constitution in 1823. In many areas of Spanish America, the focus was on how to obtain or conserve (depending on who was speaking) autonomy from Spain. In others, what was at stake was the need to ensure autonomy *vis-à-vis* other American enclaves, as was famously the case in Río de la Plata, where relations between the city of Buenos Aires and other regional capitals quickly deteriorated, and in Central America, where the various political centers wished to renegotiate their relations with Mexico City. In both these cases, the crisis was an opportunity to rearrange relations not only with the Spanish monarchy but also with other Latin American political centers.

In Luso-America, actors faced the questions whether to obey the *juntas*, provincial assemblies, or the king, and how to position themselves with

¹³ On politicization in Spanish America, see for example, Echeverri Muñoz, *Indian and Slave Royalists* and her article “‘Sovereignty Has Lost its Rights’: Liberal Experiments and Indigenous Citizenship in New Granada, 1810–1819,” in B. P. Owensby and R. Ross (eds.), *Justice in a New World: Negotiating Legal Intelligibility in British, Iberian, and Indigenous America* (New York: New York University Press, 2018), 238–69; P. Blanchard, *Under the Flag of Freedom: Slave Soldiers and the Wars of Independence in Spanish South America* (Pittsburgh: University of Pittsburgh Press, 2008). On politicization in Luso-America, see for example, J. P. G. Pimenta, “A política hispano-americana e o império português (1810–1817): Vocabulário político e conjuntura,” in I. Jancsó (ed.), *Brasil: Formação do estado e da nação* (Estudos Históricos 50) (São Paulo: Editora Hucitec, 2003), 123–39; A. C. Araújo, “Um império, um reino e uma monarquia na América: as vésperas da independência do Brasil,” in I. Jancsó (ed.), *Independência. História e Historiografia* (São Paulo: Editora Hucitec, 2005), 235–70; L. M. Bastos Pereira das Neves, *Corcundas e constitucionais. A cultura política da independência (1820–1822)* (Rio de Janeiro: Editora Revan, 2003); and H. Kraay, “Muralhas da independência e liberdade do Brasil: a participação popular nas lutas políticas (Bahia, 1820–25),” in J. Malerba (ed.), *A independência brasileira. Novas dimensões* (Rio de Janeiro: Editora FGV, 2006), 303–41.

regards to the 1822 Portuguese constitution. As in Spanish territories, they disagreed about the form of government and the policies to adopt, but they also engaged in heated debates regarding the appropriate relations between the metropole and its American territories. Historians point out that the transfer of the Portuguese court to Brazil was itself revolutionary, as it exposed the prince regent to new pressures and politicized the Brazilian society. By the 1820s, much of the debates centered around the question whether Portugal and Brazil would remain united under a central government, or each have a separate and autonomous government, or whether Brazil would again be subjected to Portuguese interests, as had been the case before the imperial crisis.¹⁴ For some Brazilians, a united government, even if unequal, was preferable, as they feared control by Rio de Janeiro and São Paulo more than they feared supervision by Portugal. Others felt that the contrary was true. Fragmentation within Luso-America was also evident. Several Brazilian provinces participated in the Portuguese *Cortes* of 1820 despite royal disapproval, others did not. Confrontations between the various regions in Luso-America that predated the imperial crisis and the creation of the independent kingdom of Brazil in 1822 continued into the 1840s.¹⁵ As in Spanish America, disagreement as to how to respond to European developments led to civil wars, as different factions and different regions clashed as to which was the best way to react.

Regardless of these disagreements, at the initial stages of these imperial crises, almost no one – either in Spanish or in Portuguese America – imagined independence to be the solution. Instead, actors wished to preserve or enhance their autonomy. When separation did become a possibility, it was not always evident whether the aim was to sever the links with the monarchy or with the Spanish and Portuguese Peninsular communities. Was the rebellion directed against the monarch or the metropole? Even among those in favor of independence, different answers were given to the question of the kind of relations the new polities would have with the former colonial power (confederation, commonwealth, association, or none of the above?) If finding a common answer was difficult, identifying who should give it was

14 M. R. Berbel, “Nación portuguesa, Reino de Brasil y autonomía provincial,” in J. E. Rodríguez O. (ed.), *Revolución, independencia y las nuevas naciones de América* (Madrid: Mapfre, 2005), 397–423; and C. Nogueira da Silva, “Empire, Federalism, Nation(s) and Homeland(s) in the First Portuguese Constitutionalism (1821–1822),” *Giornale di storia costituzionale* 40(2) (2020), 57–82. On the question how revolutionary these processes were, see J. P. G. Pimenta, “La independencia de Brasil como revolución: historia y actualidad sobre un tema clásico,” *Nuevo Topo: Revista de Historia y Pensamiento Crítico* 5 (2008), 69–98.

15 J. C. Mosher, *Political Struggle, Ideology, and State Building: Pernambuco and the Construction of Brazil, 1817–1850* (Lincoln: University of Nebraska Press, 2008).

just as problematic. In this process of renegotiation, reorganization, perhaps imperial disintegration, who would be the legitimate political actors? How to identify the territories that could become new polities? Would the old vice-royalties become new states? Would colonial provinces? Colonial towns? And who could legitimately represent them?

Attempts at answering the fundamental question of which new states would be instituted in the former colonial territories led to confrontations and internal struggles, even civil wars.¹⁶ Different polities were proposed, experimented with, and sometimes eliminated. Attempts to conserve viceregal structures in both North and Central America, and in the territory of Nueva Granada, soon failed. This was partly the result of the growing powers of municipal corporations, which had increased their autonomy during the imperial crisis. Whether because their authorities assumed sovereignty to replace the captive king, or because the 1812 Cádiz constitution had mandated the creation of new municipalities and established electoral procedures that increased municipal control (by allowing parish *juntas* to decide on who had the right to vote), by the time independence was declared, municipal bodies were the main political actors. In some places, for example, present-day Ecuador, alliances between cities acting as sovereign bodies constituted new states. In others, such as Río de la Plata, alliances between cities were harder to achieve, and took various shapes and a very long time to cohere.¹⁷ Several cities, such as Montevideo, proclaimed themselves independent states. In Brazil, separate colonial units, such as the State of Brazil and the State of Grão Pará, which had been directly tied to Lisbon rather than to one another, were joined together to create a new country (the state/empire of Brazil), sometimes to the displeasure of local actors who had sought autonomy (or independence) not so much from Lisbon

16 See for example, N. Goldman and M. Ternavaio, "Construir la república: Semántica y dilemas de la soberanía popular en Argentina durante el siglo XIX," *Revista de Sociología e Política* 20(40) (2012), 11–19; and S. C. Chambers, "'Drying Their Tears': Women's Petitions, National Reconciliation and Commemoration in Post-Independence Chile," in K. Hagemann, G. Mettelle, and J. Rendall (eds.), *Gender, War and Politics: Transatlantic Perspectives, 1775–1830* (London: Palgrave Macmillan, 2010), 343–60. On what transpired in Brazil, see for example, J. Malerba, "As independências do Brasil: ponderações teóricas em perspectiva historiográfica," *História (São Paulo)* 24(1) (2005), 99–126, at 101.

17 J. C. Chiaramonte, "El federalismo argentino en la primera mitad del siglo XIX," in M. Carmagnani (ed.), *Federalismos latino-americanos: México/Brasil/Argentina* (Mexico City: El Colegio de México, Fondo de Cultura Económica, 1992), 81–132; and J. C. Chiaramonte, "Autonomía e independencia en el Río de la Plata, 1080–1810," *Historia Mexicana* 58(1) (2008), 325–68. Chiaramonte criticizes the lack of attention to natural law in the historiography that studies these political debates. On natural law (though failing to identify it as such), see also F. J. Tavarez, "Viscardo's Global Political Economy and the First Cry for Spanish American Independence, 1767–1798," *Journal of Latin American Studies* 48(3) (2015), 537–64.

as from Rio de Janeiro or São Paulo. During the first half of the nineteenth century, and sometimes even later, in both Spanish and Portuguese America, new polities who claimed to represent new or old communities were formed, transformed, reformed, dismantled, and constructed yet again.

As the first answers to the most basic question – what new states would emerge out of the implosion of the colonial regime – began surfacing, the challenges in transitioning from colony to independent state became obvious. The transition required thousands of specific decisions regarding practically every aspect of collective life. The future was to be built on the ruins of the past, yet, despite the desire for change, the past often served as a foundation for the present.

In this chapter, I survey some of the questions that had to be answered, mostly by identifying debates that had to be settled and the difficulties entailed in achieving this goal. While the specific solutions that were adopted will be described in Sections 5.1–5.3, the aim here is to imagine a revolutionary period that required profound mutations and presented enormous challenges, and in which both continuity and change played major roles.¹⁸ I also wish to demonstrate that, despite local differences, there was a common Latin American story, and that, moreover, the various options that were considered often formed part of a larger repertoire that actors on other continents also discussed.

