

Historical Foundations of Civil-Military Relations in Spanish America

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Civil-Military relations in Spanish America involve dynamic interactions among military institutions, government policy makers, other organized interests, and ordinary citizens.¹ They are conditioned by domestic and international variables, by short-term and long-term circumstances, and by particular features of each nation that constitute national social and political regimes. For almost every general observation on Latin American society and civil-military relations, nonconforming patterns in particular nations may be offered as inconvenient exceptions. Generalizations about politics in the region, including civil-military relations, must necessarily acknowledge this underlying diversity as a starting point.

Despite this "dilemma of diversity", this chapter identifies some more or less commonly shared historical patterns of civil-military relations in Spanish America bequeathed from colonial times and from the nineteenth-century . These cultural, institutional, and historical patterns, and efforts to sustain them or alter them, persist, with variation, as a frame for civil-military relations in the region at the end of the twentieth century.

The historical influence of customs, attitudes, values, institutional norms, professional standards and political culture encumber and shape present civil-military relations in all modern polities— not just in Spanish America. In this sense, history is not "the past" or what has "passed" but rather a complex set of enduring (and sometimes antagonistic) collective expectations, beliefs, social memories, and institutionalized patterns of behavior that continue to operate as contingencies influencing the present— and future. Such historical influences do not fully determine the present or the future, but they do form part of the complex, path-dependent course of social and political change in each nation and community. They operate more or less overtly, more or less consensually, more or less consciously, and more or less conflictively. They also operate to legitimate present actions whose ostensible purpose is to reaffirm historical commitments, values and shared dreams or, alternatively, as obstacles, antiutopian politico-cultural barriers to "the Revolution" or the "good society", however defined by social reformers

and revolutionaries.

In Spanish America, both colonial and nineteenth-century patterns of civil-military relations have survived into the twentieth century, though they have not survived unchanged or uniformly within the region.² Nevertheless, certain aspects of civil-military relations and military institutions in Latin America, and certain patterns of conflict over these patterns and institutions, are recognizable common legacies of pre-twentieth century developments. The present chapter emphasizes *some* of the similarities across the region and notes the main variations prior to World War I.³ The chapter begins with *colonial legacies*, considers the impact of the *wars of independence* and early efforts at nationbuilding, the *challenge of creating new constitutional regimes and the role of the armed forces in nineteenth century constitutions*, nineteenth-century *national security laws and penal codes*, and the *impact of European military missions*. Together these legacies form a "living past" that continues to influence civil-military relations. Examples of the influence of this "living past" are presented for illustrative purposes, but without making an effort to historicize or to compare systematically the diverse cases — a task for lengthier, detailed historical research.

Iberian Colonial Legacies

The "Warrior-Priest Tradition" and Conquest of Las Indias

For over seven centuries prior to Columbus' voyage of "discovery" in 1492, the Iberian peninsula experienced intermittent dynastic warfare and war between factions of Christians and Moors, family feuds, territorial, economic, ethnic, religious, and cultural conflict. This on-again, off-again crusade (711 A.D. -1492), ostensibly to liberate Iberia from North African conquerors, engendered anomalous alliances, temporary truces, and illusory pacifications. Reconstructed historically as the "*reconquista*", as if for seven centuries there existed a constant battle to recuperate Iberia for Christianity (and conveniently neglecting the seven centuries of miscegenation, cultural borrowing, and political pragmatism), this period gave birth to the foundational myths of Spanish nationalism and militarylore. Américo Castro affirms that "the reconquest was a loom on which the history of Spain was warped"; Claudio Sánchez Albornoz,

asserts: I consider the Reconquest the key to the history of Spain."⁴

Whatever the character of the "real" history of this period, as a foundational myth for Spain, the "unceasing monotone of the Reconquest was of Christian Spaniards against Moslem Spaniards, of Cross and Sword against Moorish Crescent"⁵ Crown and Church promised booty, privilege, and salvation to the Christian Soldiers who fought and died for "King and God".⁶ Gradually the various Iberian Christian kingdoms, *las españas* (Asturias, León, Castilla, Navarre, Aragón, Catalonia), consolidated their jurisdiction and pushed southward from Castile toward Andalucia. The dynastic union of Castilla-Aragón after the marriage of Ferdinand and Isabella in 1469, creation of the Inquisition in 1480, and the victory in Granada in 1492 melded military conquest with a religious crusade into a proto Spanish nationalism. (The Inquisition was not abolished in Spain until 1820; religious toleration in Spain did not formally exist even in the early 1960s). In the words of Rubén Dario, "in Spain the Cross is on the Sword."

No other European nation-state has its origins in this sort of religious-military crusade, nor can date its consolidation so precisely in a fusion of historical myth and historical events. Historian John Crow's summary of the year 1492 is revealing: victory in the *reconquista* against the Moors at Granada and planting of the Cross on Alhambra Hill on January 2, 1492; the Inquisition expelled Jews from the country en masse; Rodrigo Borgia, a Spaniard, became Pope; Columbus "discovered" America; and Antonio de Nebrija published the *Castilian Grammar*, the first grammar of any modern European language. According to Crow, when the queen asked the author "What is it for?", Nebrija answered: "Language your majesty is the ideal weapon of empire."⁷ Whether this account is accurate or apocryphal, the Spanish crown ruled the first European nation with a *national* grammar.⁸ It would export the warrior-priest tradition, the institutions and practices of the *reconquista*, the fusion of crusade, military conquest, and religious-cultural imposition to *las indias*.⁹ It may be that in some ways, as Benedict Anderson argues, nations are "imagined communities", but the Spanish monarchy and its overseas empire were a very real religious, cultural, political, and military presence in Europe and on the world scene from 1492.¹⁰

Iberian Catholicism, the Spanish language, Hispanic political institutions and cultural patterns were implanted in *las indias* by *conquistadores* accompanied by priests, and sometimes

by *conquistadores* who were priests. The union of the Holy Roman Empire under the Habsburgs on the accession of Charles V (Charles I of Spain, 1516-1556), which made the Spanish crown the point of the lance of the counter reformation, added a global dimension to the extension of the Spanish crusade and reinforced the fusion of Papal authority (the *donación*, or "grant" that conferred *las indias* on the Spanish Crown) and royal patrimonial authority. Charles V considered himself "as the personal champion of Christendom"; in his view the conquest of *las indias* served the dual purposes of providing great wealth for his royal coffers and of extending the domain of the Universal Church, though he also "made war on the Pope and reduced the papacy to a role of subservience to the Spanish state" when his German troops sacked Rome in 1527. When his son, Philip II, inherited the throne (1556-1598), he began his reign with an *auto-de-fe* at Valladolid; several heretics were burned at the stake. Philip II "would rather not rule at all if he had to rule over a nation of heretics."¹¹ This was the king who presided over the extended conquest and settlement of Spanish America and, briefly, of Brazil.

In practice, the exploration, conquest, and initial settlement of *las indias* lasted almost a century, if permanent settlement at Buenos Aires (1580) is taken as a temporal-geographic benchmark — while periodic Indian rebellions into the eighteenth century made the "conquest", of bodies, souls and territory, an enduring mission.¹² Expansion and extension of the Spanish imperial administration and creation of new territorial divisions superficially replicated, albeit in a telescoped time period, the *reconquista* in Spain: a period of neo-feudal conquest followed by creation of two viceroyalties (New Spain, Mexico, 1535 and New Castile, Peru 1542), then gradual and recurrent imperial reorganization - culminating with the creation of the viceroyalty of New Granada (1739) and Rio de la Plata (1776)

The founders and early governors of the new territories frequently bore the title of *adelantado*, an honor given to the *adelantados de frontera*, the military leaders of the *reconquista* on the Iberian peninsula.¹³ And the motivations of these early *conquistadores* also mirrored the mixture of religious zeal and quest for instant riches depicted so well in the epic *Poem of the Cid*, describing the exploits of a heroic figure of the eleventh century who combined warring against the Moors with warring against Christian princes, collecting taxes on behalf of King Alfonso VI of Castile, and creating his own vast domain, all in the name of loyalty to

Catholicism.¹⁴ His appeals to recruit armies - "those who want to stop their toil and get rich, let them come with me to conquer and to populate this land," and the results, after a victory at Valencia — "those who came on foot are now mounted; gold and silver, it's more than one can count. All are now rich- every one of them who went," paralleled the dream and, sometimes, the luck of the *conquistadores* in the sixteenth century.¹⁵

