

THE HISPANIC TRADITION OF LIBERTY:
THE ROAD NOT TAKEN IN LATIN AMERICA

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ABSTRACT: In the last decade, historians have identified the cause of the West's success in liberty and wealth: Medieval legal and political institutions. England and the United States (especially the United States Constitution) preserved longest the medieval legal and political institutions which accounts for their greater success in liberty and prosperity. Spain equally possessed these institutions, but at the moment of Spanish settlement in Mexico and Peru, it abandoned its medieval institutions for 'modernization' - for bureaucratic, mercantilist, tax-gathering institutions. Latin America should re-examine Spain's medieval traditions of liberty and search for roots to regain the Anglo-American medieval road to liberty and prosperity.

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It is an honor to address the Mont Pelerin Society which is meeting once more in Guatemala, and especially to address it in Antigua, where the third oldest university in the New World was established as the University of San Carlos Borromeo.

A decade ago, the Mont Pelerin Regional Meeting was held in Spain. F. A. Hayek insisted that he and his former student, Marjorie Grice-Hutchinson of the University of Málaga, would speak at the University of Salamanca. Hayek sees the School of Salamanca as the forerunners of Austrian economic theory, just as they were the forerunners in international law and of rights theory.

We are aware that Spanish America has had many problems in the establishment of institutions which protect human liberty. I wish to attempt to identify the Spanish traditions which were conducive to liberty, and why they were not instituted in Latin America.

Perhaps my family's history makes me aware of the contrasts in Spanish traditions. My maternal ancestors in Brandenburg and Saxony were rather removed from these issues. My paternal ancestors were the beneficiaries of Spanish hospitality and protection of constitutional rights. My grandfather's family were Florentine officials of the Holy Roman Empire for five hundred years until as Ghibellines they were exiled when the Medicis ended the republic and established the Grand Duchy of Tuscany. The Liggios were welcomed in Aragonese Naples where they were in the service of the Two Sicilies; when the French Revolution came to Naples, they accompanied the Spanish Bourbon court to Palermo, helped write the Constitution of 1812 and for their liberalism were left in Sicily after the Congress of Vienna.

My grandmother's family were similarly provided refuge by the Aragonese

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government in Sicily in the fifteenth century. They were part of the northern Albanian tribes who in the face of Ottoman dominance escaped Illyria under Skanderbeg (Alexander Bey) and settled in autonomous communities in Sicily. They freely practiced their Byzantine rite Catholicism and spoke Albanian until immigrating to New York over a century ago.

As we approach the anniversary of Christopher Columbus' voyage to the New World in 1492, the world has before it an important pair of models for liberty and wealth: Iberian South America and Anglo-North America. Those five hundred years of South American history and four hundred years of North American history provide significant bases of comparison. Much attention can be focused on the differences in the Native cultures which were encountered by the immigrating Europeans.

In North America, the Indian tribes' valuable characteristics were well presented in the monumental reports of the Jesuit Relations; but the Indian tribes were not engaged in settled agriculture and tended to move with the animal resources as European settlement displaced the animal resources.

In South America, Castilians encountered two massive, centralized empires, the Aztecs and the Incas, which exploited the settled, agricultural populations. Much to the envy of the early English colonists, the Spanish crown substituted itself for Aztec and Inca rulers, while individual Spaniards gained the roles of receivers of part of the agricultural production of the Native peoples.

The Native Indian populations of South America were muchmore advanced in agriculture and craft skills, as well as political skills of taxation, than the Native tribes of North America. If England's crown and English colonists had had a similar opportunity, they would have embraced it fully; and North America's experience would have paralleled South America's.

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To understand the differences between South and North America, however, we must study Europe's legal and political institutions during the five hundred years before 1492--before Columbus received the support of Isabella and Ferdinand in their camp during the final seige of Moslem Grenada.