The Challenges

If the first question that had to be answered was which polities could demand autonomy or independence, no less problematic was the definition of their citizen body (on this, see also Section 5.1). As the imperial crises unfolded and local actors moved to declare independence (roughly in the period from 1807 to the 1830s), some of the new Latin American states decreed the expulsion of the citizens of the former colonial powers, which they now considered dangerous foreigners.¹⁹ Others admitted them into citizenship if they were willing to swear allegiance to the new order. In Brazil, already resident Portuguese were transformed into “Brazilians” under the presumption that if they remained in

18 On this period as featuring constant experimentation on multiple levels, see also H. Sabato, *Republics of the New World: The Revolutionary Political Experiment in Nineteenth-Century Latin America* (Princeton: Princeton University Press, 2018).

19 As happened in Lima, Mexico, and Argentina. See for example, T. Herzog, “Communities Becoming a Nation: Spain and Spanish America in the Wake of Modernity (and Thereafter),” *Citizenship Studies* 11(2) (2007), 151–72, at 161–63; and T. Herzog, “Nosotros y ellos: españoles, americanos y extranjeros en Buenos Aires a finales de la época colonial,” in J. I. Fortea and J. E. Gelabert (eds.), *Ciudades en conflicto (Siglos XVI–XVIII)* (Valladolid: Junta de Castilla y León, 2008), 241–57.

the country after 1822, they had agreed with the move to declare independence. Yet, in many localities, hostility to these Portuguese was evident, as was their *de facto* exclusion from the community. Loyalty was required not only of these former compatriots, but also from all other residents, who were implicitly or explicitly to agree to the new emerging structures. During this period, some disagreements regarding the measures and laws that the new states should adopt were perceived as legitimate (and were thus tolerated), while many others were classified as treason and their proponents punished.²⁰

Equally complex was the status the new states bestowed on their indigenous inhabitants and populations of African descent, including both free and enslaved persons.²¹ Individuals belonging to these groups were either granted theoretical legal and/or political equality, or they were outright discriminated against by their exclusion from the nation's body politic or citizenship (or both). Often, inclusion – declaring all those born locally citizens, regardless of race or ethnicity – survived only a few decades before such declarations were repealed or exclusion was exercised indirectly by eliminating the participation of those considered unfree or dependent. In other places, theoretical inclusiveness did not stop or diminish anti-indigenous violence and the intensification of slavery.²² New legal categories were invented, distinguishing “civilized” persons from so-called “savages,” to whom the laws assigned differential treatment. The legal capacity of those classified as belonging to the second category was limited, such as their ability to enter into contracts,

20 See for example, I. Polastrelli, *Castigar la disidencia. Juicios y condenas en la élite dirigente rioplatense, 1806/1808–1820* (Buenos Aires: Academia Nacional de la Historia, 2019); J. L. Ossa Santa Cruz, *Armies, Politics, and Revolution: Chile, 1808–1826* (Liverpool: Liverpool University Press, 2014).

21 The literature on these questions is enormous. I found the following most useful: B. Larson, *Trials of Nation Making: Liberalism, Race and Ethnicity in the Andes, 1810–1910* (New York: Cambridge University Press, 2004); A. Sleiman, “‘Seriam todos cidadãos?’: Os impasses na construção da cidadania nos primórdios da constitucionalismo no Brasil (1823–1824),” in I. Jancsó (ed.), *Independência. História e Historiografia* (São Paulo: Editora Hucitec, 2005), 829–47; and C. Nogueira da Silva, “Da ‘carta de alforria’ ao ‘alvará de assimilação’: a cidadania dos ‘originários de África’ na América e na África portuguesas, séculos XIX e XX,” in M. Berbel and C. H. de Salles Oliveira (eds.), *A experiência constitucional de Cádiz. Espanha, Portugal e Brasil* (São Paulo: Alameda, 2012), 109–35.

22 Y. Miki, *Frontiers of Citizenship: A Black and Indigenous History of Postcolonial Brazil* (Cambridge and New York: Cambridge University Press, 2018); J. A. Erbig, Jr., *Where Caciques and Mapmakers Met: Border Making in Eighteenth-Century South America* (The David J. Weber Series in the New Borderlands History) (Chapel Hill: UNC Press, 2020); and C. R. Larson (ed.), *The Conquest of the Desert: Argentina's Indigenous Peoples and the Battle for History* (Albuquerque: University of New Mexico Press, 2020). On projects of granting equality to all, regardless of race or ethnicity, and their demise in the second half of the eighteenth century, see for example, T. H. Schaefer, *Liberalism as Utopia: The Rise and Fall of Legal Rule in PostColonial Mexico, 1820–1900* (Cambridge Latin American Studies 106) (Cambridge: Cambridge University Press, 2017).

or they were attributed diminished criminal responsibility, allegedly in order to protect and “civilize,” rather than punish, them.²³ Treating these individuals and groups as potential, rather than actual, members of the body politic, some Latin American states eventually began to disregard their presence. Indigenous and Afro-Latin American individuals and groups disappeared from the official records, as state authorities no longer mentioned their existence or counted them. This elimination enabled some states, most notably Argentina, to claim that these groups were extinct.

If the composition of the new national communities was debated, no less contentious was the extent of their territories. The literature on the new Latin American states tends to center on the juridical doctrine of *uti possedetis*, which allegedly permitted continuity between the colonial and the postcolonial period by determining that the borders of the former colonial entities, now states, would remain as they had been before independence.²⁴ More recently, however, various historians have demonstrated that this continuity was easier to imagine than implement, as actors in most Latin American states disagreed as to what the situation at the end of the colonial period had been. Such disagreements often degenerated into conflicts which, according to most contemporaries, were not directed at expansion but only at allowing each of the new polities to possess what was rightfully theirs. As a result of these repeated confrontations, and despite vociferous claims to the contrary, by the mid-twentieth century most Latin American borders did not derive from the old colonial demarcations but had been fixed either as a result of war or in bilateral treaties.²⁵

23 T. Herzog, “Latin American Legal Pluralism: The Old and The New,” *Quaderni fiorentini per la storia del pensiero giuridico moderno* 50(2) (2021), 705–36, at 713–19. Also see T. Herzog, “Percibir el otro: El código penal de 1924 y la división de los peruanos en personas ‘civilizadas’, ‘semi-civilizadas’ y ‘salvajes’,” in J.-M. Scholz and T. Herzog (eds.), *Observation and Communication: The Construction of Realities in the Hispanic World* (Ius Commune Sonderheft 101) (Frankfurt am Main: Vittorio Klostermann, 1997), 399–414.

24 S. Lalonde, *Determining Boundaries in a Conflicted World. The Role of Uti Possidetis* (Montreal: McGill-Queen’s University Press, 2002), 24–60; J. Castellino and S. Allen, *Title to Territory in International Law: A Temporal Analysis* (Burlington: Ashgate, 2003), 7 and 57–89; and M. G. Kohen, *Possession contestée et souveraineté territoriale* (Paris: Presses Universitaires de France, 1997), 426–28. On the original use of this doctrine in international law, see K. Touri, “The Reception of Ancient Legal Thought in Early Modern International Law,” in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 1012–33, at 1029–30.

25 It has been estimated that as much as 75 percent–90 percent of present-day Latin American borders were the result of post-independence conflicts: T. Herzog, “Historical Rights to Land: How Latin American States Made the Past Normative and What Happened to History and Historical Education as a Result,” in M. Carretero, S. Berger, and M. Grever (eds.), *Palgrave Handbook on Historical Culture and Education* (London: Palgrave Macmillan, 2017), 91–107; and T. Herzog, “The Meaning of Territory: Colonial Standards and Modern Questions in Ecuador,” in L. Roniger and

In part, the difficulty in fixing the new states' territories can be explained by the constant changes in colonial jurisdictions, and the constant disagreement regarding their definition even during the colonial period.²⁶ However, complexity was also aggravated by the prevalence of territories – including large tracts of the continent's interior as well as its Southern Cone – that had *de facto* been external to the colonial system. The conquest of these territories by the post-independence states during the nineteenth century unleashed violent campaigns of occupation and extermination that continued well into the twentieth century.²⁷

Another fundamental issue that contemporary actors had to resolve was the nature of the political system to be established. Would the new states be monarchies? Republics? Perhaps even empires? All these forms were attempted, some producing regimes more stable than others. Supporters of centralism fought against federalists, and in both factions, many disagreed about what centralism and federalism actually were, and how they should best be designed and implemented (for a more detailed discussion, see Sections 5.1, 5.3, and 6.1).²⁸ Regions clashed with each other, rural and urban interests competed, liberals faced conservatives, and each of these groups was internally divided on multiple issues. Instability was permanent, as different projects were experimented with, polities were constituted and broken up, constitutions were drawn and redrawn, and governments constantly changed.