The Spanish "warrior-priest" tradition came with Iberian conquistadores to the Western hemisphere. The melding of conquest, governance, and religious-cultural intolerance persisted in colonial life to the end of the eighteenth century. This tradition permeated more deeply in major colonial centers than in frontier territories such as Costa Rica, parts of Venezuela and Rio de la Plata or Chile. But it was nowhere without some influence. Writing in 1967 Jacques Lambert concluded, "Nowhere else have the initial forms of colonial domination left such a strong and lasting imprint on countries that have been independent so long."¹⁶ Seemingly confirming Lambert's assertion, the military governments of Latin America from the 1950s into the late 1980s frequently justified the movements that brought them to power and their subsequent policies as efforts to defend "Western Christian Values" against "godless communism" and "subversion".¹⁷

Military Missions: External Security, Warfare, and Public Order

From the sixteenth century until the early eighteenth century Spanish rulers were almost always at war, preparing for war, or recovering from war. Iberian armies and mercenaries fought in Europe, in North Africa, Asia, and against Indian peoples from the southwestern United States to the southern tip of South America. Spanish navies and their mercenary *armadas* fought in the Mediterranean, the Atlantic, the Pacific, and the Caribbean. But in addition to their external warfare roles, the officers and soldiers in Iberian military forces were also responsible for law enforcement and maintenance of public order. Neat distinctions between police and military functions did not exist. By the early nineteenth century, the internal security missions of the armed forces had increased greatly, both in Spain and in the colonies, as a result of the extended Bourbon reforms that began after the War of the Spanish Succession that ended in 1713-14 and intensified after the British occupation of Havana (1762-63), riots in Madrid in 1766, and colonial rebellions from Mexico to the Andean regions after 1765.

At the end of the War of the Spanish Succession (1714), the king redesigned Spanish internal administration, replacing the old viceroalties with provincial captaincy-generals. First introduced in Aragón, Valencia, Mallorca, and Asturias from 1715 to 1717, this system finally prevailed throughout Spain, except Navarre, by 1790. The captain-general, symbol of the transition from "kingdom" with local law and custom to province ruled by a centralizing Castilian authority, became the most important administrative officer in Spain. Usually he was president of the *audiencia*, the highest provincial civil and criminal court, head of the provincial *consejo de guerra*, and commander of troops stationed in the province. In his judicial functions he was advised by one of the judges of the *audiencia*, called the *auditor de guerra* (a specialized civil-military legal adviser -and a military designation still existent in some parts of Spanish America at the end of the twentieth century).

This fusion of administrative, judicial, and military authority made military officers "the superior authorities of the entire administrative system and the ordinary justice system."¹⁸ It responded to the king's belief that "in order to effectively legislate, enforce the laws, and implement judicial decisions, the existence of a permanent army was necessary, not only for external defense but within the kingdom. ...This explains the position achieved by the military in Spanish territorial organization in the eighteenth century."¹⁹

Although the administrative reforms were resisted, applied unevenly, and even aborted in certain provinces, they gradually took hold from 1717 until Felipe V's demise in 1746. He abolished the old provincial constitutions and conciliar government, and made military officers the most important officials in public administration. Militarization of internal administration was an essential tool for forging an overarching Spanish *patria* from the collection of kingdoms and viceregal jurisdictions inherited from medieval and Habsburg times.

These reforms from 1714 to the 1740s reflected the intensified Bourbon concern with *consolidating centralized political control over the provinces*-and the central role of the military in achieving this objective. In the words of Spanish historian José Ramón Alonso, "the army was converted into the foundation of Philip V's monarchy, a military monarchy from its origin, with an army almost always in action from the New World to Milan. Without the constant support of the army, Spain might have been dismembered, as England desired until 1715."²⁰ In addition to

the militarization of public administration, in 1734 the king established a system of "disciplined militia" in Castile, a sort of home defense force to which was conceded many of the traditional military *fueros*. The crown standardized militia organization, equipment, and uniforms. This militia further engaged numerous Castilians in military training and accustomed them to military discipline.

Militarization of internal administration and recruitment of civilians in militia was accompanied by militarization of politics. By the 1730s the army had grown tremendously, officers served in key government positions, as ambassadors, and as the king's principal advisers. Defense ministers directed Spain's foreign policy—indeed managed much of Spanish public policy. In addition, all cases of treason, subversion, and sedition were transferred to the jurisdiction of military tribunals. Militarization of internal politics and public administration was part of the Bourbon effort to establish authority over Spain after ousting the Habsburg dynasty and to centralize authority over the various kingdoms, towns, ecclesiastical jurisdictions, and groups in society that enjoyed special privileges and immunities (*fueros*) in relation to royal authority. Military officers became "natural" participants in politics and government, from policymaking to public works, from public order to collecting taxes.

Internal Security of the State and the Armed Forces

Riots in Madrid that spread throughout Spain in 1766 provoked military reforms that further militarized Spanish politics and administration. Urban riots protesting the liberal economic reforms (such as freeing the price of bread) and other policies of the Marquis de Quillache spread to Cuenca, Zaragoza, Salamanca, Extremadura and Andalusia.²¹ After containing the riots with promises of amnesties, rescinding unpopular decrees, and lowering bread prices, the King blamed the Jesuits for the disorders, expelled them from Spain and the colonies, and reorganized internal administration to prevent further such threats to internal order.

In July 1767 the province of Castile became the *captaincy-general of New Castile*, presided over by Captain General and President of the Council of Castile, the Count of Aranda. Having fused civil and military authority, the King made Madrid a military department (*plaza de armas*) and stationed fifteen thousand troops in the capital and environs. Political opponents were subjected to the jurisdiction of ad hoc tribunals (*juzgados especiales*), and the government

ordered secret executions and the "disappearance" of enemies. New militia were created in Castile, charged with fighting contraband and banditry and maintaining internal peace. In 1768 Carlos III decreed new military regulations (*reales ordenanzas*) that extended the jurisdiction of military tribunals over civilians for crimes committed during the riots (an ex-post change of jurisdiction and of law that applied to the "crimes" against internal security). The king also gave military administrators authority to approve or prohibit public meetings and to take preventive measures, when the king requested. When disturbances occurred, regulations transferred territory for approximately five leagues from the garrison's base to military jurisdiction, essentially imposing martial law over the entire civilian population. Military forces were assigned many routine police functions and served as bailiffs in civil and military courts. All cases of treason (*infidencia*), subversion, and sedition were also transferred to military tribunals.

Further militarization of internal administration occurred in April 1774 with publication of a decree-law (*pragmdtica*) on popular tumult, essentially a public order or "internal security" law.²² This *pragmdtica* outlawed display or dissemination of unapproved posters and placards. It also outlawed "subversive" writings (*papeles sediciosos*) and penalized those who, knowing of such materials, failed to report this to the local authorities. Further provisions regulated public meetings, and authorized troops to use "whatever force necessary" (*se usard contra ellos de la fuerza, hasta reducirlos a la debida obediencia*). From 1774 to 1779 the government created new militia units to repress highwaymen, bandits, and vagrants. In 1781 regular army troops were stationed in Andalucfa and Extremadura to fight contraband and banditry, with orders to act "as if they were in a state of war" (*como si lo executasen en guerra viva*). In 1784 a Royal Instruction ordered the captains-general to compile lists and information concerning bandits in their jurisdictions, and to share such information across jurisdictions, an internal intelligence function that, if taken literally, required a permanent political espionage system.²³

Deliberate confusion between "bandits" and political adversaries became the rule in Spain (and, later, in Spanish America), since "bandits" were typically subject to military tribunals, immediate execution, and "ley fuga".²⁴ It would be no accident that so many "bandits" were shot "attempting to escape" or that government authorities in twentieth century Spanish America labeled rebel leaders such as Pancho Villa in Mexico or Augusto César Sandino in Nicaragua

(1927-31), as "bandits"-- a legal categorization that subjected the "bandits" to military jurisdiction, unprotected by civil liberties and rights (*garantias constitucionales*) or due process.

Thus the Bourbon kings gradually militarized internal administration in Spain, established special courts for dealing with "subversives", "bandits" and many other categories of political opponents, and made civilians subject to military tribunals and military law. By 1805 army officers presided over every territorial tribunal in Spain. These patterns for dealing with internal security and political opposition, to greater or less extent, were extended to Spanish America (see below) and were retained after independence.

Due Obedience, Military Law, and Military Codes

Important sections and language of the military regulations of 1768 survived the independence struggles, nation-building and constitution writing in the nineteenth and twentieth century to guide military behavior until almost the end of the twentieth. Assumptions about the duty of officers to *obey orders* without question and to innovate only in areas where regulations or orders left a vacuum shaped routine military operations and also operations in "internal war" and law enforcement in eighteenth and nineteenth-century Spain and Spanish America. These same premises, couched in virtually identical language in military codes, would guide operations against guerrillas and leftist political movements in the region after 1959 - operations that resulted in widespread human rights violations in much of Latin America.