Iberia's legal and political institutions were the same as the rest of medieval Europe's. Thus, on the eve of colonization, Spain shared all the institutions of Europe and England. It is essential to identify those legal institutions, and account for Spain's rejection of its medieval heritage and initiation of new, Absolutist institutions following the acquisitions of the Aztec and Inca sovereignties. Spain embarked on the creation of an Absolutist state in Spain and the colonies; England languished in its medieval heritage, and its medieval heritage was carried by the Colonists to North America. The American Revolution was a successful struggle to retain the English medieval heritage when London itself seemed to move in the direction of Absolutism.

At the time (after 1760) of London's attempt to displace North America's medieval heritage, a leading Bourbon reformer and utilitarian advocate of Enlightened Despotism, Gaspar Melchor de Jovellanos (1744-1811) declared Iberia's great tragedy to be its Gothic inheritance. Jovellanos and the Enlightened philosophers attacked Montesquieu and his assertion that it was Gothic constitutional traditions which were the foundations of the flourishing of liberty and wealth among Europeans. We need to recall that Montesquieu and his defense of the Gothic constitution was the most influential authority among the American founding fathers.

Montesquieu's defense of constitutional rights--guaranteed by limitation on the expansion of government by balance of powers and separation of powers--is a source of understanding the differences between the developments of South

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America and North America. Montesquieu's analysis (paralleled by Tocqueville) emphasizes the importance to individual rights of the multiplicity, competition, and historic roots of legal and political institutions. Eric Jones, in the European Miracle (Cambridge University Press, 1981), explains the crucial development of rights founded in the medieval institutions developed during the five hundred years before Columbus. Europe's outstanding success in liberty and wealth in the last five hundred years was due to exactly the Gothic inheritance which Jovellanos disdained.

Perhaps our understanding of the differences between South and North America will be assisted by the analyses of Montesquieu, Tocqueville, Acton, and Burckhardt (the latter three of whom were the names which Hayek originally wished as the names of this society). The mid-nineteenth century Liberals' (Tocqueville, Acton, and Burckhardt) analyses were based on the work which had been accomplished by the earlier nineteenth century French Liberals.

The great Liberal historian, Augustin Thierry, had documented the development in the middle ages of free institutions. Basing himself on the economic theory and political studies of Jean Baptiste Say, Destutt de Tracy, Benjamin Constant, Charles Comte, and Charles Dunoyer, Thierry undertook voluminous researches and publications of the growth of commerce and industry, the emergence of the middle class, and the charters and oath-associations from the eleventh century whereby the legal and constitutional rights of the middle class were protected. Thierry's work showed how the individual rights of Europeans were sanctified in the progression of oath-bound associations from the Peace of God/Truce of God movements through the town charters and the formation of representative institutions. The memory of this magnificent Classical Liberal historiography was practically lost. But its importance has been emphasized

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again by recent valuable contributions to legal and constitutional scholarship. The most significant contribution has been that of Harvard Law Professor Harold Berman, Law and Revolution: The Formation of the Western Legal Tradition (Harvard University Press, 1983).

Thierry's historical contributions show how rights emerged in the great religious movements of the Peace of God and the Gregorian Reformation, and were consolidated in the oath-bound associations creating town-charters and representative institutions. In the debris of the Carolingian Empire and its tradeless feudal system, there arose commerce, industry, with watermills and windmills and private property in land. The feudal institutions were challenged by the oath-bound associations, usually led by abbots or bishops. Contract and consent became the center of the struggle against the feudal institutions of autarkic economy. In the conflict against feudalism, the emerging market forces of commerce and agriculture created the edifice of medieval legal and constitutional institutions.

The remnants of medieval legal and constitutional institutions in Cataluna and Castile were attacked in the eighteenth century with the succession of the Bourbons. This process was intensified under Carlos III, who brought wide experience when he succeeded his half-brother, Ferdinando VI. In 1734 at the age of sixteen, Carlos had ruled Parma for his mother, Queen Elizabeth Farnese, and in 1736 he became king of the Two Sicilies until he ruled in Spain from 1759 to 1788. During Carlos' quarter century in the Two Sicilies, he undertook legal and economic reforms inspired by the School of the Two Sicilies: Antonio Genovesi, Giuseppe Palmieri, Gaetano Filangieri, Domenico Cantalupo, Domenico Caraccioli and the Abbe Ferdinando Galiani (Cf. P. Custodi, Scrittori classici Italiani de economia politica, 50 volumes (1803-16).)