Despite these disagreements, to most of those contemporaries whose opinions are preserved in the written record, it was clear that the transition from colony to independent state required a new legal regime. In various declarations and in early legislation, the polities that declared their independence formally espoused the idea of a legal order in which parliaments would have a monopoly over legal creation. This required the drastic modification of the old order. As described in Section 3.1, instead of the multiplicity of legal sources (ranging from canon and Roman law to customs, royal decrees, and “common sense,” all of which had to be weighed anew in each case to be decided) and a variety of different powers, each with its own jurisdiction, many actors in the postcolonial

C. H. Waisman (eds.), *Globality and Multiple Modernities: Comparative North American and Latin American Perspectives* (Brighton: Sussex Academic Press, 2002), 162–82.

26 T. Herzog, *Frontiers of Possession: Spain and Portugal in Europe and the Americas* (Cambridge: Harvard University Press, 2015).

27 S. E. Lewis, “Myth and History of Chile’s Araucanians,” *Radical History Review* 58 (1994), 112–41; V. N. César de Carvalho, “Soberanía e confronto na fronteira amazônica (1850–1910),” *Anuario de Estudios Americanos* 52(2) (1995), 121–50; and P. García Jordán and N. Sala i Vila (eds.), *La nacionalización de la Amazonia* (Barcelona: Universitat de Barcelona, 1998).

28 See for example, J. L. Ossa, “No One’s Monopoly: Chilean Liberalism in the Post-Independent Period, 1823–1830,” *Bulletin of Latin American Research* 36(3) (2017), 299–312.

states imagined a system in which there would be a single sovereignty that would be undivided, exclusive, and monopolistic. They also imagined a new normative system where legislation enacted by the representatives of the people would be the only legitimate legal source. The aim was to abandon the old system that allowed for the existence of multiple distinct authorities that declared and applied the law, and to instead institute a single authority and a single normativity. As Francisco de Paula Santander, who championed the cause of independence in the territory of present-day Colombia, famously stated “[w]eapons have given you independence: laws will guarantee you liberty.”²⁹

Yet, how was this to be achieved? Could colonial law persist in some matters, or must it be completely abolished, and new laws adopted instead? How would the transition from the old to the new system be organized, and how fast could it be realized? If the system required a true overhaul, what areas should be prioritized? And how to deal with colonial law that was contradictory to the new constitutional arrangements? Should older norms that were in conflict with the new order be automatically repealed, or should this require formal revocation? Here too, opinions varied. Some leaders urged their contemporaries to abandon Spanish or Portuguese law, which they believed was deeply flawed and inadequate for the needs of the early nineteenth century, and to adopt a better system, often by imitating legal developments elsewhere. Others rejected the idea of looking to foreign law for inspiration and imagined a homegrown legislation, modeled according to local conditions and local desires by rational actors meeting and discussing the various solutions in parliament. In the end, most of the new Latin American countries opted to uphold the colonial law as long its provisions did not stand in direct or indirect opposition to the “freedom” and “independence” that had been achieved.³⁰ What this meant in practice, of course, was a matter of debate.³¹

29 “Las armas os han dado independencia: las leyes os darán la libertad.” This famous saying, contained in a message Santander sent to congress on December 2, 1821, is now reproduced on the walls of the Palacio de Justicia in Bogotá. For the full text, see “El general Santander se dirige a los pueblos de Colombia...” in J. F. Blanco (ed.), *Documentos para la historia de la vida pública del libertador de Colombia, Perú y Bolivia* (Caracas: Imprenta de “La Opinión Nacional”, 1876), n. 1954, vol. VIII, 223–24.

30 J. C. Chiaramonte, “The ‘Ancient Constitution’ After Independence (1808–1852),” *Hispanic American Historical Review* 90(3) (2010), 455–88, at 471; R. Breña, “The Emancipation Process in New Spain and the Cádiz Constitution: New Historiographical Paths Regarding the *Revoluciones Hispánicas*,” in Eastman and Sobrevilla Perea, *The Rise of Constitutional Government*, 42–62, at 57.

31 M. Candiotti, “‘Reformar útilmente la justicia’: Jueces y leyes en la construcción del estado en Buenos Aires en la década de 1820,” in Irurozqui and Galante, *Sangre de ley*, 97–130, for example, at 121–22.

This continuity explains why legal education, too, remained largely unchanged in most Latin American countries, and legal textbooks from the colonial period continued to be used. The process of changing the legal order that began in the early nineteenth century, in some areas as early as the imperial crisis of 1807/8 and during the wars of independence, did not culminate until the second half, sometimes the end, of the nineteenth century (codification, e.g., mostly got underway only from the 1850s onwards; see Section 5.2). As we shall see later, the result was that for almost a century, the new independent structures that emerged in Latin America often stood on shaky grounds not only socially, politically, or economically, but also legally. As one historian has observed, they were in a “permanently provisional” state.³²

This reality produced extraordinary situations. For example, in many places, citizens were to vote before the laws defining who citizens were had been enacted or lists of citizens had been drawn. This enabled members of “voting tables” – or sometimes local priests or *juntas* – to decide whom they considered a citizen and thus permitted to vote. Those who wished to vote did not know whether they would be able to before they attempted to exercise this right.³³ Confusion also reigned in other ways. While the general assumption was that colonial law of Iberian inspiration should continue in place at least until the new states had consolidated their legal regime, less attention was given to the question of the status of indigenous customary law, practiced by indigenous peoples, which had been recognized *de iure* in Spanish territories, and *de facto* operated also in Portuguese America (see Section 3.1). Would it continue to be considered valid under the new legal order, or automatically revoked? Equally problematic was the status of other customary laws, created by locals and Afro-Latin American communities. Another issue to be resolved was the interaction of local law with state-wide normativity. Would the previous system that permitted the existence of both a general pan-European law and local adaptations persist, or should a single legality apply to all the new states’ inhabitants, irrespective of their place of residence and group belonging?

32 J. C. Chiaramonte, cited in M. Ternavasio, *La revolución del voto. Política y elecciones en Buenos Aires, 1810–1852* (Buenos Aires: Siglo Veintiuno Editores, 2002), 33.

33 G. Chiaramonti, “Andes o nación: la reforma electoral de 1898 en Perú,” in A. Annino (ed.), *Historia de las elecciones en Iberoamérica, siglo XIX* (Buenos Aires: Fondo de Cultura Económica, 1995), 315–46, at 320; A. Annino, “The Ballot, Land and Sovereignty: Cádiz and the Origins of Mexican Local Government, 1812–1820,” in E. Posada-Carbó (ed.), *Elections before Democracy: The History of Elections Europe and Latin America* (London: Institute of Latin American Studies, 1996), 61–86, at 66 and 69–70; Sábato, “La ciudadanía en el siglo XIX,” 83.

Challenges from within were matched by challenges from the outside. As they transitioned to independent status, the new Latin American polities strove to obtain international recognition.³⁴ Spanish American states mostly achieved this in 1833, when Spain renounced its claims to the continent and recognized them as sovereign and independent. Yet, even before this date, the need to deal with these new polities led to the invention of new doctrines, based on natural law, which allowed a *de facto* treatment of them as sovereign even before they had been granted formal recognition. These new doctrines were championed by many of the new Latin American states, which paradoxically pushed for a more inclusive and formally equal international order at the same time as they domestically intensified, rather than questioned, social hierarchies.³⁵ Thus, while opposing European supremacy in the international sphere, Spanish American actors continued in their quest to “conquer” the Americas, efforts which they justified by Eurocentric notions based on hierarchies in what they identified as “levels of civilization.” Some Latin American actors even reversed the European argument regarding levels of civilization that discriminated against the American continent in the international sphere and suggested that Spanish American polities were superior to European ones because of their rejection of monarchical rule and their adherence to the wave of liberal revolutions that had swept the Atlantic World.³⁶

Meanwhile, in 1820s and 1830s Portugal, a conflict regarding the succession to the Portuguese Crown – first between Dom Pedro, the heir who remained in Brazil, and his younger brother Miguel, and then between Miguel and Pedro’s daughter Maria (as will be discussed in more detail later) – led to a civil war (1828–34) during which a regency acting for Maria strove to secure international recognition first from her father, the emperor of Brazil, and only then from other countries.³⁷ Portugal recognized Brazilian independence in 1825, but, somewhat ironically, by the late 1820s, it was the Peninsular

34 N. Carillo-Santarelli and C. Olarte-Bácares, “From Swords to Words: The Intersection of Geopolitics and Law, and the Subtle Expansion of International Law in the Consolidation of the Independence of the Latin American Republics,” *Journal of the History of International Law* 21(3) (2019), 378–420; and G. S. Ribeiro, “Legalidade, legitimidade e soberania no reconhecimento da independência,” in G. S. Ribeiro (ed.), *Brasileiros e cidadãos. Modernidade política, 1822–1930* (São Paulo: Alameda, 2008), 17–35.