What is striking is the resilience of these colonial regulations — the almost exact replication of the language and spirit of colonial military regulations in nineteenth and twentieth-century military codes. To illustrate, language from the Spanish *ordenanzas* of 1768 is reproduced below followed by language from military codes in Colombia, Argentina and Peru in the 1960s and 1970s. These regulations are reproduced in Spanish in the text, with the relevant phrases highlighted, to illustrate the longevity of both the spirit and wording of colonial military regulations and doctrine in Spanish America.

Spain. 1768. Article 9:

Todo oficial en su puesto será responsable de la vigilancia de su Tropa en él; del exacto cumplimiento de las órdenes particulares que tuviere. y de las generates que explica la Ordenanza, como de

tomar, en todos los accidentes y ocurrencias que no le estén prevenidas, el partido correspondiente a su situación, caso, y objeto, debiendo en los lances dudosos elegir el más digno de su espíritu y honor.

Chile. 1839. 1860. Ordenanza para el Regimen. Disciplina. Subordinación i Servicio de los Ejércitos de la República. Titulo XXXII (9)

Todo Oficial en su puesto será responsable de la vigilancia de su tropa en el exacto cumplimiento de las órdenes particulares que tuviere. i de las i enemias que esplica la Ordenanza. como de tomar en todos los accidentes y ocurrencias que no le estén prevenidas, el partido correspondiente a su situación, caso i objeto, debiendo en los lances dudosos elejir el más digno de su espíritu i honor.

Argentina. Reglamento de Servicio Interno. 1969:

El que comandare una tropa será responsable de la vigilancia de ella, del exacto cumplimiento de las órdenes particulares que tuviere v de las disposiciones contenidas en las leyes y reglamentos. como de tomar, en todos los accidentes y ocurrencias que no estén previstos, el partido correspondiente a su situación, caso y objeto, debiendo en los lances dudosos elegir él que considere más digno de su espíritu y honor.

Peru. Reglamento General del Servicio Interior. 1975

Todo oficial es responsable de la vigilancia de su tropa,

del exacto cumplimiento de las órdenes particulares que
tuviere y de las prescripciones reglamentarias, así como
de tomar en todos los accidentes y ocurrencias que no estén
prevenidos, la actitud correspondiente a su situación, caso
y objeto, debiendo en los trances dudosos elegir el más digno
de su espíritu y honor.²⁵

The longevity of these provisions in military codes and the spirit that pervaded them could not be foreseen in 1768. But the legacy of the 1766 riots and the subsequent royal decrees profoundly, if not always consciously, influenced civil-military relations in Spanish America. These military regulations and the internal security measures taken by the king and Aranda created the legal and policy foundations for managing political dissidence and protests in Spain and independent Spanish America. They also embedded in military regulations the concept of *obediencia debida* (*due obedience*) and its corollary, individual immunity for actions carried out *under orders*. The consequences of disobedience could be drastic. Chile's first post-independence military code, adopted in 1839 and reformed in 1860, stipulated: "Any soldier, corporal or Sergeant, on active service, who fails to obey all and any Officers of the Army, will be sentenced to death" ("*será castigado con pena de la vida*").²⁶ Moreover, even when orders of superiors were possibly illegal, these codes required strict compliance (unlike the British and then United States tradition of "objecting" to illegal orders). Illustrative (and typical) language in this regard in the Guatemalan Código Militar (1878) stipulated: Orders from superiors should be obeyed ... without vacillation and without discussion, and without making observations of any sort, even when there is cause to do so, until after complying with the orders."²⁷ This clearly

means that orders to interrogate, torture, or execute prisoners must be followed; any objections could be presented later.

And the consequences for disobedience? "Any soldier, corporal or sergeant who fails to obey every and any Army officer ... will suffer the death penalty." The same penalty was prescribed for sergeants and corporals who did not obey their superiors, that is, higher ranking noncommissioned officers.²⁸ Under these circumstances, it is easy to understand why "due obedience" would be a legal defense for soldiers and officers. The military codes did not recognize "illegal orders" as a proper rationale for failure to obey orders and the penalties for disobedience could be drastic and immediate

Almost everywhere in Latin America this sort of language was retained in military codes during the twentieth century.²⁹ Use of the concept of "due obedience" as a defense by military personnel in cases involving violation of human rights in the 1980s and 1990s is grounded in this pre-1948, pre-Nuremberg military doctrine.³⁰ The events of the 1980s and 1990s have, in some respects, reaffirmed this doctrine, whether by plebiscite in Uruguay or with the "due obedience law" in Argentina (1987).

Beyond the "due obedience" laws, many aspects of the colonial *ordenanzas* and the nineteenth century military codes survived well into the twentieth century, including jurisdiction of military tribunals over civilians for many sorts of "political" crimes. This feature of Latin American legal culture invariably made the armed forces political actors.

The Military *Fuero* and Jurisdiction of Military Tribunals over Civilians

The military *fuero* in Spain and colonial Spanish America is a complex topic both legally and historically.³¹ The concept of "fuero" refers both to "privileges and immunities" and also to

"jurisdiction". Medieval towns obtained *fueros*, a royal charter of privileges from the king. Such *fueros* were the basis for local government, a sort of medieval "federalism" that was gradually eroded by the centralizing encroachments of the developing European nation-state to the time of the French Revolution (1789). *Fueros* also existed for special groups in society ~ nobles, religious orders, guilds, and the military. Priests and other religious pertaining to the ecclesiastical *fuero* enjoyed immunities from civil authority in certain stipulated cases and were subject to ecclesiastical courts. This might be "protection" against civil authority or it might mean lack of protection against ecclesiastical law by appeal to the "rights" of other subjects. This was also true for the guilds (*gremios*) and for military personnel. Officers acting as military judges might protect their personnel against civilian claims, both in civil and criminal cases, but might also impose the extremely harsh penalties stipulated in the military codes for everything from bigamy to bestiality. Thus the military *fuero* could be a mixed blessing, despite its use as an enticement to military service in both the militia and regular army, especially where recruits were offered exemption from taxes, from ordinary jurisdiction in civil litigation, and enhanced social position. In Spanish America these privileges were especially attractive to the "lower classes" and "people of color" (*pardos*, *mulatos*, and the various *castas*).

For purposes of understanding civil-military relations in Spain and Latin America, however, three main aspects of *the fuero* are essential.

(1) Military personnel were subject preferentially to military jurisdiction and tribunals in cases of alleged criminal behavior, whether the alleged crimes were committed against civilians, against other military personnel, or against government authorities. Military officers acting as judges in *consejos de guerra* (courts martial) heard such cases, and had some incentive to find

that military personnel had acted properly when accused of misdeeds ~ especially if they had acted under the orders of an officer. This aspect of the military *fuero* had variable impact from colony to colony and region to region within colonies. When the military *fuero* was extended to militia units and to black, mulato and *casta* troops in the eighteenth century, it also provided some social mobility and insulation from civil government authority. At the same time, it resulted in "a withering respect for justice, [an] undermining of the prestige and credibility of local government, and the establishment of the military as a dominant force in the provinces [of Cartagena and Panama]." ³²

(2) In many instances, *civilians were subject to military jurisdiction*, especially for crimes in which military personnel jointly participated with civilians, when the crime committed was rebellion, sedition, tumult or other such crimes in which "internal security" was threatened (as already exemplified in the case of bandits, vagrants, and those who disseminated subversive writings).

(3) Military jurisdiction generally meant that "normal" judicial protection and due process was not available to the accused. These patterns were maintained after independence in most of Spanish America, though the extent of military *fueros* and jurisdiction over civilians recurrently became a matter of political debate in the nineteenth century. ³³

The extent of military jurisdiction over civilians varied considerably in Spanish America after independence, as constitutional and legal changes reduced or eliminated both the military *fuero* and trial of civilians under military law. No systematic comparative historical investigation exists that documents the constitutional, legal, and political battles regarding military *fueros* and military jurisdiction over civilians. In some cases the military *fueros* were

eliminated early: Costa Rica (1825), Venezuela (1830), Uruguay (1838), Bolivia (1839) and Mexico (1857). (In the Bolivian case, however, the 1839 Constitution was not implemented and its successor (1843), was labeled sarcastically by opponents the *ordenanza militar* because of its authorization of virtual martial law whenever the president judged that there existed "internal commotion" or "external danger").

