

**"Social Constitutionalism" in Latin America: The Bolivian Experience of 1938**



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*The Americas*, Vol. 22, No. 3 (Jan., 1966), 258-276.

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## “SOCIAL CONSTITUTIONALISM” IN LATIN AMERICA: THE BOLIVIAN EXPERIENCE OF 1938

IN LATIN AMERICA in the twentieth century, nation after nation has revised its concepts of constitutional law to take into account the whole new realm of state responsibility for the economic and social welfare of its citizens. Beginning most dramatically with the Mexican Constitution of 1917, Latin American states have written into their constitutional charters detailed chapters on the social responsibility of capital, the economic rights of the worker, and the state responsibility for the protection and security of the family and for the physical and mental welfare of all its citizens and classes. In rewriting their national constitutions, the Latin Americans have deliberately broken with the classic liberal constitutionalism of the nineteenth century and adopted what some have called a “social constitutionalist” position. This new pattern of thought emphasizes the positive role of the state in assuring the welfare of its citizens, and essentially reflects the over-all changes in twentieth-century Latin American political ideology, which has seen the decline of liberalism and the growth of Marxism and *indigenismo*.<sup>1</sup>

In the majority of cases, these new social constitutions have been the work of radical minorities, and their writing has preceded the revolutionary changes which were necessary to secure the enactment of the new ideas of social justice. But these radical innovators were not troubled by this problem, for they conceived of their constitutions as programs of action for the future. With the writing of these detailed

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<sup>1</sup> A detailed nation-by-nation survey of these new social and economic provisions is given in: Academia de Ciencias Económicas, Buenos Aires, *Las cláusulas económico-sociales en las constituciones de América* (2 vols.; Buenos Aires, 1947-1948). On the revolutionary character and impact of the Mexican Constitution of 1917, see: Russell H. Fitzgibbon, “Constitutional Developments in Latin America: A Synthesis,” *American Political Science Review*, XXXIX (June, 1945), 518-520.

George I. Blanksten has defined this expansion of constitutional scope in 20th-century Latin America as a “fourth function” of constitutionalism. “The classic view of written constitutions is that they are designed to perform three functions: to limit the power of government, to set forth the basic outlines of its structure, and to state certain of the broad hopes and aspirations of the constitutions’ framers. Today many of the constitutions of Latin America attempt a fourth function: to render mandatory certain operations of government designed to contribute to the social welfare.” George I. Blanksten, “Constitutions and the Structure of Power,” in Harold E. Davis (ed.), *Government and Politics in Latin America* (New York, 1958), p. 237. This “fourth function” has been called “social constitutionalism” by Latin American legal theorists; see: Oscar Frerking Salas, “Las cláusulas económico-sociales en la constitución política de Bolivia,” in Academia de Ciencias Económicas, Buenos Aires, *Las cláusulas*, p. 64.

programs of social justice, they consciously hoped to lay the guidelines for all future socio-economic change both within the existing order, which was to be judged by these new standards, and for the coming revolutionary generations.

This was essentially the experience of Bolivia when in 1938 she belatedly joined with the majority of other Latin American nations in revising her constitutional law along these new lines. Prior to 1938 there had existed a basic uniformity in the numerous constitutions which had guided the destiny of Bolivia. While an enduring constitutional charter had not been enacted until 1880, this eleventh constitution in the short history of the Republic merely represented a variant form of a constitutional pattern which had been established as early as the famous Bolivar Constitution of 1826. This pattern provided for a liberal form of government with limited powers in relation to the individual, for a laissez-faire attitude toward the economy, a centralized republic, and a relatively independent legislature tied to a powerful presidency.<sup>2</sup> In common with the other constitutions of nineteenth-century Latin America, the emphasis was on the purely legalistic defense of personal property and liberty against the State, with no thought whatsoever to define the positive social functions of the State towards the welfare of its citizens.<sup>3</sup>

The Constitution of 1880, unlike its predecessors, survived for over fifty years, primarily because of its association with the rise of a stable political party system. For with the advent of the War of the Pacific (1880-1884), Bolivia had finally and belatedly developed a coherent dual party structure which had at its base a firm commitment to constitutional legality. The great Conservative and Liberal parties that developed in the late nineteenth century, and the Liberals and Republicans in the first third of the twentieth century, succeeded in establishing a unique political and constitutional stability, despite the occasional resort to violence.<sup>4</sup>

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<sup>2</sup> For the constitutions of Bolivia see: Ciro Félix Trigo, *Las constituciones de Bolivia* (Madrid, 1958). In most of these 19th-century constitutions and especially in the 1880 charter, provisions for a type of parliamentary government were made through congressional right of interpellation and censorship of the cabinet. William S. Stokes, "Parliamentary Government in Latin America," *American Political Science Review*, XXXIX (June, 1945), 527-528.