35 T. Long and C. A. Schulz, “Republican Internationalism: The Nineteenth-Century Roots of Latin American Contributions to International Order,” *Cambridge Review of International Affairs* 35(5) (2021), 1–23.

36 J. E. Sanders, “The Vanguard of the Atlantic World: Contesting Modernity in Nineteenth-Century Latin America,” *Latin American Research Review* 46(2) (2011), 104–27.

37 G. Paquette, “In the Shadow of Independence: Portugal, Brazil, and Their Mutual Influence after the End of Empire (late 1820s–early 1840s),” *e-Journal of Portuguese History* 11(2) (2013), 101–19, at 106–17.

Portuguese government that, fighting against Miguel, sought recognition as well as military and economic support from Brazil.

Spanish America: An Old Constitution for a New Society?

In the post-independence period, the question whether the new polities should be constructed *ex nihilo* or retain at least some of the old institutions was also widely debated across the continent. Some suggested that the imperial breakup provided an opportunity for redrawing even the most basic social rules. Others argued that, as with the legal system, it was impossible to change the entire social, economic, and political order quickly, and that continuity – at least of some aspects, and temporarily – was beneficial. Yet others insisted that the new states lacked the power to undo or redo society. As the famous Argentinean intellectual Juan Bautista Alberdi (1810–1884) argued in 1853, governments came and went, but the old laws not only continued in place, the new governments were also called to abide by them.³⁸ Because humans could not change the nature of things, a representative assembly could enact laws, but these laws could not be invented at will. They had to derive from both nature and history, and to take existing legal precedents into consideration.

The struggle between those advocating for continuity and those pressing for change, those imagining a slow transition and those preferring it rapid, as well as disagreements regarding what to change and how, led to a power struggle between social groups, political factions, and powerful individuals. One of the first and most fundamental questions these actors had to answer was how to transform an *Ancien régime* based on loyalty to a king to a new regime whose legitimacy would originate in the consent of community members. Those declaring independence often claimed to speak for units – the people? the nation? – not yet in existence, and their legitimacy as their representatives was not generally recognized. As a result, debates regarding retaining the old or inventing a new constitution also involved preliminary considerations as to what kind of political body could legitimately decide on such elemental issues as independence and the drawing up of a new constitution. Should municipal *juntas*? A constitutional assembly? Should political leadership be limited to the capital city, or should other towns or even

38 J. B. Alberdi, *Bases y puntos de partida para la constitución de la República Argentina* (Valparaíso: Imprenta de Mercurio, 1852), esp. at 92–94, 119–21, and 150–51.

villages participate? Would representation in the new assemblies be limited to corporate bodies or should it include all citizens? And what would a just and proportional representation be? Most agreed that voting was the best way to elect representatives, but how would voting be organized, and how would representation be distributed?

The case of Buenos Aires is illuminating.³⁹ In the 1810s and 1820s, locals debated how to square the existence of multiple local communities, each demanding recognition as a sovereign body, with the formation of new central authorities also endowed with sovereignty. Could Buenos Aires represent the villages inside its province, or must each village send its own representative to a general assembly? Should voting take place in open meetings in which all citizens could participate and vote (similar to the traditional *cabildo abierto*, as during the 1810 election of deputies to the *junta* of Buenos Aires), or was there to be an assembly of elected representatives who would vote on behalf of their electorates (as in the 1811 elections)? Should each local community be represented individually by one or several of its citizens, or should representation be general to the entire province and elections be organized in the province as a whole? If communities were to be represented, how many delegates should each have? If each community were to be represented by the same number of delegates, the largest city, Buenos Aires, would lose its hegemony. Was it fair for small settlements to be accorded the same weight as the capital? If not, should representation be proportional to the number of inhabitants? To a community's economic importance? And once elected, would those chosen represent their particular town or village, or the provincial or national community at large? Among other things, the answer to this last question was of prime importance, because it also touched on the question whether delegates would have a free mandate, or would, by contrast, be limited to the power and instructions received from their local community.⁴⁰

The flurry of elections that took place in Buenos Aires after independence (of deputies to the general congress, of governors, members of various *juntas*, and town councils), did not mask these disagreements. Neither did it solve the question of who had the right to vote. The general assumption was that this

39 See Ternavasio, *La revolución del voto*; M. Ternavasio, "The Impact of Hispanic Constitutionalism in the Río de la Plata," in Eastman and Sobrevilla Perea, *The Rise of Constitutional Government*, 133–49; and M. Ternavasio, *Gobernar la revolución. Poderes en disputa en el Río de la Plata, 1810–1816* (Buenos Aires: Siglo Veintiuno Editores, 2007).

40 This was reminiscent of how the Old Regime *Cortes* had functioned, where representatives of cities had met to discuss different issues, and where debate about whether they had the power to take decisions or required the pre-authorization of their municipality had been frequent.

right should be granted to all *vecinos*, or at least to those who were “free” and “patriots,” but there was no consensus either on what this category (*vecino*) or these conditions (“free” and “patriot”) meant, nor on whether all those voting were equal. In 1815, members of the voting table in Arrecife, in the province of Buenos Aires, declared a person who had not received the majority of votes to have won the election because, according to them, he had been backed by “better” and “freer” voters, whose votes should not be counted as one but as 100 votes each, because they also represented their family, dependents, and employees.⁴¹ In the minds of those taking this decision, *Ancien régime* configurations that gave heads of household the power to represent all members of the household justified these conclusions, and quality – however they defined it – had to come before quantity, or at least quantity could be readjusted to what it allegedly represented. In 1817, after many elections had already taken place in the province, a provisional enactment by the government specified twenty-five years as the minimum age for voting. It also determined that the right to vote should be granted to those “born and residing” in the territory, unless they were dependent, had no property, and/or no “useful” office or occupation. These arrangements largely reproduced *Ancien régime* perceptions that considered vagabonds and other individuals without fixed domicile or economic independence as having no political rights. As mentioned earlier, these vague definitions, as well as the absence of electoral or other registers, led to the extraordinary situation in which members of voting tables were able to decide who had the vote and who did not (on the definition of citizenship in early constitutions, see also Section 5.1).⁴²

The wish to adopt a new system that would embody a new, postcolonial “general will,” thus met with resistance from those who had upheld the old system, in which only heads of households or municipal corporations had been enfranchised, and only they had had the right to represent and speak for the community. These disagreements also unleashed a power struggle between the new central authorities that were to replace the king, on the one hand, and the municipal corporations that declared themselves sovereign, on the other. In Buenos Aires, this power struggle resulted in provincial legislation that abolished the autonomy of existing municipalities and their representative assemblies. The central organs of the province, who took this decision, argued that while municipal corporations had been important

41 Ternavasio, *La revolución del voto*, 50.

42 Ternavasio, *La revolución del voto*, 41–42, 83 and 95, showing that as a result he who controlled the identity of those sitting at the voting table, also controlled the results of the elections.

under monarchical rule as representatives of their community, they were superfluous under the new representative system.⁴³ The suppression of the traditional representative bodies and their officials and judges, however, led to legal uncertainty, because no new law regulating the municipal regime was enacted until 1854.⁴⁴ The result were continuous conflicts between officeholders at different levels. Many of those whose offices were theoretically suppressed *de facto* proceeded as if this suppression had not taken place. Locals, who frequently refused to collaborate with the new officials named by the provincial authorities, preferred the previous officeholders, because they believed that they were more likely to respect their traditional rights and privileges. Similarly, as had been the case during the colonial period, local judges (*alcaldes*) continued to both declare and implement the law, as well as to act as magistrates with the authority to govern their communities. Attempts to limit their political and legislative power mostly failed, as locals continued to consider villages and towns as moral entities that not only merited representation in provincial and national assemblies, but should also be headed by local, traditional, magistrates.