While systematic study of the politics associated with elimination of military *fueros* in the nineteenth century remains to be done, it is clear that persistence of military *fueros* and military jurisdiction over civilians for certain criminal proceedings on the model established in the colonial period and retained in the nineteenth has significantly influenced civilian-military relations in Spain and much of Spanish America until the late twentieth century.³⁴ Indeed the jurisdiction of military tribunals over civilians and the application of military law "in time of war" to civilians, for "political crimes", was a crucial element in the human rights violations that characterized both military and civilian regimes in much of Spanish America from the 1960s until the 1990s.³⁵ Such military jurisdiction over civilians was, for example, a permanent fact of life in Colombia from the late 1940s, with the country under states of siege governed by the language of the 1886 Constitution. Military jurisdiction over civilians in Colombia from 1948 to 1991 resembled that of late-eighteenth century Bourbon Spain.³⁶ In Chile, civilians continue to be prosecuted in military tribunals for a variety of "crimes", including "insulting military officers" to the present (1999). And in Peru in the 1990s, Peru's president Alberto Fujimori greatly expanded military jurisdiction over civilians in certain types of cases involving "national security" and in parts of the country that the government declared "emergency zones." In contrast, in El Salvador and Guatemala, military jurisdiction over civilians ended as part of the

reforms adopted after the "peace accords" that terminated the guerrilla wars in those two countries in the early 1990s.

Fusion of Military and Civilian Authority

Related to the internal security role for the armed forces and application of military law to civilians, both in Spain and the colonies in the eighteenth century, there existed, for some purposes, a routine overlap and fusion of civil and military authority. The *Ordenanza de Intendentes del Rio de la Plata* (1782) and those of Nueva España (Mexico, 1786) gave viceroys, intendentes, and other comandantes general "total authority" (*todo el lleno de la superior autoridad omnimodas facultades*). The *Ordenanza de Intendentes* reaffirmed this concentration of authority (except in Venezuela), recognizing the viceroys, captains-general, and audiencia presidents' "full and superior authority, consistent with their high rank" (*superioridad pleno ejercicio de "todas las facultades propias de su elevada dignidad"*).³⁷ Almost all the viceroys in Mexico, Peru, Rio de la Plata and New Granada were military officers. The same was true in the captaincy general of Chile and Guatemala, and of the governors in Cuba and the Philippines. This trend was intensified in the 1760s and 1770s due to problems of internal order, the temporary loss of Havana and Manila to the British in the Seven Years War (1762-63) and several serious rebellions from the mid 1760s in Quito (1765) the 1770s and 1780s in Oaxaca, northwestern Venezuela, Arequipa, Cuzco, La Paz, Cochabamba and Socorro (in New Granada).

This wave of revolt, precipitated in great part as reactions to the Bourbon reforms that sought to enhance colonial revenues and reassert royal authority over local interests, culminated with the Túpac Amaru uprising (1780-81).³⁸ By revolt's end, the Spanish army and militia

numbered over 17,000, a larger force than the regular garrison strength in Mexico, Peru, and New Granada combined. In the course of the fighting thousands died amidst fear of a generalized race war. In 1784 Peru was divided into seven intendancies, with an additional two created in Chile under the command of Viceroy Teodoro de Croix, ex-Commandant General of the Frontier Provinces of New Spain. Thus as the Spanish colonies approached the nineteenth century, militarization of internal administration became ever more visible.

At the end of the eighteenth century the military establishment was an integral aspect of Spanish colonial administration. Civil and military authority often overlapped, military courts had jurisdiction over civilians for many sorts of crimes, especially those involving internal security and public order, and military officers and even enlisted personnel enjoyed certain privileges and immunities vis a vis civilian society, particularly *the fuero* militar. Tensions frequently existed between civil and military authorities, especially at the local level (*cabildo*), but the "special" status of the military was recognized in law and in practice. While the military was "subordinate" to government authority, it was also immune from oversight and subject to separate channels of authority that went directly to the king or, after independence, the President of the new Latin American countries.

The Armed Forces and Independence Movements

The wars of independence in Spanish America (1808-1830+) were everywhere civil wars that divided all institutions and groups of the colonial order.³⁹ This included military institutions, both the army and militia, which saw officers and enlisted personnel fight to reaffirm the Spanish colonial regime and then to overturn it. Many of the leaders of the Spanish American independence movements defected from the Spanish Army and others were officers in the

colonial militia.

The course of independence struggles varied greatly from Mexico to the southern tip of South America; in some cases independence cost thousands of lives and destruction of property and infrastructure (Venezuela, Rio de la Plata, Chile) and in others independence came without significant warfare (most of Central America). Even when Spanish armies were finally defeated in Peru (1824) and southern Chile (1826), the region succumbed to territorial disputes, internal wars, foreign invasions, and naked struggles for power and control of government revenues. Efforts to create large confederal nations failed in Central America, Northern South America and in the Rio de la Plata region. Fragmentation led to creation of new nation-states that corresponded roughly to old colonial territorial jurisdictions (*audiencia*, *captaincy-general* or lesser jurisdictions).

In these circumstances, military force, though usually not professional military organizations, became the arbiters of politics. This was the age of the *caudillos*, charismatic leaders, landowners, ex-military officers, and others who imposed their will or lost their lives at the head of armies composed of forcibly recruited peasants, ex-slaves, vagrants, ranch hands, urban "lower classes" and loyal henchmen.⁴⁰ The stakes for losers was high and the risks substantial enough to make control of violence literally worth *everything*. Every change in government potentially threatened catastrophe or proffered a windfall for the victors and their clientele.⁴¹ With politics so crucial to their personal and professional fate, and so volatile, "liberty, equality and fraternity gave way to infantry, cavalry, and artillery, as the republics bled themselves in constant warfare."⁴² Such conditions reinforced the relative autonomy of armed forces in the region and eroded the limited credibility of enfeebled civil authority.

From the 1820s onward restoration of political order and effective law enforcement was at a premium. For many, the memory of relative calm under Spanish colonialism had great appeal. Though typically unsuccessful before 1880, with the arguable exception of Chile, political leaders sought to design institutions for "good government" that would somehow combine the spirit of Spanish, French, British, and North American liberalism with the more conservative social and legal regime of colonial Spanish America. Constitutional experimentation produced a vast array of failed regimes - including over 100 constitutions in Spanish America before 1900 (without counting the numerous short-lived "proto constitutions" and temporary constitution-like charters). Gradually, however, certain common institutions and practices prevailed in the region, including republican constitutions with relatively strong presidents, weak legislatures, and barely independent judiciaries. In the sphere of civil-military relations there also developed some common institutions and practices that, blended with the colonial legacies, continue to exercise influence in the twentieth century. Likewise, the definition and outcomes of conflicts in the area of civil-military relations, for example efforts to eliminate or reduce the *fuero militar*, also continue to frame civil-military relations amongst the Spanish American republics.

Nation-Building and the Armed Forces

The Military and the Patria: Foundational Myths

The independence wars and the numerous regional and transnational wars that eventually established the boundaries of the new nation-states became the benchmarks for Latin American military institutions. The region's armies claimed a tutelary, guardianship role, what they called a "historical mission" to oversee the "transcendental destiny and values" of *la patria*. There

arose an almost universal claim that *national military institutions preceded the nation itself*, and that "the army is the soul of the present, because, assuring respect for the law, it prevents the nation from falling into barbarism; it is the soul of the future, because assuring order and security in the country, it favors its progress y helps it to achieve its destiny."⁴³ Put boldly, in the words of El Salvadoran Lt. Colonel Mariano Castro Morán: "In the process of creating nationality, in all epochs of the history of peoples, the ultimate and decisive stage is the formation of national armies, or, in modern times, the institutionalization of national armed forces.... Here in El Salvador, the National Army was created at the dawn of the Republic. ...In effect, the history of our country in the nineteenth century is nothing more than the history of our men in uniform who created and reformed laws and institutions in the fields of culture and liberal, democratic humanism."⁴⁴

Whatever the historical accuracy or credibility of such claims, they remain strong elements of military lore and military discourse in the late twentieth century. Indeed they are disseminated on the ubiquitous Internet website maintained by the Latin American armed forces that proclaim boldly the *pre-national historical origins of national military institutions*, the continuing relevance of the armed forces' historical mission of "overseeing" their nations' destiny, and the identity of military institutions with the core values of the nation-state. A Venezuelan website, for example, proclaims: " The Army is born with the Nation ... its preamble in times of the conquest"; the Chilean Army website declares that "the history of our nation has been the very history of its Army...."; and an Uruguayan army website affirms "The National Army is born with the Patria. It is a foundational army, principal actor in the Campaigns of Artigas [the "George Washington" of Uruguay], ...reborn in the Liberating Crusade of 1825".⁴⁵

Similar language can be found on army, navy, and even air force websites across the region, in the military academy texts and in official national histories. According to this version of Latin American history, the "national" armies predate the modern "*patriots*"; they created their nations, defended them against Spanish reconquest, foreign intervention, and internal strife that threatened dismemberment ~ became their permanent guardians. These historical versions of the origins of military guardianship are not only validated in the "birth" of nations and their survival; they are reinforced by the constitutional missions assigned to the armed forces in the nineteenth century.