<sup>3</sup> Russell H. Fitzgibbon, "Constitutional Development," pp. 511-518.

<sup>4</sup> For the best general political histories of this period see: Alcides Arguedas, *Historia general de Bolivia (el proceso de la nacionalidad)*, 1809-1921 (La Paz, 1922), and Enrique Finot, *Nueva historia de Bolivia (ensayo de interpretación sociológica)* (2d ed.; La Paz, 1954).

But this stability broke down under the impact of the Chaco War (1932-1935), as the general political ideology of the nation changed and the traditional political party system broke apart. This dissolution of the basic components of the older order had a direct impact on the national constitution, and to reflect these new developments, and also in an important way to guide them, the historic 1880 charter was overthrown and replaced by the Constitution of 1938, a document markedly different in tone, ideology, and provisions from the nation's previous constitutions.

The primary causes for these changes in the fundamental political order of the nation was the introduction of Marxist and indigenist ideology in the 1920's,<sup>5</sup> and the disastrous defeat suffered by Bolivia in its war with Paraguay. Because of the utter incompetence and corruption of the civilian and military leadership during the war, and their cynicism in causing it, there occurred a revolt against this traditional leadership on the part of the younger generations. The revolt of this so-called *generación del Chaco* was initially too confused in its own thought clearly to formulate a coherent ideology or leadership of its own. But in its rejection of the older order and frantic searching in a multitude of ideological byways to create a new national political life, this new generation completely undermined the traditional patterns and prepared the way for the great revolutionary changes of the following decades.<sup>6</sup>

At first many of the returning veterans joined innumerable splinter groups which stressed moderate social reform in one form or another.<sup>7</sup> Others attempted to work with leaders of the older order who were

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<sup>5</sup> Guillermo Francovich, *El pensamiento boliviano en el siglo xx* (México, 1956), pp. 83 ff.

<sup>6</sup> For a discussion of the ideology and forms of expression of the new Chaco War generation see: Francovich, *Pensamiento boliviano*, pp. 82-83; Augusto Céspedes, *El dictador suicida, 40 años de historia de Bolivia* (Santiago de Chile, 1956), p. 143; Fernando Diez de Medina, *Literatura boliviana* (Madrid, 1954), pp. 342, 358 ff.

<sup>7</sup> A host of such groups were formed as early as 1934, the most important ones in La Paz being *Beta Gama*—whose members included Hernán Siles Zuazo, Victor Andrade, and José Aguirre Gainsborg—(*El Diario*, August 11, 1935; *El Diario*, July 25, 1935) and the *Célula Socialista Boliviana*, under the direction of Enrique Baldívieso and Carlos Montenegro (*La Razón*, October 2, 1935; *El Diario*, October 3, 1935). These two groups in turn merged and formed the nationally important *Confederación Socialista Boliviana* in November, 1935, which by early 1936 was known as the *Partido Socialista*. For the moderate reform program of these "Baldívieso Socialista," as they later came to be called to distinguish them from the other various socialist positions, see: *Confederación Socialista Boliviana, Programa unificada* (La Paz, 7 de diciembre de 1935); also *El Diario*, November 23, 1935.

sympathetic to the new tone of political life,<sup>8</sup> and still others plotted with like-minded junior army officer veterans to set up a corporate type of state or a confused version of a moderate socialist one.<sup>9</sup> But despite the diversity of organizational forms, this new political movement of the Chaco generation had certain themes which were common to all factions. Among these, of course, was a strong nationalism. But this new nationalism differed markedly in tone from the pre-war chauvinistic territorial nationalism, for it was essentially an economic nationalism and expressed itself in absolute hostility to foreign capital, as represented by such firms as Standard Oil. Along with this economic nationalism, there was a general commitment to some kind of basic social reform. While some wished to see only the urban *mestizo* and white middle and lower classes benefited, others sought social vindication not only for these groups but for the miners and Indians as well, accepting and deepening, in this latter aspect, the position taken by the extreme fringe of pre-war radical Marxist and indigenist thinkers.<sup>10</sup>