Developments in other parts of Latin America were somewhat similar to what transpired in Buenos Aires.⁴⁵ In Central America, frequent debates took place between 1808 and 1823 regarding municipal sovereignty and its role in the transition to new republican structures.⁴⁶ National and local sovereignty often clashed rather than cohered, making the transition from the *Ancien régime* model of sovereignty (with a plurality of local powers) to a new model with a single (central) sovereignty extremely difficult. In what is now Mexico, municipalities that had traditionally been subjected to the city of Tlaxcala sought to protect – and probably increase – their autonomy by opposing attempts by the city’s elites to have Tlaxcala province be declared

43 Similar arguments were invoked in Mexico, where actors debated how to maintain old, corporate representation, while also enabling a new form of representation of the nation as a whole. See for example, C. A. Hale, *El liberalismo mexicano en la época de Mora (1821–1833)* (Mexico City: Siglo Veintiuno Editores, 1972), 118.

44 M. Ternavasio, “Entre el cabildo colonial y el municipio moderno: los juzgados de paz de campaña en el Estado de Buenos Aires, 1821–1854,” in M. Bellingeri (ed.), *Dinámicas de antiguo régimen y orden constitucional. Representación, justicia y administración en Iberoamérica, siglos XVIII–XIX* (Turin: Otto Editore, 2000), 295–336, for example, 308–9.

45 These questions have recently been studied in a special thematic issue of the journal *Nuevo Mundo, Mundos Nuevos* 23 (2023), edited by G. Verdo and V. Ayrolo.

46 M. Molina Martínez, *Los cabildos y la independencia de Iberoamérica* (Granada: CEMCI, 2002); J. Dym, “La soberanía de los pueblos: ciudad e independencia en Centroamérica, 1808–1823,” in Rodríguez O., *Revolución, independencia, 309–37*; and J. Dym, *Politics, Economy, and Society in Bourbon Central America, 1759–1821* (Boulder: University Press of Colorado, 2007).

a state within the Mexican federal structures. As the capital of such a new state, the city of Tlaxcala's control over the surrounding municipalities would have been not just cemented, but also augmented.⁴⁷ At the opposite end of the spectrum, other Mexican actors asked how civil equality could coexist with distinctions and privileges attached to corporate municipal structures, and argued for their suppression and the creation of a single, united, central sovereignty and a single, general law.⁴⁸

Similar processes also took place in the territory of the *Audiencia de Quito* (present-day Ecuador) in the 1810s, 1820s, and 1830s. There, municipal corporations, whose powers had increased substantially during the late eighteenth-century Bourbon reforms, struggled to maintain their hegemony inside and outside their territories, as well as to coordinate their activities with one another during and even after independence.⁴⁹ This has led some historians to conclude that in this *Audiencia*, independence led to federalization with cities, rather than citizens, as political actors. The configurations that emerged during this period did not imagine the state as an assembly of citizens. Instead, they accentuated *Ancien régime* structures that viewed the polity as an assembly of corporations that, paradoxically, were now more powerful than had been under colonial rule. After independence, municipal elections usually allowed members of the old elite to remain in power, with their positions now legitimized not only by their place in the local hierarchy, but also by their ability to mobilize supporters. Here as in Buenos Aires, the vote was granted to *vecinos*, and until an electoral law was introduced in 1861 and civil registries were formed, parish *juntas* had the power to decide who held citizenship and could vote, and who did not.

During and after the imperial crises, the sovereignty of local entities augmented rather than diminished also in other ways. One of the most important changes introduced in Spanish America with the Cádiz constitution – but which continued also after independence – was the “municipalization” of indigenous communities. Giving them the status of *municipio* turned these communities, which had previously been governed by traditional elites, into constitutional entities with new, elected authorities endowed with new administrative powers. The Cádiz delegates had initiated municipalization as a way to ensure the

47 M. Galante, “Municipios y construcción del estado (Tlaxcala, 1824–1826): Definición ante la ley y administración de justicia,” in Irurozqui and Galante, *Sangre de ley*, 169–201.

48 Hale, *El liberalismo mexicano*, for example, at 123–25.

49 F. Morelli, *Territorio o nación. Reforma y disolución del espacio imperial en Ecuador, 1765–1830*, trans. A. Hermosa Andújar (Madrid: Centro de Estudios Políticos y Constitucionales, 2005).

modernization of indigenous communities as well as their integration into the nascent constitutional structures. Given that the constitution equated local citizenship (*vecindad*) with kingdom-wide citizenship, transforming indigenous villages into municipalities could potentially also ensure the integration of their local citizens in the national community. For local indigenous individuals, municipalization opened the road not only for greater local autonomy and formal equality with nonindigenous individuals and municipalities, but also for changes within indigenous communities, desired by some, disliked by others.

We have ample information on how this process of municipalization unfolded in various locations.⁵⁰ In some, it led residents to request the authorities to grant the status of *municipio* to residential conglomerates or villages founded on private lands that formed part of colonial *haciendas* or *estancias*.⁵¹ The affected landowners frequently challenged these requests, because they feared losing not only ownership of their land but also their – *de facto* even if not *de iure* – political power over those living on their land. Many of the resulting legal issues were hotly debated. Would the municipalization of settlements on private land change the status of their residents from tenants to citizens, that is, *vecinos*? If so, would the landlords lose the ability to remove tenants who failed to pay their rent because, as local citizens, they would have the right to remain in the community? Could they be compelled to sell parts of their land to the community, because it would now include not only private land but also municipal territory? On occasions, landlords employed a racialized argument that their indigenous tenants were not yet ready to become members of self-ruling communities and that only they, the landlords, could ensure social and political order and obedience to the law.

In many places, the municipalization of indigenous communities led to power struggles between traditional indigenous elites and newly elected officials, yet, in many others, formal changes masked continuities. Frequently, despite legal reforms, indigenous communities maintained many of their organs and customs almost intact.⁵² The constitutional redefinition of indigenous

50 Rodríguez O., *La revolución política*, 109–23 and Morelli, *Territorio o nación*, 159–87. On how Cádiz reinforced rather than undermined municipal structures also among the indigenous peoples and in rural areas, see M. Guzmán Pérez, “Cádiz y el ayuntamiento constitucional en los pueblos indígenas de la Nueva España, 1820–1825,” in Centro de Investigaciones de América Latina (ed.), *De súbditos del rey a ciudadano de la nación (Actas del I Congreso Internacional Nueva España y las Antillas)* (Castelló de la Plana: Universitat Jaume I, 2000), 305–24.

51 T. H. Schaefer, “Law of the Land? Hacienda Power and the Challenges of Republicanism in Postindependence Mexico,” *Hispanic American Historical Review* 94(2) (2014), 207–36. Also see Schaefer, *Liberalism as Utopia*, 97–128.

52 Schaefer, *Liberalism as Utopia*, 129–60.

villages, furthermore, did not necessarily mean that the constitution's egalitarian ethos was adopted, as well. In some communities, traditional service obligations that resulted from membership status were not distributed equally: Mostly on the basis of hereditary distinctions between nobles and commoners, some community members managed to avoid these duties altogether.⁵³ In other instances, general suffrage was rejected in favor of giving the vote only to elders and *principales*. Equally important in maintaining traditional hierarchies was the continuing presence of common landholding, despite constitutional and legal changes that favored private ownership. Common lands were frequently managed by the local authorities that, despite the abolition of traditional village structures and the institution of constitutional municipalities, still functioned as sovereign corporate bodies that could exclude those whom they identified as "foreign," even when they resided locally, from enjoying the rights of members. Traditional elites also continued to represent their communities in negotiations with other authorities and in the courts, as they and many members of indigenous communities insisted that the traditional structures continued to exist parallel to and independently of the new constitutional structures and their officeholders.

If the difficulties in converting colonial and monarchical governance to one based on new constitutional and legal arrangements were clear with respect to the role and organization of municipal bodies, the same was true for the judiciary. The colonial judiciary had been an important instrument both for enhancing state hegemony and for limiting its reach (see Section 3.1). Most cases were decided locally by locally elected, non-jurist judges, who considered their principal task to be what we would now call peace and justice making.⁵⁴ Despite the new constitutional arrangements, in most polities, these practices remained largely unchanged, as did the identity of those occupying the bench.⁵⁵ Alongside the persistence of most colonial law into the second half of the nineteenth century in both Spanish and Portuguese

53 P. Guardino, "Community Service, Liberal Law and Local Custom in Indigenous Villages, Oaxaca, 1750–1850," in S. Caufield, S. C. Chambers, and L. Putnam (eds.), *Honor, Status, and Law in Modern Latin America* (Durham: Duke University Press, 2005), 50–65; N. Sobrevilla Perea, "Loyalism and Liberalism in Peru, 1810–1824," in Eastman and Sobrevilla Perea, *The Rise of Constitutional Government*, 111–32.

54 T. Herzog, *Upholding Justice: Society, State, and the Penal System in Quito (1650–1750)* (History, Languages, and Cultures of the Spanish and Portuguese Worlds) (Ann Arbor: University of Michigan Press, 2004).