Nineteenth-Century Constitutionalism and the Military

The desperate circumstances of the early nineteenth century in Latin America made reestablishing political stability and law enforcement a primordial task for nation-builders, whether they proclaimed themselves liberals or conservatives, republicans or monarchists, centralists or federalists. The traditional fusion of military and civil authority in territorial administration, the jurisdiction of military tribunals over "bandits" and others who threatened public tranquility, and the dual mission of armed forces -internal order and external defense - were constitutionalized and codified in most of the region after independence. Of 103 constitutions adopted from independence until 1900, slightly over 80 per cent defined the role of the armed forces *in the constitution*. Usually this definition included maintaining internal order, law enforcement, and protecting the constitutional order against usurpation. In a few cases the military even had a mandate to supervise elections (a function adopted in the twentieth century in more Latin American countries), to ensure proper presidential succession, and to prevent *continuismo* (that is, "staying over" in office by presidents). These constitutions made the

armed forces virtually a fourth branch of government, designated in constitutional language as *permanent institutions* of the various republics. Their constitutional authority and missions were stipulated with greater brevity than that of the legislature, judiciary and executive branches of government, but nevertheless their elimination or the modification of their *political authority and duties* required constitutional reform. Moreover, these constitutions rarely specified who would decide when "disorder" warranted military intervention, when the actions of presidents, legislators, or local officials constituted threats to the "constitutional order" or to republican institutions, or when "internal commotion" (a common phrase in nineteenth century constitutions) justified military action.

Arguably, this ambiguity gave the armed forces the authority or imposed on them the obligation to exercise the equivalent of "judicial review with bayonets". To illustrate, Peru's 1856 Constitution obligated the armed forces to disobey the government if it violated the constitution or the laws. Victor Villanueva, an expert on the Peruvian military and former officer suggests : "This meant accepting, implicitly, that apart from the suffrage, sovereignty resided in the army rather than in the people. The latter had the right to elect governments and the army the duty of ousting them when it [the army] determined that they violated the constitution".⁴⁶ Even if Villanueva slightly over interprets the constitutional phraseology, the basic point is valid: the constitution appears to leave the armed forces as the arbiter of the constitutionality of government action, the "guardian" of constitutional rule. In the case of Guatemala, the treatise on "military duties" most widely read by the generations of officers from the 1950s to the 1980s instructed officers not to intervene in the activities of political parties "so long as their activities do not promote disorder nor threaten the integrity of national honor; if that occurs, then the

armed forces, fulfilling their duty, must impose the law, subjecting [the parties] to the proper Authority ("*deberd importer los fueros de la legalidad, supeditando su obediencia, constante y absoluta, al Poder de que depende*")."^{*1} In short, if the situation "gets out of hand", it is the duty, that is, *the constitutional duty*, of the armed forces to protect national honor and "save" *la patria*.

While most nineteenth-century Latin American constitutions did not explicitly go this far, in defining the role of the armed forces, over 80 per cent of the constitutions also recognized and reaffirmed the colonial military *fueros*. This constitutionalization of the armed forces political functions, prerogatives, and privileges was reinforced further by incorporation of various constitutional regimes of exception into the political design of the Spanish American republics and the Brazilian monarchy. Importantly, however, in some cases (a bit less than 20 per cent of the constitutions, the military *fueros* were explicitly abolished and in slightly over 20 per cent the constitutions prohibited jurisdiction by military courts and application of military law to civilians. This central issue in civil-military relations to the present (1999) was engaged in some countries almost immediately after independence. Why certain countries went in this direction and the majority did not has not been investigated systematically, though it is clear that the struggle to eliminate or retain military *fueros* played an important part in politics in much of the region during the nineteenth century.⁴⁸

Constitutional Regimes of Exception and the Military

Latin American constitutions, from the first war-time charters adopted during the independence struggles, included clauses that allow suspension of civil liberties and rights to meet all manner of emergencies: natural disasters; threats to constitutional order; insurgency;

rebellion; "internal commotion", civil war and many other contingencies. Illustratively, the charter of Gran Colombia (1821) authorized that "in times of internal commotion and armed conflict endangering the security of the Republic," the president "take whatever extraordinary measures, not within the normal sphere of his authority, that the case may require."

With variations, constitutional regimes of exception permit press censorship, restrictions on meetings and assembly, suspension of habeas corpus and other procedural protections for those arrested or detained. Regimes of exception may also confer "extraordinary powers" (*facultades extraordinarias*) on the President and other government officials, including military officers. In some cases, regimes of exception are equivalent to imposing martial law, that is assigning to military officers full government authority, suspending the operations of ordinary courts, and subjecting civilians to military law and tribunals.

Regimes of exception have different names and purposes from country to country and from time to time. Common regimes of exception are "states of siege", "internal war", martial law, and "state of emergency". But these names for regimes of exception do not imply similar political and legal meanings; thus "state of siege" in Chile before 1874 implied virtual constitutional dictatorship but after 1874, with constitutional reform, was much more limited regarding the "emergency powers" extended to the President. In all cases, however, regimes of exception are the result, in constitution-making, of a priori philosophical, moral and political decisions that, at times, civil liberties and rights, including basic "human rights" must be subordinated to "protecting *lapatria*."⁴⁹ Argentina's 1853 Constitution's state of siege provisions, for example, amounted to virtual martial law, like Chile's prior to 1874. This provision has been frequently used in Argentine history. More recently, well before the 1976

military coup, the elected government (1973-1976) declared a state of war against terrorism. In the words of Argentine General Adcel vilas, "the offensive against subversion presupposes in the first place freedom of action in all areas ...a series of special procedures, an instantaneous response, a persecution to the death."⁵⁰ And in Chile in 1973, the Military Junta declared that the state of siege that it imposed, in accord with well established Chilean practice since 1925, implied a "state of war" for legal and judicial purposes, as established in the Military Code of Justice.⁵¹

Constitutional regimes of exception extend, by definition", "exceptional" authority to government authorities and circumscribe civil liberties and rights. They are enforced by the armed forces and police, who exercise under such regimes expanded, if not unlimited, political and even judicial authority. Such regimes of exception since the independence movements of the nineteenth century have been, and remain, part of Latin American constitutionalism and political culture, though details vary from country to country. They are taken for granted throughout the region; they remain in place everywhere at the close of the twentieth century as essential elements of Latin America's "protected democracies" and a fundamental subtext of civil-military relations.

National Security and Military Law

From the late nineteenth century, most Latin American penal codes included special sections dealing with political crimes, such as sedition, rebellion, and insurrection.⁵² The Penal Code in effect in Argentina in 1888, for example, had a section titled "Crimes against internal security and public order". Crimes included under this section included "rising up in open hostility against the government of any Province, for any of the following purposes: to alter or

destroy the Constitution; to depose the Governor or other authority or to impede transfer of power as specified in the Constitution; to extract any sort of decision from the authorities (*arrancar a los poderes constituidos alguna medida o concesion*); to impede the meetings of the legislatures, dissolve them, or interfere with their functioning; to reform the existing institutions by violent means; to promote disobedience by provincial or local authorities to the Government (*sustraer á la obediencia*). Any of these actions constituted the crime of "rebellion," punishable by three and one-half years of exile. Other such crimes included sedition, "tumultuous assembly" (*reunión tumultosa*), *motin*, *asonada*, *atentado contra la autoridad*, and *desacato* - among many others.⁵³ The penalty for the crime of *desacato* ("those who resist or openly disobey the government [*la autoridad*]" or create a "grave disturbance", wherever "government officials are carrying out their functions") was from one to six months in jail. Chile's *Código Penal* (1874) had similar provisions regarding crimes and misdemeanors against the internal security of the State.⁵⁴ Laws regulating the press, censoring untoward comments on religion or offending the Catholic Church, and prohibiting offensive publications, posters, and speeches also sought to chill opposition to incumbent governments.⁵⁵

In some instances these penal codes overlapped with the military codes; in others certain crimes were automatically assigned to military courts. In still other cases, crimes defined in penal codes or in special internal security laws, normally assigned to civilian courts (*fuero común*) were (and still are) assigned to military courts, if committed when the country, or a region of the country, is under a declared regime of exception, such as "state of emergency", "state of siege" or "state of internal commotion". These overlapping and reinforcing constitutional, legal, and military code provisions establish a permanent regime of *protected*

democracy, that is an ostensibly constitutional regime whose architecture *designs-in* military guardianship, restrictions on civil liberties and rights by civilian governments and, when necessary, by military institutions, and threatens civilians with military law and military tribunals if "*la patria* is threatened".