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During the reign of Carlos III in Spain, many works of French and Italian writers on jurisprudence, constitutional thought, and economics were translated into Spanish. An important source of economic ideas for Spain and Ibero-America was the Royal Economic Society of Madrid. Prominent Spanish economists included Pedro Rodriguez, Count Campomanes (1723-1802), and Gaspar Melchor de Jovellanos (1744-1811) (Cf. Juan Sempere y Guarinos, Biblioteca espanola económico política (1803-16); Manuel Colmeiro, Historia de la economía política en Espana (1863); and Biblioteca de los economistas espanoles (1880).)

A starting point for Spanish economists in the late eighteenth century was Turgot's Reflections on the Formation and Distribution of Riches (1770).

According to Schumpeter:

Turgot's theoretical skeleton is, even irrespective of its priority, distinctly superior to the theoretical skeleton of the Wealth of Nations. It is not too much to say that analytic economics took a century to get where it could have got in twenty years after the publication of Turgot' had its content been properly understood and absorbed by an alert profession. As it was, even J. B. Say--the most important link between Turgot and Walras--did not know how to exploit it fully. (Schumpeter, The History of Economic Analysis, (pp. 248-9))

In the flowering of Liberalism in the early nineteenth century, one of Hayek's favorite authors, Benjamin Constant, raised a serious question. He challenged what he perceived to be Charles Dunoyer's determinist view of progress. Constant asked: If we believe that economic and technological improvement is accompanied by improvement of moral sentiments, how do we explain the fact that while all of the more advanced peoples of Europe - French, Lombards, Flemish, Dutch, Germans, and Austrians - accepted the tyranny of Napoleon Bonaparte, it was the Spanish peasants alone who rose up against the French occupation, and exhausted and then destroyed Napoleon's rule? Constant

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saw the Spanish peasants as the liberators of Europe.

It is exactly in the context of the Spanish struggle for liberation from Napoleon that arose the first use of the word, Liberales, which was adopted by the English and French admirers of the Spanish vanguard. However, there was a strong conflict among the Spanish Liberales and among their French and English friends. The opponents of the monarchist Absolutists in Spain divided between the Josephist supporters of King Joseph Bonaparte and French modern statism, and Constitutional supporters of the Cortes of Cadiz and the Constitution of 1812.

Many supporters of Enlightenment French philosophy, economics, and legal reform, such as Jovellanos, were associated with the French Napoleonic administration in Spain. Charles Dunoyer served in the French civil administration in Navarre and maintained long friendships with Spanish political and economic writers who later were exiles in France. The works of the Spanish exiles were published in French. The Spanish exiles translated many of the French liberal writings into Spanish to challenge the anti-liberal direction of Spanish political life. Thus, Jean Baptiste Say, Destutt de Tracy, Charles Comte, Charles Dunoyer, Augustin Thierry, and the French Doctrinaires, Francois Guizot, Royer Collard, de Barante, Laine, and Maine de Biran had an impact on Spain's political thought. But the greatest influence from this French direction was the English Utilitarian, Jeremy Bentham. Bentham's writings often appeared in French translations by Dumont long before they appeared in English. Sometimes Bentham's ideas for law reform were codified in Latin America before Englishmen knew what he had written. The Utilitarian influence in Latin America is one of the major negatives in contrast with the lack of Utilitarian impact on North American thinking.

In the era of independence in Spanish America in the early nineteenth

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century, Jeremy Bentham's writings flooded the Iberian world. Utilitarianism rather than Whig Liberalism was seen correctly to be the heir of the Enlightenment, but seen wrongly to be the guide to liberty and wealth. English and American constitutionalism as described by Montesquieu was understood correctly to mean inefficient government institutions which cancelled out each other, but was understood incorrectly to mean a block to an efficient society rather than an efficient society required inefficient government.