55 S. C. Chambers, "Citizens Before the Law: The Role of Courts in Postindependence State Building in Spanish America," in M. A. Centeno and A. E. Ferrao (eds.), *State and Nation Making in Latin America and Spain: Republics of the Possible* (Cambridge: Cambridge University Press, 2013), 356–74. On attempts to reform the system, see for example, Candiotti, "Reformar útilmente la justicia," 101–21.

America (given the slow pace of legal change and codification, discussed in Section 5.2) and the ongoing dependence on wide judicial discretion, this has led historians to conclude that there was extensive continuity in jurisprudence from the late colonial to the early national period.⁵⁶ Even though the basic assumptions of colonial legislation were in theory radically different from (and sometimes even incompatible with) the new values that independence and revolution sought to implement, in the absence of new legislation, both judges and litigants continued to uphold the old norms. This was true both in Spanish America and in Brazil, where conflicts between the new constitutional powers and the judiciary were constant, and where, despite the legal changes introduced in the early nineteenth century, legal culture remained more or less untouched.⁵⁷ It is possible, however, that some of the new values did find recognition in the courts, where they were sometimes imposed by judges rendering decisions that endorsed them.⁵⁸ Among these was the demand to hold public officers accountable when they ignored the law (rather than when they upset social harmony, as had been the case before), or the introduction of new measures to evaluate the honorability of individuals, where old criteria based on traditional hierarchies were now accompanied by the new languages of citizenship and equality, patriotism, and civic virtue.

Portuguese America: A Unique Yet Ordinary Case?

When compared to developments in Spanish America, the untangling of Portugal and Brazil leading to Brazilian independence was a particularly convoluted affair. Acting as regent of Brazil, Dom Pedro, heir to the Portuguese throne, first refused to obey the order of the Portuguese *Cortes* to return to Portugal in 1821 and, in 1822, declared Brazilian independence. Yet, the story of Brazilian independence did not end there.⁵⁹ Though

56 C. Hünefeldt, *Paying the Price of Freedom: Family and Labor among Lima's Slaves, 1800–1854* (Berkeley: University of California Press, 1994) and the works of S. C. Chambers, for example, in “‘To the Company of a Man Like My Husband, No Law Can Compel Me’: The Limits of Sanctions Against Wife Beating in Arequipa, Peru, 1780–1850,” *Journal of Women's History* 11(1) (1999), 31–52. Several of the contributions to V. M. Uribe-Urban (ed.), *State and Society in Spanish America during the Age of Revolution* (Wilmington: Scholarly Resources, 2001) also describe these continuities.

57 A. Slemian, “A administração da justiça nas primeiras décadas do império do Brasil: instituições, conflitos de jurisdições e ordem pública (c.1823–1850),” *Revista do Instituto Histórico Geográfico Brasileiro* 172(452) (2011), 225–72.

58 R. Zahler, *Ambitious Rebels: Remaking Honor, Law, and Liberalism in Venezuela, 1780–1850* (Tucson: University of Arizona Press, 2013).

59 Paquette, “In the Shadow of Independence,” 103–6.

crowned as the new Brazilian emperor, Dom Pedro was still the legitimate successor to the Portuguese throne, to which he ascended after his father's death in 1826. Acclaimed as the rightful monarch in both Portugal and Brazil, he controlled Portugal through a regency. Within months of succeeding his father, however, growing pressure in both Portugal and Brazil led Dom Pedro to abdicate the Portuguese throne in favor of his seven-year-old daughter Maria – on certain conditions: First, when Maria came of age, she was to marry Dom Pedro's younger brother Miguel and rule Portugal alongside her husband; second, in place of the 1822 constitution embraced by the *Cortes*, Portugal was to adopt a new constitutional charter that Dom Pedro would dictate.

The constitution that Dom Pedro imposed on Portugal in 1826 was extremely similar to the one he had instituted in Brazil in 1824.⁶⁰ In both cases, he proceeded without consulting representative assemblies, creating a constitutional monarchy that granted the monarch strong executive power. Though the 1826 constitution was received with public celebrations in Portugal, by 1828 the struggle between monarchists, who backed these developments, and liberals, who opposed them, between the supporters of absolutism and those in favor of the constitutional monarchy, had degenerated into a civil war. During this conflict, many of those who criticized the 1826 constitution argued that while the need to draft a new constitution for Brazil had been evident – after all, it had emerged as a new polity in 1822 – the same was not true for Portugal, which already had its own traditions. Furthermore, they argued, as Portugal had recognized Brazilian independence in 1825, Brazil was now a foreign country, even if it was ruled by the same monarch as Portugal. That both countries should have an almost identical constitution was, in the eyes of such critics, inconceivable. The constitution was also criticized by some because it was seen as an instrument to secure continued relations between Portugal and Brazil as well as the continuous domination of the house of Braganza on both sides of the Atlantic Ocean.

The conflict over constitutional issues was compounded by a war of succession. Miguel, Pedro's brother and his daughter Maria's supposed future husband, first declared himself regent and then, in 1828, claimed to be the lawful Portuguese king, arguing that his brother Pedro had lost his rights to the throne after he had become the sovereign of an independent Brazil and therefore could not abdicate in favor of his daughter.

60 G. Paquette, "The Brazilian Origins of the 1826 Portuguese Constitution," *European History Quarterly* 41(3) (2011), 444–71.

In 1831, under public pressure from his Brazilian subjects, Dom Pedro also renounced the Brazilian Crown, this time in favor of his son, Dom Pedro II. He then returned to Portugal and declared himself regent and the guardian of his daughter. Queen Maria's reign, however, was established firmly only in 1834, when her uncle and fiancé, Miguel, was finally defeated. Maria also retained rights to the Brazilian throne, until the Brazilian parliament excluded her from the list of possible heirs in 1835, following a 1834 vote to prohibit the return of her father, the former emperor, to Brazil. In 1836, the constitution imposed by Dom Pedro on Portugal in 1826 was abolished and the 1822 constitution restored, but two years later, in 1838, Maria approved a new constitution for Portugal, which had been proposed by the *Cortes*. Only four years later, however, the constitution imposed by Dom Pedro in 1826 was reinstated. It remained in force, albeit with modifications, until the declaration of a republic in Portugal in 1910.

Some contemporaries in both Portugal and Brazil remarked on the absurdity of these entanglements. In 1826, they asked how the Portuguese could support the crowning of the emperor of Brazil as their king.⁶¹ Others pointed to Pedro's constant attempts to control both Portugal and Brazil and argued that these violated the 1824 Brazilian constitution, which mandated that Portugal and Brazil never again be unified under the same monarch. On both sides of the ocean, factions debated whether or not to trust the Braganza dynasty, and how to manage the relations between Portugal and Brazil: Some supported total separation, others favored a union, and most preferred one of multiple other options between these two extremes. As one historian has remarked, even after Brazilian independence, it was difficult, perhaps even impossible, to separate colonial from national history.⁶² Indeed, contrary to what had taken place in Spanish America, the continuing presence of the king and the involvement of the different Braganza family members in ruling both sides of the ocean made the breakup between Portugal and Brazil particularly convoluted.

Despite these particularities, common threads linked the Spanish and the Portuguese experience in the 1810s, 1820s, and 1830s. In both empires, relations between the old metropole and the Americas were central to the debates regarding the new shape of the "national" political and legal systems. In both, the role of the monarch, both when present and when absent (either because he had been forced to abdicate, as in Spain/Spanish America, or

61 Paquette, "In the Shadow of Independence," 108–10.

62 Paquette, "In the Shadow of Independence," 117. See also Paquette, *Imperial Portugal*, for example, 2–3 and 9–11.

because he was residing elsewhere, as in the case of Portugal/Brazil), was pivotal, as was the assumption of sovereignty by municipal *juntas*, central *juntas*, and regencies. In both monarchies, the questions whether the absence of the king and the war situation justified calling a meeting of the *Cortes* (a task normally performed by the king, who, however, could or would not issue such a call throughout the 1810s and 1820s), and what these *Cortes* could do (could they propose a new constitution?), as well as who should be represented in them and how (municipalities? citizens? and how many?), were equally debated. Legally, the wish to enact new constitutions met with the response that these either must innovate and reform or, on the contrary, must respect the “ancient constitution” or *lei fundamental*.⁶³ Regardless of the innovations the various constitutions introduced, even the most ardent revolutionaries argued that their aim had only been to ensure respect for an ancient constitution that a tyrannical regime had violated. In both monarchies, in short, the separation of colonies from metropole and the adoption of a new, constitutional, regime was easier to conceive than to execute, as legal and political ties and traditional social structures often proved more resilient than the declarations that announced their rupture.

The Global Context: Imitation or Convergence?