From 1935 to 1938 these various programs and ideologies mingled and dispersed, only to unite again. A general tone of reform was nevertheless paramount in the political ambient, and in May, 1936, the more reform-minded younger army officers decided to carry out the overthrow of the civilian government in alliance with some of these new political splinter groupings. With the establishment of the military junta under the leadership of Col. David Toro, there was initiated a new impetus to reform which the military tried to capitalize upon by calling the new regime a government of "military socialism."<sup>11</sup>

<sup>8</sup> A classic example of this was the pre-war political leader Bautista Saavedra, who renamed his Republican party the *Partido Republicano Socialista* and announced his adhesion to historic materialism, as opposed to liberalism. Bautista Saavedra y Edmundo Vázquez, *Manifiesto programa, Donde estamos y a donde debemos ir* (La Paz, 30 de septiembre de 1935), p. 6.

<sup>9</sup> For the ideology of the officer class in reference to fascism and corporatism, see: Pedro Zilveti Arce, *Bajo el signo de la barbarie* (Santiago de Chile, 1946), pp. 23 ff.

<sup>10</sup> As early as the 1920's the radical Tristan Marof [Gustavo Adolfo Navarro] was expounding his revolutionary thesis, "tierras al indio, minas al estado." For the fullest development of his ideas on Bolivian society and institutions, see: Tristan Marof, *La tragedia del altiplano* (Buenos Aires, [1934]). A typical pre-war radical group was the *Grupo Tupac Amaru* which advocated violent overthrow of the government, nationalization of the mines, and collectivization of the soil by a revolutionary worker-peasant coalition. Tupac Amaru's pre-war program is reprinted in René Canelas López, "El sindicalismo y los sindicatos en Bolivia," *Revista Jurídica* (Cochabamba), Año VIII (Junio de 1946), pp. 74-75; for its anti-war propaganda, see: Grupo Tupac Amaru, *Manifiesto, La victoria o la muerte (al pueblo boliviano: soldados, estudiantes, obreros)* (N. P., [1934]).

<sup>11</sup> The best general survey for the governments of "military socialism" is: Porfirio Díaz Machicao, *Historia de Bolivia, Toro, Busch, Quintanilla, 1936-1940* (La Paz, 1957).

But while a host of administrative reforms of a mild socialist nature came forth from the government, and tended to clarify some of the key issues affecting the nation, a major platform for their discussion and resolution had still not developed, for the junta tended to rely only upon itself and its small coterie of supporters.<sup>12</sup> Nevertheless, under its rule, in every city of the republic, café groupings appeared and debated the issues of social justice,<sup>13</sup> national student meetings became sounding boards for the questions of the type and depth of reforms needed by the nation,<sup>14</sup> and finally the labor and veterans' movements took on ever more politically committed positions toward radical reform.<sup>15</sup> Bowing to this pressure and discussion, the Toro government in November of

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Also see: Herbert S. Klein, "David Toro and the Establishment of 'Military Socialism' in Bolivia," *Hispanic American Historical Review*, XLV, 1 (February, 1965), pp. 25-52.

<sup>12</sup> For a full discussion of all these various reforms, see the ministerial reports collected in: República de Bolivia, Departamento Nacional de Propaganda Socialista, *Informe presentado por el señor coronel presidente de la junta militar socialista de gobierno al ejército nacional* (La Paz, 1937).

<sup>13</sup> Aside from the moderate groupings already noted, there were a host of more radical organizations which promoted far more revolutionary ideologies. Among these organizations the most important were: *Grupo de Izquierda* of Cochabamba (led by José Antonio Arce and Ricardo Anaya); *Bloque Intelectual Obrero Avance* of Oruro; *Frente Popular* of Potosí; the *Partido Obrero Revolucionario* and much later the *Partido Socialista Independiente* both of La Paz.

<sup>14</sup> The impact of the war on the student movement was clearly seen in the IV Congreso Nacional de Estudiantes held in late 1938. Building on innumerable local university student meetings, it became a platform for the full elaboration of a most revolutionary set of ideological positions, and ended by advocating the overthrow of the existing order by a worker-student alliance. See *El Diario*, January 4, 1939; and Alberto Cornejo S., *Programas políticos de Bolivia* (Cochabamba, 1949), pp. 297-300.