Pierre Claude Francois Daunou, a co-author of the French Constitution of the Year III (1795), with a divided executive and bi-cameral legislature, was a constitutional theorist with a major impact on Latin America. Associated with the Ideologues, Daunou lost influence during the rule of Napoleon; he was professor of history at the College de France (1819-30) and archivist of France (1830-40). He became a leading exponent of individual rights alongside of Benjamin Constant. Daunou's Essai sur les garanties individuelles was an impressive statement of constitutional protection of individual rights. Translated into Spanish, the book had as great a success in Latin America as Jefferson's publication of Destutt de Tracy's Commentary on Montesquieu in North America

Daunou's principles in Les garanties individuelles did not find in Latin America any of the medieval institutions which had sheltered liberty in England and America. The rule of Spanish absolutism was swept away, but the new institutions did not harken back to the medieval Iberian traditions, such as the Fueros.

In the midst of the resistance of the Spanish townsmen and rural yeomen after May 2, 1808, their leaders sought inspiration from the historic institutions of Spain. The provincial councils looked to the medieval

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representative institutions, and the national council in Cadiz called in 1810 for the formation of a successor to the Cortes which issued a new Constitution on March 19, 1812. It was based on English constitutional principles. The Liberales sought a foundation in the Gothic traditions of liberty in constitutional documents and institutions, such as the communas of Cataluna and Castile. In March, 1814 Ferdinand VII was restored after swearing to maintain the constitution of 1812. But he suppressed the Cortes and undertook a ferocious destruction of the Liberales. In January, 1820 a revolution re-established the Cortes; but a French invasion in 1823 restored Ferdinand VII and witnessed his massacre of the Cortes in Cadiz. Benjamin Constant was the French writer most in tune with the Spanish Constitutionals and their foundation in the medieval representative institutions of the communas.

Spain had shared the liberation from Roman taxation and inflation when the Germanic tribes burst the Rhine frontier in 406 A. D. The Visigothic settlers in Spain brought German concepts of limited power of the ruler and extensive independence and rights of freemen. The king must live on his own resources, and the concept of taxation was unacceptable to independent freemen. But the representative institutions of the Germans became limited to the Visigothic Christian kingdoms in the Pyrenees, Asturias, Navarre, and Galicia with the Moslem conquest after 711 A. D. and the Moslem defeat by the Franks at the Battle of Tours in 732 A.D.

During the five hundred years of the Reconquista, the Germanic concepts of law and political institutions flourished in Spain. In the various kingdoms of Spain, Asturias, Galicia, Navarre, Leon, Castile, Aragon, Cataluna, and Valencia the rights of freemen were clearly recognized. Taxation was at odds with freedom. The king's capacity depended on possessing enough funds of his

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own to pay for his costs as king. The nobles and freemen, townsmen in municipalities with charters, and the secular and monastic clergy embodied complete independence and rights against the king.

The well-known oaths of the nobles, freemen, townsmen, and clergy, as at the coronation of the kings of Aragon, and the reciprocal oaths of the kings required kings to live up to their oaths; and if not, the freemen, etc. were absolved of their oaths. We find in the Fueros--traditional rights and independence from taxation of the medieval nobles, freemen, townsmen, and clergy, with their roots in Germanic legal concepts--the foundations of modern rights. English legal and constitutional history, with the Magna Carta, was parallel to the experiences in Spain, such as the Great Charter of 1020 issued by the Cortes of Leon under Alphonso V.

Unfamiliarity with the history of the Hispanic Pyreneean kingdoms could lead one to think that Spanish Christians were isolated from the mainstream of the flowering of European medieval civilization. The oath-sworn associations, arising from the Peace of God and Truce of God movements in the tenth and eleventh centuries, were led and protected by the Clunic monasteries. The great Abbey of Cluny (north of Lyon) led a religious reform, and then a political reform. Spain and Spanish monasteries were particularly linked to the Abbey of Cluny through the most important of its pilgrimage goals--the shrine in western Spain of Santiago de Compostela. Large numbers of pilgrims, often the people who had participated in the oath-sworn associations of the Peace of God movement or in the oath-sworn associations which brought self-governing charters and representative institutions to the towns and provinces of France, traveled to Compostela. Massive numbers of the monks who had led these movements made the pilgrimage to Compostela. The Spanish Pyreneean kingdoms were inundated with