Latin American actors who had to answer these questions were not the only ones facing such dilemmas. Many of the issues they were called to consider formed part of larger Atlantic conversations, fueled by revolutions that sought to change the social order (according to some historians), or independence movements that only wished to end the colonial regime (according to others). Obviously, Latin American actors were propelled into action by an international crisis that engulfed large parts of Europe, which were equally affected by the so-called Napoleonic wars. Traditionally, historians have also suggested that Iberian responses to the Napoleonic invasion of the Iberian Peninsula were heavily influenced by the events of the previous decades in British North America, where thirteen colonies had declared their independence in 1776, and the French revolution of 1789, which, among other things, had also fueled the Haitian revolution and subsequent independence (1791–1804).⁶⁴ But

⁶³ On this debate in Portugal and Brazil, see Paquette, *Imperial Portugal*, 17–34.

⁶⁴ For example, J.-R. Aymes, “Le débat idéologico-historiographique autour des origines françaises du libéralisme espagnol: Cortes de Cadix et constitution de 1812,” *Historia Constitucional* 4 (2003), 45–102, <http://hc.rediris.es/04/index.html> (last accessed Mar. 12, 2022); P. G. Carozza, “From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights,” *Human Rights Quarterly* 25(2)

other researchers have asked whether, irrespective of issues of influence or reception, similar responses could possibly also be explained by the similarities of the challenges facing those trying to limit the consequences of the war, or striving to create a new order. Some historians have also rejected the conclusion that Latin American actors imitated revolutions taking place elsewhere by pointing out that the solutions adopted in Iberia and Latin America might have been in some regards even more radical, precisely because of their truly Atlantic dimensions.⁶⁵

The challenges facing contemporary actors in the future United States of America, in Haiti, and in Latin America were indeed strikingly similar. The initial goal of those responding to the imperial crises was not independence but to reform the colonial order and/or obtain greater autonomy from the metropole. Yet, their responses to the imperial crises, and the discussions, and the degree of violence they unleashed, were transformative. They politicized colonial actors, many of whom went on to demand independence. In all these cases, the move from the *Ancien* to a new *régime* produced formal declarations of independence that, first proposed by North American actors, thereafter became the standard procedure by which new polities claimed sovereignty and international recognition.⁶⁶ Independence also required the elaboration of new constitutions and laws, although, as described earlier, constitutions changed faster than other areas of law, a situation that often resulted in a lack of legal certainty or even chaos.⁶⁷

(2003), 281–313, at 300; K. Racine, “‘This England and This Now’: British Cultural and Intellectual Influence in the Spanish American Independence Era,” *Hispanic American Historical Review* 90(3) (2010), 423–54, at 429; and M. Rodríguez, “The Impact of the American Revolution on the Spanish- and Portuguese- Speaking World,” in Library of Congress Symposia on the American Revolution (ed.), *The Impact of the American Revolution Abroad* (Washington: Library of Congress, 1976), 101–25. For a critique of such interpretations, see Paquette, *Imperial Portugal*, 3–5.

- 65 A. Rivero, “The Portuguese Uprising of 1820: A Forgotten Atlantic Revolution,” in F. Colom González and A. Rivero (eds.), *The Traditions of Liberty in the Atlantic World: Origins, Ideas and Practices* (Leiden: Brill, 2016), 55–69, citing (at 60–62) Abbé de Pradt, Karl Marx, Jeremy Bentham, and Antonio Gramsci.
- 66 D. Armitage, *The Declaration of Independence: A Global History* (Cambridge: Cambridge University Press, 2008); and J. Gaffield (ed.), *The Haitian Declaration of Independence: Creation, Context, and Legacy* (Charlottesville: University of Virginia Press, 2016). On the declarations of independence in Latin America, see a.o. J. Malagón (ed.), *Las actas de independencia de América* (Washington: Pan-American Union, 1955).
- 67 On the role of the US constitution as a model for Latin American ones, see E. Zimmermann, “Translations of the ‘American Model’ in Nineteenth Century Argentina: Constitutional Culture as a Global Legal Entanglement,” in T. Duve (ed.), *Entanglements in Legal History: Conceptual Approaches* (Global Perspectives on Legal History 1) (Frankfurt am Main: Max-Planck-Institut für europäische Rechtsgeschichte, 2014), 385–425; and Section 5.1.

In North as in Latin America, those moving to declare independence and adopting constitutional changes suggested that their activities were justified by loyalty to an “ancient constitution,” which they accused their monarch and European compatriots of having infringed. Their struggle, they argued, involved a fight to restore the “good old order,” and was an act of legitimate resistance against tyranny and oppression. Yet, in both cases, as well as in France and Haiti, actors also appealed to a natural law that, according to them, included the right to form new communities and endow them with institutions and norms. Moreover, in their view, natural law also authorized them to rebel in order to protect their individual rights. The new regime they instituted, therefore, had to abide by these rights, and the best method to do so was by adopting a written declaration of rights. The connection between independence and the institution of a new regime based on both natural law and natural rights was made explicitly in Haiti’s 1804 declaration of independence. It included not only the pledge to end French domination, but also an oath by those declaring independence that, in the new state, all would be not only independent but also enjoy personal freedoms.⁶⁸

In France, the future United States, Haiti, and Latin America, actors favoring independence battled to define the new political entities, draw their boundaries, and delineate their citizenry. Institutionally, however, the transfer from the *Ancien régime* to the new regimes was more contentious in France and Latin America than it had been in North America. During the revolutionary years in Latin America, the identification of the units that would become independent was extremely convoluted. Different cities, provinces, and territories could not agree on how to proceed, whether to unite or remain separate (see also Section 5.1). Disagreements regarding which political structures would ensure the “greatest happiness” led the French to change constitutions as often as many Latin American states would do over the course of the nineteenth and even twentieth centuries. Meanwhile, the transition from colony to statehood in the future United States in the 1770s was relatively simple, as separate colonies declared themselves states and adopted their own, new constitutions. As far as we currently know, no serious debate took place in the future USA regarding which communities could declare their independence, nor on whether each of the old colonies would

68 D. Armitage and J. Gaffield, “Introduction: The Haitian Declaration of Independence in an Atlantic Context,” in Gaffield, *The Haitian Declaration of Independence*, 1–22, at 11. The text of the declaration (translated into English) is available online at <https://today.duke.edu/showcase/haitideclaration/declarationstext.html> (last accessed Mar. 20, 2023).

become a single new state or be divided into several – or whether various colonies would be united to form one state, as was often the case in Spanish America. Moreover, the new North American states' constitutions, enacted in that emancipatory moment, retained their validity, rather than repeatedly changing throughout the nineteenth and twentieth centuries, as happened in France and in the former Iberian colonies. Yet, in the USA, the new states nonetheless found it difficult to coordinate their activities and create federal structures. Various types of alliances were considered, discussed, espoused, or discarded.

Despite these differences, the processes that led to independence in the future United States and in Latin America did share many similarities. For example, the story of the North American British colonies' independence could be told – though it mostly is not – as involving the gradual rise of local assemblies that limited royal powers and extended colonial autonomy, even freedoms. In Latin America, too, cities obtained greater powers over time, which had them refashion themselves as autonomous, if not outright sovereign. In both cases, while independence had initially been almost inconceivable, it eventually became the desired goal, though not everywhere at the same pace. Historians have linked this development, among other things, to changes in political culture and a growing political involvement by colonists as a result of Enlightenment thought as well as the social and economic changes wrought by the imperial crises.

In France and Latin America, contemporaries invoked the general will of a nation – but who constituted that nation was far from obvious (see also Sections 5.1–5.3). The US constitution spoke for “we the people,” without defining whom this included. Yet, neither in the United States nor in France and in the new Latin American polities was the “national” community for whom the political actors claimed to speak truly inclusive. In France and most Latin American countries, all those who opposed the revolutionary measures or were considered unfree were excluded from the body politic. In France, the USA, and Latin America, the general principle of legal equality and the declaration that humans were born free did not guarantee the end of enslavement. In the USA and the new Latin America states, discrimination often extended also to members of indigenous groups, who were either classified as not yet ready for citizenship or were viewed as both domestic and foreign, both belonging to the state and in some important ways external to its body politic.

Debates regarding whom to include or exclude from political participation and other rights continued throughout the nineteenth and twentieth

centuries (see also Section 5.3). In many of the new polities, after an initial period in which most male inhabitants were granted political rights, those in power increasingly tended to restrict these to a smaller group. Despite these exclusions, popular participation in political action was evident in France, Haiti, and Latin America. Whether achieved through the celebration of popular assemblies, appeals to the courts, involvement in uprisings, or in other ways, those lacking the right to vote found means of expressing their opinions and to influence decision-making, at least to some degree. We have fewer studies on how this was done in the United States, but historians nonetheless suggest that many subaltern actors were also active there, even if the literature has not yet described their contributions fully.