<sup>15</sup> The Bolivian labor movement, which had been smothered by Salamanca at the outbreak of the Chaco War, strongly revived in 1934 and 1935, and by 1936 was able to organize its first national confederation, the *Confederación Sindical de Trabajadores de Bolivia*. The founding congress of the CSTB also reversed historic labor policy in Bolivia and advocated outright affiliation with the small radical *grupos* such as those in Oruro, Potosí, and Cochabamba into *Frentes Populares* and direct involvement in elections, etc. *El Diario*, December 3, 1936. Also two years later the CSTB finally broke Bolivian isolation and became a founding member of Vicente Lombardo Toldano's inter-American *Confederación de Trabajadores de América Latina*. Agustín Barcelli S., *Medio siglo de luchas sindicales revolucionarias en Bolivia, 1905-1955* (La Paz, 1956), p. 146.

The major Chaco War veterans organization was the *Legión de Ex-Combatientes* which was founded in late September, 1935. *El Diario*, October 3, 1935. Although primarily mutualist in aim and apolitical by original program, the LEC, because of its size and intimate identification with the *generación del Chaco*, became a major power in the national political scene and had an important control over the direction of government affairs. More frankly committed to direct political action through party politics were the smaller ANDES (*Asociación Nacional de Ex-Combatientes Socialista*) and the AEP (*Asociación de Ex-Prisioneros*). For the program of AEP, see *El Diario*, August 12, 1936; for that of ANDES, see ANDES, *Programa político* (La Paz, 1937).

1936 finally announced that it would call together a constitutional convention to draft a national charter which would reflect the new ideas abroad in the land. A Constitutional Reform Study Commission was set up and elections were promised, though the junta continuously procrastinated on this issue.<sup>16</sup>

This was essentially the situation when the Toro government was quietly replaced by the regime of Lt. Colonel Germán Busch in July of 1937.<sup>17</sup> This change-over at first brought few new developments in the younger and leftist generations, for Busch was probably the most typical representative of this generation's confused state of mind. Desperate for some kind of regeneration of society, he nevertheless had no clear idea of how this could be achieved, and in his lack of coherent plan he constantly shifted back and forth from corporate state ideas, to economic liberalism, back again to moderate socialism, and finally ended with a personal style dictatorship. But despite this confusion, Busch rapidly set about implementing the former government's plans for a constitutional convention and by November, 1937, issued a call for elections of convention delegates (senators and deputies to meet at first in a unicameral body) for March, 1938.<sup>18</sup>

The convocation of this assembly on May 24, after three years of non-parliamentary government, was a major event in itself. But even more important was the role this convention had as a clarifying force in the great revolutionary movement which had taken hold of the nation since the outbreak of the Chaco War. A truly extraordinary congress, the gamut of its representation ran from arch conservatives and representatives of the oligarchy—veterans of the political battles of the past—to quasi-Communists who had never before held political office. For the first time in Bolivian history, authentic working class leaders held a seat in the national congress and some of the nation's greatest leftist intellectuals presented themselves as deputies. Future leaders and past politicians were present, and many who would never have been elected but for the use of government force at the polls, including one rural Indian peasant.<sup>19</sup> With almost universal accord, the traditional parties

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<sup>16</sup> For the establishment of the Constitutional Reform Commission, see *El Diario*, October 1, 1936, and for the electoral promises, see *El Diario*, November 3, 1936.

<sup>17</sup> *El Diario*, July 14, 1937.

<sup>18</sup> *El Diario*, November 23, 1937.

<sup>19</sup> This very unusual composition of the Convention was due to strong government pressure at the polls. In preparation for the convention elections, the scattered moderate and radical leftist political elements had joined forces with the labor and veterans movements—the LEC and CSTB were both permitted to run their own candidates like regular parties (*El Diario*, August 28, 1937)—to form a temporary electoral coalition

and rightist press attacked this unwashed and unlettered convention as a shame and a mockery to the national honor.<sup>20</sup> Yet, despite the inexperience of the majority of its delegates and despite the fantastic multiplicity of conflicting ideologies and positions expressed, the *Convención Nacional* of 1938 was to create the first truly revolutionary constitution in Bolivian history since the establishment of republican government.