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the information of the representative institutions of town charters and provincial representation in medieval Europe which were expressed in the Fueros. (Karen M. Kennelly, C. S. J. (President, Mount St. Mary's College, Los Angeles), "Medieval Towns and the Peace of God," Medievalia et Humanistica (1964), and "Catalan Peace Truce Assemblies," Studies in Medieval Culture (1975); Thomas Bisson, "The Organized Peace in Southern France and Catalonia, c.1140-c.1233," American Historical Review 82 (1977), pp. 290-311; H. E. J. Cowdrey, "The Peace and the Truce of God in the Eleventh Century," Past and Present 46 (1970), pp. 42-67; Georges Duby, "Les laïcs et la paix de Dieu," I laici nella 'societas christiana' dei secoli XI e XII: Atti della terza settimana internazionale de studio della Mendola, 21-27 Agosto 1965 (Milan, 1968), reprinted in Hommes et structures du moyen age (Paris, 1973) pp. 227-240, and trans. C. Postan in The Chivalrous Society (Berkeley, 1977), pp. 123-33; and Thomas Head and Richard Landes, eds., Essays on the Peace of God: The Church and the People in Eleventh-Century France, in Historical Reflections (Fall, 1987), volume 14, number 3.)

The conquest of the kingdom of Grenada in 1492 witnessed the establishment of Absolutism, the core feature of which was the end of the universal, supra-political position of religion and especially of the Church. The universal church was replaced under Absolutism by a subservient, state religious bureau. Throughout Europe in the fifteenth and sixteenth centuries, the universal, trans-political position of the Church was ended. For example, the French kings and rulers of the Spanish kingdoms were able by Concordats to gain from the Papacy total control over the church institutions in their territories.

The Protestant Reformation, the second phase of this movement, occurred where local rulers were not able to gain similar concessions from the Popes;

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countries where rulers already had wrested control of the Church remained "faithful" and sought to consolidate their gains through the Catholic Reformation centered on the Council of Trent. In Spain, the rulers of Castile, Aragon, and Cataluna after 1480 gained the power to establish political inquisitions beyond the powers of the bishops. The infamous Spanish Inquisition not only dominated the Peninsula, but the Vice-royalties of Mexico and Peru.

Just as the Monarchist's Church of the Council of Trent (with the Royal Inquisition) contributed to Absolutism, the history of Spain and Spanish colonies in the reign of Charles V indicate the great turning point whereby Spain lost its medieval constitutionalism and led much of Europe in substitution of oriental despotism. As William Graham Sumner's The Conquest of the United States by Spain (1900) showed that while the U. S. conquered Spain's colonies, Spain's imperialist ideas had conquered the intellect of American politicians, so the distinguishing characteristics of European constitutionalism compared to oriental despotism (cf. Jones, The European Miracle (1981) were lost with Spanish conquests of Asia and South America. Spain adopted the imperial methods of India, Turkey, China, Mexico, and Peru in place of the decentralized, limited constitutional institutions of medieval Europe.

The decline and political control of religious institutions in the fifteenth century undermined the foundations of European constitutionalism's uniqueness. The Spanish crown's access to the gold and silver of the Aztec and Inca despotisms made Spain the paymaster of European wars for a century and a half. Castilian infantry excelled throughout Europe leaving Spain's monetary and human wealth in graves around Europe. To achieve imperial greatness, Spain had to abandon the medieval free market and constitutional institutions.

Along with the precious metals of the Indies, Spain sought to impose a

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"modern" system of taxation to pay for its imperial role. Navigation acts were passed for state control of foreign trade for fiscal purposes. The Mesta was granted monopoly of sheep migration, preventing enclosures and agricultural development in Castile, for taxation purposes. But wool could not be exported so that Spanish manufacturers would have cheap raw materials to export to the monopolized South American markets. The Seville merchants had monopoly of trade to South America under the Casa de Contratación to collect customs, judge commercial cases, and set trade policy. The Consejos de las Indias controlled political administration. In South America, the self-governing municipal institutions, modelled on medieval Spain's communas, were abolished. Instead, royal appointees ruled under the royal Audiencias and the Viceroy.