More importantly, this permanent regime of protected democracy came to be accepted as "normal" by many if not most civilians, indeed came to be viewed as an essential ingredient of constitutional "democracy" in the Latin American context. As long as there is no immediate crisis, no threat of disorder, no significant political polarization, such systems may operate as if they were "democratic". But the cumulative effect of these colonial and nineteenth century patterns of civil-military relations was to fashion a political culture, or more accurately, national political cultures, that have deeply embedded authoritarian and militarist political institutions and practices. Indeed these institutions and practices are so deeply embedded in the "political mentality" of the region that well-known civilian politicians, regarded as "democrats" echo militarylore and military political doctrine in times of crisis. Colombia's President Julio César Turbay, for example, addressing the thirteenth Conference of Commanders of Latin American Armies in Bogotá in 1979 commented: "Naturally, in extreme cases, confronted with an ostensible political vacuum that leads toward generalized anarchy, the Armed Forces must (*se ven precisadas*) exercise power to reestablish the rule of authority."⁵⁶ And Chilean ex-president, Eduardo Frei Montalva, in an interview in Spain after the 1973 military coup in his country, declared: "the military have saved Chile ... they were called on by the nation and they fulfilled their legal duty If a people has been so weakened and harassed (*acosado*) that it cannot rebel, ... then the Army substitutes its arms and does the work."⁵⁷

These remarks by ex presidents Turbay and Frei are not isolated viewpoints. The accretion of colonial legacies and nineteenth century patterns of civil-military relations, converted into militarylore, patriotic myth, national rituals, and military doctrine, pervade primary school textbooks, official histories, civic education, and daily political life. Their continuing influence at the end of the twentieth century varies from country to country, their persistence is more or less subject to contestation and change. But nowhere in Latin America have these legacies been erased, nowhere have the cultural, institutional, and behavioral foundations of authoritarianism, militarism, and protected democracy been definitively eliminated.

European Missions and Professional Militarism: Patriotism and Antipolitics

In the late nineteenth century, another element was added to the accreted systems of civil-military relations in Latin America: the influence of European military missions contracted to "professionalize" and "modernize" the region's armed forces. The most important influences came from Spain, France, and Prussia/Germany, and from diffusion of the technical, organizational, and doctrinal lessons of these missions through Latin American missions (especially the Chilean diffusion of Prussian influence) in northern South America and Central America. The history of these missions and their influence have been investigated by Frederick Nunn and other scholars.⁵⁸ For the purposes of the present chapter mention should be made of the most important legacies of the European missions, filtered by the local circumstances in each Latin American country: (1) politicization of the region's armed forces; (2) the identification of the nation-state with the armed forces; (3) the dissemination of disdain for liberalism, for Marxism, for politicians, and for political parties ~ that is (4) the nurture of a professional

military "antipolitical" subculture.

Many Latin American countries contracted officers from Germany and France and sent their officers to academies in both these European nations. From Mexico to Chile military manuals, regulations, doctrine and training regimen emulated French and German patterns, often merely translating European publications into Spanish. France and Germany had the most modern and admired military institutions in Europe. They were also the most politicized and antipolitical. The French and German concepts of "nation in arms", of making the barracks the "school of the people" was transferred to their Latin American pupils. Colmar von der Goltz's notion in *Das Volk in Waffen* (1883) that the army was the binding agent of citizenry and state was widely disseminated and popularized.⁵⁹ As Frederick Nunn notes in his investigation of "European military professionalism", Goltz believed that "the enigma to be solved... is how to produce a complete fusion of the military and the social and industrial life of the people, so that the former may impede the latter as little as possible, and so that, on the other hand, the full wealth of the resources of the latter may be evidenced by the healthy condition of the former."⁶⁰

The European missions also taught, based on their own experience, that politics corrupted society, that politicians meddled in what should be "strictly professional" military affairs, and that "national development" depended on strong government supported by the armed forces. The French army, defeated by Prussia in 1870-71 repressed the Paris Commune in 1871 "in an appalling bloodbath"; by 1906 the General Labor Confederation declared that "in every strike the Army is for the employers" and denounced its recurrent use as strikebreakers.⁶¹ In Prussia, Helmuth von Moltke despised politicians and believed that war had "become too serious a matter for soldiers to be able to tolerate the interference of civilians...."⁶² Like its French counterpart,

the Prussian army maintained internal security and supervised surveillance of the Social Democratic Party and repression of political activism and labor movements. After 1896 no soldier was allowed to attend any meeting without an officer's permission or to sing any revolutionary or Social Democratic song, or to possess or distribute Social Democratic literature. German unification was a combined military-cultural mission which officers assigned to Chile, Argentina, and elsewhere in Latin America eventually shared with their students. The Prussians star pupils in Chile and Argentina, Carlos Ibáñez and José Uriburu, would echo these antipolitical, anti-socialist, anti-revolutionary themes in their own brief dictatorships (Ibáñez, 1927-31, Uriburu, 1930-32), as would the most eminent pupil of the French mission in Peru, General Oscar Benavides, who arguably carried out the first coup of the Latin American "new military professionals" in 1914. Benavides graduated first in his class from the ESG in 1906; studied in France and served on military commissions in Germany and Austria before becoming army chief of staff in 1913. He led troops against Peru's first "populist" president, Guillermo Billinghurst, after "the president dissolved congress, slashed the military budget, and threatened to arm his working-class supporters."⁶³

Thus the "professionalization" of the Latin American armed forces through European missions, officer exchanges, and education in European academies, inculcated a very particular version of military professionalism, a version inimical to liberal democratic politics, a version that reinforced the colonial and post-colonial elitism, social segregation, authoritarianism, and vanguardism of the Latin American officer corps. To the Iberian warrior-priest tradition, the legacies of Bourbon military institutions, and the multiple missions of nineteenth-century nation-building, the European tutors added romantic nineteenth-century European military nationalism,

geopolitics, and a decided contempt for civilian politicians, legislatures, political parties, labor organizations, and "revolutionary" movements. Of course, this imported military "professionalism" and mysticism was superimposed on, and differentially filtered through, distinctive Latin American realities - from Chile's recent victory over Peru and Bolivia in 1884, to Brazilian, Argentine, Paraguayan, and Uruguayan reactions to the Paraguayan War (1865-70); and Porfirio Diaz's federal army in Mexico (1876-1910), that translated German military regulations for the loading of the cavalry's horses, mules and gear on the nation's new railroads in the 1890s.

Historical Legacies and the Challenge of Democratization

By World War I, most of the premises and practices that allowed the military to assume that they had the "acquired rights and privileges, formal or informal, to exercise effective control over its internal governance, to play a role within extramilitary areas within the state apparatus, or even to structure relationships between the state and political or civil society"-- what Alfred Stepan refers to as "military prerogatives"-- were solidly established⁶⁴. In this sense, if "democratization" means, at least in part, reducing or eliminating these prerogatives, reference to "redemocratization" in Latin America in the 1980s or 1990s necessarily generates some confusion. Though the military governments from the 1960s to the 1990s may have visibly increased the direct role of the armed forces in governance, they did not *construct* the underlying "protected democracies" that existed in 1959 and reemerged in the 1980s and 1990s. The military governments selectively activated, for particular purposes, cultural, institutional, professional, and political elements of the Latin American civil-military schema that had evolved from the colonial era and the nineteenth century. Dormant in "normal times", these historically-

embedded recourses of Latin American politics become "operative" in times of "crisis". (Of course, the military governments violated the constitutions and the law, when necessary to "save *lapatria*", in accord with their understanding of the supraconstitutional "historical mission" assigned to them as "guardians." This is an essential part of the historical system of civil-military relations).