Confronted with huge neighboring territories that had been largely outside colonial control – the continental interiors, as well as the Southern Cone – the USA and many Latin American countries expanded their boundaries at the expense of indigenous peoples in the course of the nineteenth century. They claimed indigenous territory as their own by arguing that the land was either vacant or insufficiently or inappropriately occupied (because only intense agriculture – which according to them, indigenous peoples did not practice – produced a valid title), or by claiming that it already formed part of their territory, even though in practice (and in most cases even *de iure*) it never had.

Though American independence, both in the North and in the South, would eventually inspire homegrown normativity, the enactment of new constitutions did not immediately produce a flurry of legislation (on the particular case of codifications, see Section 5.2). The old colonial law continued in force on most matters, the residents of the new polities mainly debating which part should be applied and which repealed because it was not appropriate, or even repugnant, to the local conditions, which now also included the new regime.

Battling against regional differences, post-revolutionary France and Latin America also had to decide whether some measure of local distinctions would be allowed, or whether “national” homogenization and legal unification – required by the principle of legal equality – must be complete. And, despite massive changes in the way law – now the product of the “general will” as expressed by parliament – was conceived, in practice, the new legislation, while enshrining some of the principles of the revolutions, also allowed great continuity with the *Ancien régime* (on these issues, see also Section 5.3). In post-revolutionary France, despite the desire for a complete overhaul of the legal system, the *Code Napoléon*, enacted in 1804, included many traditional

elements (on this code's influence on American codifications, see Section 5.2). In Haiti, despite the revolutionaries' harsh criticism of French despotism, the wish to establish a completely new regime with laws that would guarantee freedoms did not preclude continuing French legal influence.⁶⁹ Indeed, to break with the powerful legacies of slavery inherited from France, the Haitian constitution of 1805 sought to ensure equality not by imagining a new system that would disregard racial categories, but instead by accepting these and simply declaring all citizens of Haiti black.

Though apparent in both France and Latin America, legal continuity was even more pronounced in the USA, where independence hardly affected law, other than public and administrative law. From that perspective, the move for independence in the USA was much less of a legal rupture than it is often claimed. The "nation" might have emancipated itself from colonial and monarchical domination, but its social and economic order continued mostly unchanged.

Obviously, many Latin Americans political actors closely followed debates and developments taking place elsewhere. In the 1810s, Jeremy Bentham's (1748–1832) various proposals for constitution and codification were published in Venezuela, and many of his other essays were translated and sold. Abridged versions of Thomas Paine's (1737–1809) *Rights of Man* (1791) were translated into Spanish in various locations across the continent. A Spanish translation of the French Declaration of the Rights and Duties of Man and Citizen (1789) was produced in 1794 and circulated in Nueva Granada and Venezuela.⁷⁰ Simón Bolívar was an avid reader of a huge variety of such works, as were many of his contemporaries.⁷¹

If one way to think about these connections between American independence, the French Revolution, the independence of Haiti, and Latin America is to argue for imitation and influence (as many historians have done in the past), another is to suggest that Latin American actors participated in the same republic of letters as other contemporaries did (see also Sections 5.1 and 5.2).⁷²

69 M.W. Ghachem, "Law, Atlantic Revolutionary Exceptionalism, and the Haitian Declaration of Independence," in Gaffield, *The Haitian Declaration of Independence*, 95–114.

70 Carozza, "From Conquest," 297–99. 71 Carozza, "From Conquest," 301–2.

72 On such issues, see for example, J. Simon, *The Ideology of Creole Revolution: Imperialism and Independence in American and Latin American Political Thought* (Cambridge: Cambridge University Press, 2017), who highlights the similarity in the dilemmas faced and in the horizon of possible solutions between actors in the thirteen British colonies in North America and Latin America. Both Sábado, *Republics of the New World* (e.g., 5–6 and 22–49); and J. A. Aguilar Rivera, *Ausentes del universo. Reflexiones sobre el pensamiento político hispanoamericano en la era de la construcción nacional, 1821–1850* (Mexico City: Fondo de Cultura Económica, 2012), also study the plethora of ideas and options that

Many among the leaders of the new states had resided for some time in London, Paris, or the USA, where they took part in local conversations and corresponded with local leaders.⁷³ Others remained in Latin America but published their work also in Europe. The leaders of the independence movements and the resulting states might have looked at the questions raised by independence and revolutions differently from their counterparts in Europe, or the events that they experienced might have led them to adopt different strategies. Regardless of these variations, however, their responses were nonetheless part of wider conversations, which focused on why, when, and how to form new political communities, institute new states, define their borders and citizens, and develop new legal regimes. The answers to these questions involved innovations and change, as well as continuity and preservation. As the Sections 5.1–5.3 and 6.1–6.3 and Chapter 7 will trace in more detail, decisions taken by Latin American actors not only formed part of global conversations, they also influenced them. The discussions that took place and the solutions adopted in Latin America during this period were known and debated in Europe and the USA and, according to some, contributed to the formation of new ideas and practices in such important areas as humanitarian law and international law more widely (see Section 6.3).⁷⁴ Some historians have also argued that the positions taken by Latin American actors during the independence period and the construction of the new Latin American states reinforced the international recognition of the importance of constitutions, the need to adapt states to what was perceived as their “natural borders,” and the importance of guaranteeing the freedom of the seas. Others point out that Latin American actors who expressed a desire for a new *ius gentium* in which the former colonies would play a major role might have contributed to

contemporary actors in Latin America considered, and which formed part of a larger repertoire of ideas and options that also inspired others.

- 73 Racine, “This England and This Now;” Paquette, *Imperial Portugal*, for example, 107, 114–17, and 124–27; C. Banko, “Influencia de la revolución francesa en la constitución de Barcelona, Venezuela del año de 1812,” *Boletín de la Academia Nacional de la Historia* 81(318) (1997), 43–57; and S. Alberro, A. Hernández Chávez, and E. Trabulse Atala (eds.), *La revolución francesa en México* (Mexico City: El Colegio de México, 1992).
- 74 For example, J. J. Urbana, “La aportación latinoamericana al desarrollo del derecho internacional humanitario,” in E. R. Tristán and P. Calvo González (eds.), *Actas XIV Encuentro de Latinoamericanistas españoles. Congreso Internacional. 1810–2010: 200 años de Iberoamérica Santiago de Compostela, 15–18 de septiembre de 2010* (Santiago de Compostela: Universidade, Servicio de Publicacións e Intercambio Científico, 2010), 2238–58, <https://halshs.archives-ouvertes.fr/halshs-00531620/document> (last accessed Mar. 10, 2022); and L. O. Castaño Zuluaga, “Antecedentes del derecho humanitario bélico en el contexto de la independencia hispanoamericana (1808–1826),” *Revista de Estudios Histórico-Jurídicos* 34 (2012), 323–68.

widening the list of legitimate participants in the international legal arena.⁷⁵ Beyond direct influence, it is also clear that Latin American developments impacted debates taking place elsewhere, as foreign observers compared and contrasted their own experiences to that of Latin America and sought to draw important conclusions from this comparison.⁷⁶

- 75 See, for example, the writing of Abbé de Pradt as described in M. Aguirre Elorriaga, *El abate de Pradt en la emancipación hispanoamericana (1800–1830)* (Caracas: Universidad Católica Andrés Bello, 1983); L. Bornholdt, “The Abbé de Pradt and the Monroe Doctrine,” *The Hispanic American Historical Review* 24(2) (1944), 201–21; D. Todd, *A Velvet Empire: French Informal Imperialism in the Nineteenth Century* (Princeton: Princeton University Press, 2021), at 25–71; J. C. Benassy-Berling, “Notes sur quelques aspects de la vision de l’Amérique hispanique en France pendant la première moitié du XIXe siècle,” *Caravelle* 58 (1992), 39–48, at 45–47. Interestingly, the abbé is credited with both influencing Latin American independence and learning from it. See for example, G. Jiménez Codinach, *México en 1821: Dominique de Pradt y el Plan de Igualta* (Mexico City: Ediciones El Caballito, 1982); M. Morel, “O caminho incerto das Luzes francesas: o abade De Pradt e a Independência brasileira,” *Almanack* 13 (2016), 112–29; and J. M. Portillo, *Una historia atlántica de los orígenes de la nación y el estado. España y las Españas en el siglo XIX* (Madrid: Alianza Editorial, 2022), 195–202.
- 76 On the way in which Latin American Independence affected discussions elsewhere, see for example, C. Fitz, *Our Sister Republics: The United States in an Age of American Revolutions* (New York: W.W. Norton, 2016).