If one considers the constitutional institutions of the domains of Charles V, it is possible to see the contrast with the period of his successors. The Austrian-Bohemian lands had provincial estates; the Burgundian lands had the seventeen estates of the Netherlands provinces, as well as the Free County of Burgundy. The Iberian-Italian lands had eight parliaments and constitutions: Naples, Sicily, Sardinia, Aragon, Valencia, Catalonia, Castile, and Navarre. Philip II clashed with the Netherlands' estates and lost seven of them. Charles V crushed the communas of Castile and gradually drained the power of the Cortes. The other parliamentary institutions were allowed to become ceremonial. The Spanish government imposed *Tasas* (maximum price controls) on agricultural and manufactured products, disrupting the economy. An army of tax inspectors and tax collectors were employed to enforce the mercantilist regulations. The medieval traditions were completely reversed by the Absolutist state. In Latin America, the early free institutions were strangled, and mercantilism became universal.

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However, in this period of struggle over whether Latin America would receive medieval free institutions or new mercantilism, Latin America gave to Europe one of its most important inheritances. Parallel to the institutions in Europe which guaranteed rights was the development of the theory of rights. The expansion of rights theory which reached its heights from Locke to the American Revolution was founded on the rights debates which were introduced into Spain from the New World. The origin of this development was the Disputation between the Bishop of Chiapa, Bartolome De Las Casas and Juan Gines de Sepúlveda in 1550 at Valladolid. The debate was on the humanity and human rights of the American Indians. The disputation led to the enrichment of the traditional rights theory of the Scholastics.

Iberia experienced the establishment of numerous new universities at the beginning of the sixteenth century (the process continued in Ibero-America where six universities were established by the end of the century). Building on a tradition of historical writing in the fifteenth century, for example, the Rerum Hispanorum of Alphonsus A Sancta Maria (1396-1456), the new university faculties made significant achievements in moral philosophy. From Cardinal Cajetan's (1468-1534) commentaries on Thomas Aquinas, the Late Spanish Scholastics by the dozens carved an historic sphere in the history of philosophy. Building on the De Las Casas disputation, rights theory was expanded by Francisco de Vitoria and Domingo de Soto through Martin de Azpilcueta to Francisco Suárez.

(This has been well presented by Alejandro Chafuen, Christians for Freedom (San Francisco, Ignatius Press, 1986). Concerning De Las Casas, see: Lewis Hanke, La teorías políticas de Bartolomé de Las Casas, Buenos Aires, Instituto de Investigaciones Históricas, no. 67, Universidad de Buenos Aires, 1935; Hanke, Aristotle and the American Indians (Chicago, Henry Regnery, 1959); Hanke, The

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Spanish Struggle for Justice in the Conquest of America (Boston, Little, Brown, 1965); Hanke, All Mankind is One (DeKalb, IL, Northern Illinois University Press, 1974); and Rev. Stafford Poole, C. M., ed., In Defense of the Indians of Bartolome de Las Casas (DeKalb, IL, Northern Illinois University Press, 1974).) The glory of the intellectual contribution of the School of Salamanca was more than off-set for Latin America by the substitution for medieval institutions of liberty by Absolutism and Mercantilism. For two hundred years--from Adam Smith and the Scottish Enlightenment through Macaulay, Acton and Dicey, to Harold Berman, Eric Jones, Nathan Rosenberg, Roland Vaubel--Classical Liberals have explained why the Anglo-American world escaped the disasters which befell Latin America.

First, the disasters which befell Latin America were economic and political disasters. Of course, cultural life has flourished in Latin America. This permitted the famous contrast between Caliban (Anglo-America) and Ariel (Latin America). North America is the material, sub-human, non-intellectual culture; Latin America is the spiritual, supra-human, intellectual culture. It is interesting that the comparison is drawn from William Shakespeare's Tempest, rather than classical continental writers, whether Racine or Corneille, or Cervantes and Calderón. Shakespeare appeals to us because of his realism, his materialism, if you will, rather than for heroism, spiritualism, unrealism. Is Shakespeare the playwright of the James Buchanan School of Public Choice? Shakespeare places his emphasis on the reality of human nature rather than the hope that men will be inspired to transcend their human nature's self-interest. He does not propose that politicians or voters will abandon their own self-interest for the general good.