Survival of these legacies remains, at the end of the twentieth century, a challenge for more than superficial democratization in the region in the twenty-first century. Part of that challenge consists of developing political leaders who do not share the basic premises of protected democracy, who do not believe that in times of "crisis" civil liberties and rights should be "suspended" and that the armed forces should exercise the sort of guardianship mission stipulated in the Peruvian 1856 Constitution referred to earlier. Perhaps an ever more difficult part of the challenge consists in developing civilian institutions, both government and nongovernmental, strong enough and resilient enough to nurture the long-term alteration of the authoritarian political culture and institutions bequeathed by Iberian imperialism, nineteenth-century *caudillismo* and militarism, and their reinforcement by the impact of the Cold War and the Cuban Revolution since 1959.⁶⁵

Looking into the future, there can hardly be "redemocratization" where constitutional democracy with general respect for civil liberties and rights and the rule of law (not merely elections and civilian government) previously did not exist, or, at best, existed conditionally. The historical patterns of civil-military relations described in this chapter are "living legacies" of colonial and nineteenth-century development. Their modification or elimination requires changes in encoded cultural patterns, enduring institutional arrangements, and political practices

of centuries - a task much more formidable than the restoration of an idealized "democratic"past.

Notes

1. Latin America is a term without clear geographical, cultural or political referent. No nation in "Latin" America speaks Latin and no territory was part of the Roman Empire. In the present essay I use the term Spanish America to refer to nation-states in the Western Hemisphere that were previously part of the Spanish Empire (thus excluding Puerto Rico and parts of the Southwestern United States. I use the term Latin America to refer to Spanish America, Brazil, and Haiti. This definition is strictly for convenience and conforms to one common usage among competing definitions.

2. For example, Allan Kuethe (*Military Reform and Society in New Granada, 1773-1808*, Gainesville: University Presses of Florida, 1978) suggests that different patterns of adoption and implementation of the Bourbon military reforms in different regions of New Granada after 1765, including the resistance and adaptation to the racial implications of extending military *fueros* to *mulato*, *casta* and black militiamen and soldiers, partially explain the relative strength of civilian authority over the military in Colombia and the "elitist military tradition" in Ecuador where civilian rule was much weaker (p. 188-89).

3. Many other aspects of civil-military relations are not discussed in this chapter. A particularly intriguing example is the extent to which military budgets and expenditures overburdened Spain and the Spanish American republics, forcing serious compromises in foreign policies and inducing military rebellions from Habsburgh times to the 1970s. See Bruce D. Porter, *War and the Rise of the State, The Military Foundations of Modern Politics*, New York: The Free Press, 1994: 85-86.

4. Cited in John A. Crow, *Spain, The Root and the Flower*, 3rd edition, expanded and updated, Berkeley: University of California Press, 1985: 78-79.

5. Crow (1985): 79.

6. Thus the military-religious orders, such as the Knights of Santiago, Calatrava, Alcantara, Templar and Hospitalers, the Hermandades de Castilla ("rural constabulary", called the "Holy Brotherhood" in the reign of Ferdinand and Isabella,) and the Inquisition, established in 1480, were part of the process that made Spain a "church-state" in which political authority, military power, and control of religious doctrine and patronage was fused in the Crown.

7. Crow (1985): 151.

8. A less theatrical interpretation of Nebrija's *Arte de la lengua castellana* (1492) relates that in dedicating the first grammar of a modern European language to the queen, the prologue noted the need for an official language as a "companion to empire", that would teach "the many barbarian peoples that will be conquered and governed by the laws of the conqueror" (" a los muchos pueblos bárbaros que serán vencidos y regidos por las leyes del vencedor"). Cited in Diego Mañá and Angel del Rio, *Breve historia de la literatura española*, New York: Holt, Rinehart and

Winston, 1966: 55-56

9. Colin M. MacLachlan suggests that Pedro de Mendoza, the first adelantado of the Rio de la Plata, more than likely carried with him to the "New World" a copy of the *Manual del Soldado Cristiano*, first published in Spain in 1526.

10. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso, 1983.

11. Cited in Crow (1985): 170.

12. Coincidentally in 1580 King Philip II united the Iberian peninsula under one crown, temporarily combining the Spanish and Portuguese empires until 1640.

13. C.H. Haring estimates that of the seventy individuals who contracted with the crown to subdue or colonize new areas in America in the sixteenth century, slightly less than half obtained the rank of *adelantado*. (*The Spanish Empire in America*, New York: Oxford University Press, 1947: 22-23).

14. Standard texts on Spanish literature before the 1980s date the Poem of El Cid in 1140. Critical modern research suggests that a more likely date is approximately a century later, and that the 1140 date is the result of revisionist history by partisans of Francisco Franco in Spain, seeking to enhance and glorify "hispanicism".

15. Cited in Crow (1985): 90-91.

16. Jacques Lambert, *Latin America, Social Structures and Political Institutions*, trans. Helen Katel, 3rd edition, Berkeley: University of California Press, 1971: 52.

17. There are so many examples of this sort of rhetoric that choosing any single example is a special challenge. A dramatic illustration in 1998 was an open letter from Chilean General Augusto Pinochet to his compatriots, after his arrest in London, on the request of a Spanish judge for his extradition in cases involving human rights abuses against Spanish citizens during his dictatorship. Pinochet wrote: "the dilemma was; or the Western Christian conception of existence would triumph, so that respect for human dignity and the survival of fundamental values would prevail [in the World] or the materialistic, atheistic vision of man and society, with its system that implacably oppresses liberties and rights [would prevail]. ...Communism was this truly anti-religion ... {that} sowed death and destruction ... a universal evangelism of hatred and class conflict,... a gigantic genocide." "Carta a los Chilenos", London, December 1998.

18. W. N. Hargreaves-Mawdsley, *Eighteenth Century Spain. 1700-1788: A Political, Diplomatic and Institutional History* (London: Macmillan, 1979): 10.

19. Alfonso Garcia-Gallo, *Los orígenes españoles de las instituciones americanas* Estudios de Derecho Indiano, (Madrid: Rivadeneyra, S.A. 1966), (emphasis added).

20. Alonso (1974): 30.
21. For details on causes of the riots and the political opposition King Carlos III, see Laura Rodriguez, "The Spanish Riots of 1766", *Past and Present* 59 (1973): 117-146.
22. Novísima *Recopilación de leyes de los reynos de las Indias*, 5: 338-41.
23. A more detailed discussion of these provisions may be found in Brian Loveman, *For la Patria, Politics and Armed Forces in Latin America*, Wilmington, DE: Scholarly Resources, 1999.
24. Article 288 of the "liberal" Constitution of 1812 declared that if "there is resistance [to arrest] or flight [*lafuga*] is feared, force may be used to secure (*asegurar*) the person. This language constitutionalized the practice of "shot while attempting to escape".
25. Cited in Ministerio de Defensa Nacional, El Salvador, *Doctrina militar y relaciones ejército/sociedad* (El Salvador: ONUSAL, El Salvador: Talleres Gráficos UCA, 1994: 130-131.
26. *Ordenanza para el regimen, disciplina, subordinación i servicio de los ejércitos de la República*, 2nd edition, Santiago: imprenta del Ferrocarril, 1860: 72 (Titulo LXXX (75).
27. The translation does not entirely capture the sense of the Spanish: Las órdenes del superior deben cumplirse, por sus subordinados, sin vacilación, sin murmurar y sin hacer observación ni reclamo alguno, aun cuando hubiere lugar á una ú otro, hasta después de haberlas cumplido." Guatemala, *Código Militar de la República de Guatemala*, decretado el primero de agosto de 1878, 2nd edition, Guatemala: Tipografía Nacional, 1898: 28, Capitulo III, "Delitos contra la subordinación".
28. Ibid.: 28-29, Sección 2a "De la Inobediencia". Disobedience during active duty, but not involving "in campaign or during war" brought lighter sentences: one to two years of prison, and forced labor in public works projects (Article 71).
29. An important exception was the *Ordenanza del Ejército de El Salvador* (1934), that included almost the same language as the Guatemalan code referred to in the text, but with an important addition, italicized here for emphasis: "Las órdenes *legales* del superior deben cumplirse por los subordinados sin hacer observación ni reclamación alguna, sin vacilación y sin murmurar; pero *podrán reclamar si hubiera lugar a ello, después de haberlas cumplido*" (Article 9). Thus, in this Salvadoran code, the possibility of "objecting" to "illegal orders" is recognized. While the language that follows this section is ambiguous, it appears that if the superior provides *written orders*, then the subordinate must nevertheless obey, having thereby eliminated his own responsibility, thus reaffirming the notion of "due obedience" as a proper defense. See Ministerio de la Defensa Nacional, *Doctrina Militar y Relaciones Ejército/Sociedad*, El Salvador: ONUSAL, 1994: 58-62.

