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The World: Paper Trails; In Latin America, 'The Constitution Is What I Say It Is'

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THERE is an argument to be made that the favorite pastime of Latin American politicians is neither soccer nor baseball, but tinkering with their countries' **constitutions.**

Take Ernesto Perez Balladares, the president of Panama. He doesn't like the prohibition against immediate re-election that has existed here since Theodore Roosevelt engineered this nation's breakaway from Colombia nearly a century ago, so Panamanians will trudge to the polls today to vote on a measure that would allow him to seek a second consecutive **term** next year.

Given the track record of some of their neighbors, Panamanians can consider themselves lucky. The Dominican Republic has had 32 different **constitutions** in just over 150 years, while Haiti, its neighbor on the Caribbean island of Hispaniola, has had 24 since 1804. Venezuela is South America's champion, with 25 separate charters in 187 years, and in Central America, El Salvador, Honduras and Nicaragua have each had 14 **constitutions** since splitting from Spain early in the 19th century.

"The constitutional history of Latin America is the most convulsive in the world," said Jose Luis Cordeiro, a Venezuelan economist and journalist who is the author of a recent book, "The Second Death of Bolivar," that examines the region's propensity to replace its charters. "**Constitutions** seem to have become like shirts, not even suits, which rulers put on and take off at their whim."

To many Latin Americans, the roots of the phenomenon can be traced to colonial times. In those days, kings in Madrid or Lisbon and their viceroys were fond of issuing edicts that seemed lofty on paper but both rulers and their distant subjects knew could never be enforced. From that experience came a proverb still used across Latin America to describe the prevailing attitude toward laws and decrees: "I obey, but I do not comply."

In such an environment, **constitutions** have come to be seen as statements of aspirations rather than binding declarations of principles. Latin American **constitutions** tend to be lengthy documents with dozens of chapters and scores of articles, written in florid language that promises more safeguards and services than their American counterpart while specifying more obligations. Panama's current charter, for instance, has 322 articles.

"**Constitutions** in our countries tend to be a rigid compilation of regulations or a type of detailed administrative code, more formal than real," said Miguel Antonio Bernal, a prominent legal scholar and political commentator here. "They exist not to guarantee rights, but to legitimize abuses, to allow whoever is in power to leave the reflection of his own

interests."

The end result for the average citizen, of course, is antipathy mixed with cynicism, as each ruler imposes a **constitution** tailored to his own needs and recruits jurists willing to bend to his will. Another proverb popular in Latin America warns that, "He who makes the law makes the loopholes." Or as a member of the Panamanian Supreme Court, put it recently in a lecture to law students here, "The **constitution** is what we, the judges, say it is."

Term Limits

Throughout modern Latin American history, the issue of re-election has been inextricably linked to that of **constitutions.** Since the typical caudillo, or strongman, always wants to modify or replace the existing charter with one of his own, one country after another has thought it logical to prevent the emergence of such strongmen by writing **constitutions** that simply forbid any president from serving two consecutive **terms.** Thus, the Mexican Revolution took as its slogan, "Effective suffrage and no re-election."

Today's heads of state, though democratically elected, persist in seeking to mold their societies and institutions to their own desires. Mr. Perez Balladares is by no means an aberration: over the past five years, other "modernizers," including Alberto Fujimori of Peru, Carlos Saul Menem of Argentina and Fernando Henrique **Cardoso of Brazil,** have all sought, and gained, constitutional changes that allowed them to seek re-election. Indeed, Peru's Congress on Thursday told Mr. Fujimori, the originator of the trend, that he could go after a third **term** without getting public approval in a referendum..

"What we are seeing is the revival of the old Latin American tradition of caudillismo in technocratic clothing," said Ricardo Arias Calderon, a former vice president of Panama. These new leaders "say they have found the magic formula and are the only ones who know how to apply it," he said. That is dangerous, Mr. Calderon added, because "in Latin America, unlike North America, a president is almost a king during his reign" and thus has the means to impose "a civilian dictatorship."

Words of Advice

Yet there are few signs that Latin America's procession of **constitutions** is about to stop. Colombia, Paraguay and Peru have all approved new charters since 1990, and with the United States and Latin America formally committed to a hemispheric free trade agreement by 2005, other countries will soon be obliged to follow suit. No one has asked him, but Mr. Cordeiro has a few words of advice to those who will draft those texts: Less is better.

"The experience of Latin America has clearly demonstrated that the answer to political crises is not to pass more and more laws each time, above all if these are defective or are not applied, but in having a few good laws that are respected," he said. "If laws are neither institutionalized nor implemented, they are useless."

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GRAPHIC: Chart: "New Beginnings" shows the number of **constitutions** several Latin American nations have had since achieving independence. It also shows the year their most recent **constitutions** went into effect(Sources: "The Second Death of Bolivar," by Jose Luis Cordeiro; "The **Constitutions** of the World.")

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