Shakespeare's work draws on the medieval institutions and philosophical

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traditions, as did the School of Salamanca. The England which Shakespeare describes is an England which continued to flourish in the medieval political and legal structures which continental Europe was abandoning for the Spanish Absolutist model.

In the later years of Shakespeare's career, England was ruled by James Stuart, who had been king of Scotland. James I complained repeatedly to the Spanish ambassador and to the Spanish court which he wished to copy that he hated the limitations on his power from the common law, the common law courts and judges, absence of a centralized bureaucracy, and the freedom of the House of Commons to criticize and thwart him. His son, Charles I, sought to achieve the establishment of Spanish Absolutism in England; Charles I was executed and a Commonwealth established before the Restoration returned England to its medieval legal institutions and political traditions, including the Anglican church.

Like many monarchs, Henry VIII seized supremacy of the church in England and confiscated monastic lands, but he maintained the Catholic liturgy and defended the Sacraments against Martin Luther. In the era of Shakespeare, England inherited an English Catholic church against which Protestant Reformers, the Puritans, complained. The Anglican church was a medieval church, minus monasteries and a papal legate. Similarly, the medieval common law and common law courts, protection of private property and individual rights (based on Magna Carta (1215) and Provisions of Oxford (1258)), and representative institutions in Parliament were maintained.

Most important of all, England retained de-centralized self-government. Local administration was controlled by unpaid, major tax-payers as justices of the peace. All central orders went through them (or not, as they decided).

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This was the system that was transferred to North America by the colonists. North America inherited the medieval legal institutions and political traditions of England, and carried forth the Revolution to preserve the medieval inheritance. (Charles Howard McIlwain, Constitutionalism: Ancient and Modern (Ithaca, New York, Cornell University Press, 1947, pp. 67-92)); Sir Henry Sumner Maine, Lectures on the Early History of Institutions Port Washington, New York, Kennikat Press, 1914, 1966, pp. 374-80); Roland Vaubel, "The Case for International Competition among Economic Policy Makers," Economic Affairs (October-November, 1989, pp. 28-30))

It is the medieval tradition which Berman, Jones, Rosenberg, Vaubel, etc. see as the cause of the West (and particularly of England and North America) enjoying both liberty and prosperity. Yet, the sources of so much of Latin America's knowledge about North America and about North America's views of Latin America come from the New England writers. Too many intellectuals are influenced by literature, and they see North America as characterized by the Puritans who wrote literature. The New England Puritans were not part of English medieval tradition with which we associate the liberty and prosperity of England and English America. They sought exile in New England to escape the medieval Catholicism of the Anglican Church and the medieval freedom of English society and economy. The Puritan Yankee provides the literary model, but the reality of English America was medieval in economy and society.

The American South was not only Anglican and Cavalier, but had strong Creole/Latin influences at its two commercial and cultural centers--Huguenot and British and French West Indian in Charleston; French and Spanish in New Orleans. Charleston and New Orleans were more important ports than Boston until the War between the States (David Hackett Fischer, Albion's Seed: Four British Folkways

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in America (New York, Oxford University Press, 1989), esp. "The Determinants of a Voluntary Society," pp. 3-11).

More important than Boston were New York, Philadelphia, and Baltimore. These Middle Colonies were truly characteristic of English America with their broad cultural diversity of religions and dozens of languages (in New York) rooted in their central commercialism. To achieve material progress, the Middle Colonies could not create religious, cultural, or political conformity. Diversity, toleration, and plurality were the foundations of commercial wealth. To quote Voltaire during his stay in eighteenth century London:

Enter the London stock exchange, that place more respectable than many a court. You will see the deputies of all nations gathered there for the service of mankind. There the Jew, the Mohammedan, and the Christian deal with each other as if they were of the same religion, and give the name infidel only to those who go bankrupt; there the Presbyterian trusts the Anabaptist, and the Anglican accepts the Quaker's promise. On leaving these peaceful and free assemblies, some go to the synagogue, others go to drink; ... others go to their church to await the inspiration of God, their hats on their heads, and all are content.