30. Thus Deborah Norden relates that in April 1986 the Argentine Defense Minister, Germán López, "directed an order to the Consejo Supremo to speed up the trials [of military personnel] and to expand the application of the due obedience clause in the Military Code of Justice." A public uproar caused the Minister's resignation, but in December 1986, "the legislature passed the Punto Final [End Point] law, according to which any human rights cases not yet under consideration would have to be initiated within sixty days." When the courts accelerated their work and more military personnel were charged with human rights violations, a military uprising occurred in April 1987. Then, in early June, "the administration had succeeded in convincing Congress to pass an *Obediencia Debida* [Due Obedience] law, which effectively reiterated and expanded the assumptions of the due obedience clause included in the reform of the Military Code of Justice [in 1987]." (*Military Rebellion in Argentina, Between Coups and Consolidation*, Lincoln: University of Nebraska Press, 1996: 103-104).

31. See Lyle McAlister, *The 'Fuero Militar' in New Spain, 1764-1800*, Gainesville: University of Florida Press, 1957.

32. Allan J. Kuethe, : 38.

33. This issue is discussed in more detail in Brian Loveman, *The Constitution of Tyranny, Regimes of Exception in Spanish America*, Pittsburgh: University of Pittsburgh Press, 1993. An illustrative example is the Mexican case, where the liberal Constitution of 1857 prohibited military officers from exercising civil authority in times of peace (Art. 122) and limited the jurisdiction of military courts to cases involving military discipline (Art. 13). Military fueros were also eliminated in the Venezuelan Constitution of 1830, which prohibited trial of civilians by military tribunals (Art. 219). In other cases, such as Chile, Peru, Colombia, and Guatemala, military jurisdiction over civilians remained extensive to the end of the twentieth century. In Guatemala, constitutional reforms in the 1990s finally emulated the Mexican example, severely restricting the jurisdiction of military tribunals over civilians.

34. Spain's *Código de Justicia Militar* (Madrid: Talleres del Depósito de la Guerra, 1906: 250, Ley 23 de marzo de 1906, C.L. Núm. 66) assigned to military tribunals jurisdiction in cases which military personnel or civilians "openly or covertly" defamed or offended the Army or Navy: "Los que de palabra 6 escrito, por medio de la imprenta, grabado ú otro medio mecánico de publicación, en estampas, alegorías, caricaturas, emblemas, 6 alusiones, injurien ú ofendan clara 6 encubiertamente al Ejército 6 á la Armada 6 á instituciones, armas, clases 6 cuerpos determinados del mismo, serán castigados con la pena de prisión correccional."

35. In many cases more specialized "antiterrorism laws", "arms control laws", and "national security laws" specifically established military jurisdiction over civilians for "political crimes". In other cases the Military Code of Justice has already established military jurisdiction in cases of rebellion, sedition and related crimes. See, for extensive treatment of these issues, Alvaro del Barrio Reyna and José Julio León Reyes, *Terrorismo, ley antiterrorista y derechos humanos*, Santiago: Universidad Academia de Humanismo Cristiano, 1991.

36. See Francisco Leal Buitrago, *El oficio de la guerra, La seguridad nacional en Colombia*, Bogotá: Tercer Mundo Editores, 1994: 87-90.
37. Alfonso Garcia-Gallo, *Los orígenes de la administración territorial de las Indias*, Madrid: Rivadeneyra, 1944: 982.
38. Scarlett O'Phelan Godoy lists over 80 revolts from 1763 to 1783, *Un siglo de rebeliones anticoloniales, Peru y Bolivia 1700-1783*, Cusco: Centro de Estudios Rurales Andinos Bartolomé de las Casas, 1988.
39. For a detailed account of these movements see John Lynch, *The Spanish American Revolutions, 1808-1826*, 2nd ed. New York: Norton, 1986.
40. See John Lynch, *Caudillos in Spanish America 1800-1850*, New York: Oxford University Press, 1992.
41. For a more detailed discussion of this period, including the various international wars and the domestic conflicts see Loveman (1999): chapter 2.
42. John J. Johnson, *The Military and Society in Latin America*, Stanford: Stanford University Press, 1964: 37.
43. Manuel Rodríguez Soils, *Deontología militar (Tratado de los deberes militares)*, Guatemala: Ministerio de Defensa Nacional, 1964: 37.
44. Lt. Colonel Mariano Castro Morán, *Función político del ejército Salvador eño en el presente siglo*, El Salvador: UCA Editores, 1984: 24.
45. <http://www.ejercito.mil.ve/eiehisto.htm>: <http://www.ejercito.cl/bienvenida/bienvenida.html>: <http://www.ejercito.gub.uv/muestra/cge/dptoeehh/reshst.htm>. These sites were active on December 31, 1998. Similar sites and messages could be found for Brasil, Peru, Guatemala, Colombia, and Ecuador.
46. Victor Villanueva, *Ejército peruano; Del caudillaje andrquico al militarismo reformista*, Lima: Editorial Juan Mejia Baca, 1973: 66-67.
47. Rodríguez Solís (1964): 51.
48. In the Mexican case, for example, the independence movement took as one of its slogans "religión y fueros", a response to the liberal government in Spain from 1820-1823. The struggle to abolish military and religious fueros was an important subtext to Mexican history from independence until the Ley Juárez and the 1857 Constitution. In Colombia, the Santander regime sought to dilute the military fueros and in Venezuela, where the fueros were abolished, the "Revolution of the Reformists" (1837) sought to restore them.

49. The evolution and use of regimes of exception in Spanish American politics is the subject of Brian Loveman, *The Constitution of Tyranny, Regimes of Exception in Spanish America*, Pittsburgh: University of Pittsburgh Press, 1993.
50. Cited in Donald Hodges, *Argentina's "Dirty War": An Intellectual Biography*, Austin: University of Texas Press, 1991: 125.
51. This interpretation was reaffirmed in the Navy's response to the Rettig Commission in 1991: "Informe presentado ante el Consejo Nacional de Seguridad por el Comandante en Jefe de la Armada de Chile, Almirante Jorge Martínez Busch," March 27, 1991.
52. The Latin American penal codes relied on European models, particularly Spain, France, Belgium, and Germany. Laws to protect "internal security" were common in Europe and were emulated as the Latin American countries replaced or modified Spanish colonial criminal law.
53. *Código Penal de la República Argentina*, in *Códigos y leyes usuales de la República Argentina*, Buenos Aires, Felix Lajouane Editor, 1888: 184-193.
54. *Código Penal de la República de Chile*, explicado por Pedro Javier Fernández, 2a edición, Santiago: Imprenta, Litografía i Encuadernación Barcelona, 1899: 254-263.
55. Interestingly, there were also provisions penalizing government officials who illegally banished, detained, or arrested citizens, held prisoners "incomunicado" or applied torture to prisoners, or any public officials who "exercised judicial functions" and applied corporal or other punishment without proper judicial orders (*Código Penal de la República de Chile*, Arts. 148-152).
56. Cited in Buitrago Leal, (1994):55.
57. Cited in Carlos Molina Johnson (Lt. Col.), *Algunas de las razones del quiebre de la institucionalidad política*, Santiago: Estado Mayor del Ejército, 1987: 91-92.
58. Frederick Nunn, *Yesterday's Soldiers, European Military Professionalism in South America, 1890-1940*, Lincoln: University of Nebraska Press, 1983; Patricio Quiroga and Carlos Maldonado, *El prusianismo en las fuerzas armadas chilenas*, Santiago: Ediciones Documentas, 1988; Daniel Masterson, *Militarism and Politics in Latin America, Peru from Sánchez Cerro to Sendero Luminoso*, New York: Greenwood Press, 1991: Chapter 1; Efraim Cobas, *Fuerza armada, misiones militares y dependencia en el Perú*, Lima; Editorial Horizonte, 1982.
59. Nunn (1983) has dealt with these issues in great detail; they are summarized here based largely on Nunn's research.
60. Cited in Nunn (1983): 83.
61. Alistair Home, *The French Army and Politics, 1870-1970*, London: MacMillan, 1984: 27

62. Martin Kitchen, *The German Officer Corps, 1890-1914*, Oxford, Eng: Clarendon Press, 1968: xx.

63. Masterson(1991):29.

64. Alfred Stepan, *Rethinking Military Politics, Brazil and the Southern Cone*, Princeton: Princeton University Press, 1988: Chapter 7 (p. 93).

65. This chapter does not address the period 1920-1999. But obviously the state of civil-military relations in Latin America in 1999 is not simply the result of the colonial and nineteenth century patterns discussed here. For an "update" see Brian Loveman, *For la Patria, Politics and the Armed Forces in Latin America*, Wilmington, DE: Scholarly Resources, 1999.