Peter Gay, noting that Voltaire's Lettres philosophiques (1734) were dedicated to England's rule of law, calls Voltaire's description "a positive vision of a civilization that assimilates, protects, and profits from a variety of citizens. A sound civilization, Voltaire tells his readers in one vivid image, is unity in multiplicity; since its virtues and vices constantly act upon each other, the strength of one institution is the strength of all. The rule of law, commercial prosperity, religious toleration, the flourishing of arts and sciences, civil liberties--all are necessary, all sustain each other." (Peter Gay, Voltaire's Politics (New York, Vintage, 1965, pp.. 52-53).)

After a decade in which North American and Western and Eastern European historians have identified the medieval roots of modern economic and political

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success, it is time for those engaged in Latin American studies to seek to identify in the institutions and in the philosophical and historical writings of Latin Americans, parallel themes and traditions.

When the United States Constitution was written, it received violently critical reviews from the great philosophers of the French Enlightenment. They did not understand, as Edmund Burke well understood, that the Americans had revolted against England because the English bureaucrats were attempting to destroy the Americans' medieval institutions and to install a modern, bureaucratic state. The French philosophers emphasized repeatedly that the American constitution was retrogressive, looking back to the institutions and concepts of liberty of the middle ages. Thomas Jefferson and John Adams sought to explain to the philosophers that the American revolutionaries were traditional Whigs who wished to keep all the historic, medieval institutions of England, from common law to absence of central government agents.

John Adams prepared a three volume Defense of the Constitution of the United States for the Enlightenment critics. John Adams drew on a deep background of legal history, including history of the canon law. John Adams was the highest example of the New England mind. He deserves the highest accolades for his ability, in the midst of the Age of Reason, to transcend the spirit of the age and to pursue the vast amount of reading which prepared him to understand the medieval traditions of American legal and representative institutions.

The medieval supremacy of the judiciary and judicial review were reflected in the U. S. Constitution and The Federalist Papers. "The political and social philosophies that sprang from the Enlightenment were religious because they ascribed ultimate meaning and sanctity to the individual mind and also, it must

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be added immediately, to the nation. The age of individualism and rationalism was also the age of nationalism: the individual was a citizen, and public opinion turned out to be not the opinion of mankind but the opinion of Frenchmen, the opinion of Germans, the opinion of Americans, and so forth. Individualism, rationalism, nationism - the Triune Deity of Democracy - found legal expression in the exaltation of the role of the legislature and the consequent reduction (except in the United States) of the law-creating role of the judiciary." Harold J. Berman, The Interaction of Law and Religion (Nashville, Tennessee, Abingdon Press, 1974, pp. 68-9.)

Were there any Latin American John Adamses? It is necessary to identify them, then re-examine their analyses of constitutions and institutions, and bring to the public in North and South America the value of their contributions. Classical Liberals have an important Latin American research agenda before them.

We live in an exciting epoch. The concept of liberty, the concept of the capitalist revolution, is once more to the fore. The restoration of mercantilism, whether as Socialism in the eastern Bloc countries or as Welfare State in Western Europe, North and South America, has once again failed. The capitalist revolution is the first agenda.

The scholarly research in the last decade has more clearly identified what Lord Acton and Alexis de Tocqueville in the last century and what F. A. Hayek and Bruno Leoni (at Mont Pelerin Society meetings) in this century, have been explaining to us. We must understand what it is about the West's legal and political institutions that provided us with unique dividends of liberty and wealth. We know from all these sources that the West's unique development is due to the inheritance of medieval legal and political institutions.

It is understandable that the East Bloc countries which shared that

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tradition--Yugoslavia, Poland, Hungary, Czechoslovakia, East Germany, Lithuania, Latvia, Estonia--have taken the lead in recent months in re-establishing the route to a free society. Their example gives hope to Latin American countries that their roots in Spain's medieval tradition can provide Latin Americans with a road map to finding the route to success in better founding institutions of liberty and prosperity.