In accord with the rather unusual nature of the Convention, the first session began with an uproar over the swearing in of the deputies. Many of the radical intellectuals and labor leaders refused to swear by the traditional Catholic oath, and, much to the chagrin of the traditional press,<sup>21</sup> swore, like Carlos Mediancelli, deputy for Potosí and a member of its powerful local *Frente Popular*, "by the cause of the proletariat, by Bolivia and by humanity." Mediancelli was followed by "camaradas" Arratia and Siñani, who likewise swore loyalty to the working classes and to their cause and ideals. One deputy even swore "by Christ, who is the greatest socialist."<sup>22</sup> Once the uproar over these radical procedures had subsided, the Convention settled down to the process of organization and to the immediate election of President and Vice-President for a four-year term. On the 27th of May, as was expected, the Convention, by almost unanimous vote, elected Busch to the presidency and Enrique Baldivieso to the vice presidency for a term to last until 1942.<sup>23</sup>

Now the great debate began over the meaning of the Convention and what its aims should be for the new Constitution which it proposed to write. From the very beginning of its first preliminary sessions, the

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known as the *Frente Único Socialista* in February, 1938. Pledged to present a united list of candidates, it backed the Busch government and had reciprocal support from the latter as representing a government party. *El Diario*, February 18, 1938. With the government showing strong preference for the new grouping, many of the traditional political parties withdrew from the race (*El Diario*, February 27, 1938) and the March elections saw a major victory for the *Frente* slate throughout the nation. *El Diario*, March 15, 1938. In the actual composition of the convention, of the three great pre-war parties, the Genuine Republicans had no representatives, the Liberals two, and the Republican Socialists a somewhat greater number. Céspedes, *El dictador*, p. 166.

<sup>20</sup> See, e. g., *El Diario*, May 25, 1938; *El Diario*, May 26, 1938; Ciro Félix Trigo, *Las constituciones*, p. 130; Céspedes, *El dictador*, p. 167. Also see the bitter remarks of Alcides Arguedas, who was defeated for a senate seat for La Paz in the Convention, who labeled the majority of the 1938 Convention deputies as "little men without names, without past, without distinction, almost illiterate and in truth obscure, really insignificant persons, anonimities . . .", etc. Alcides Arguedas, *Obras completas* (2 vols.; México, 1959), I, 1214-1215.

<sup>21</sup> *El Diario*, May 26, 1938.

<sup>22</sup> Convención Nacional de 1938, *Redactor de la Convención Nacional* (5 vols.; La Paz, 1938-1939), I, 31. This work is hereafter cited as *Redactor*.

<sup>23</sup> *Ibid.*, pp. 74, 76.

speakers at the Convention and the delegates themselves had shown a marked sense of awareness on these questions. Almost all believed that they were creating a brave new world for the generation of the Chaco, and that the blood of the Chaco was being turned into a great constructive vote of protest against the old order by this singular gathering. The Minister of Government Colonel César B. Menacho had expressed just this sentiment as the representative of the junta when he greeted the Convention in its first meeting by declaring:

We are living, señores Convencionales, in an unquestionably historic moment. The Chaco War has created a new collective conscience, and a clear reflection of that evolution must be the work which you will realize within this chamber. . . . We are at the point in which events seem to pause perplexed, in order to take new impulse with a total rejuvenation of their spiritual and material forces. We find ourselves, exactly, at the historical point from which it falls to us to look behind, to severely and honorably re-examine our national past. It corresponds, therefore, to the talent and sagacity of the legislators to extract a constructive philosophy which must be within that retrospective study [and with this new philosophy] to rectify our trajectory as a people and a nation. Do not forget that by the ideological bedrock which you will uncover, surely, the National Convention of 1938 will orient the generations for fifty years to come.<sup>24</sup>

This same theme, of the potential of the convention to finally mold the restless Chaco ferment into a coherent ideology, was also clearly echoed by the socialist Renato Riverín when he accepted the presidency of the Convention. He demanded that "the sensibility of the new orientations of the representatives, who defended the national sovereignty in the bloody fields of the Southeast," must take into account the social unrest which afflicted Bolivia and the world of their day, and rework the nation in the light of them.<sup>25</sup>

To the newly elected Vice-President and moderate socialist leader Enrique Baldovieso, the Convention was:

not the traditional expression of the numerical vote, nor of the arithmetic democracy. It represents a new spirit, it is the depository of a new conscience and has the imperative mandate of a people that, in the anguish of the war, in that tragic shock, by force of pain and heroism, has discovered the lies which it lived and now seeks the truth and wants justice. From this comes the mandate which the honorable national representatives possess; it is not common parliamentary power, but a mandate to mold into deeds the intentions of the collective soul.<sup>26</sup>

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<sup>24</sup> *Ibid.*, p. 3.

<sup>25</sup> *Ibid.*, p. 20.

<sup>26</sup> *Ibid.*, p. 83.

It remained for a leftist intellectual, however, to give a concrete and perceptive prescription for the needs and aims of the new body. In a major speech, to which most of the delegates later paid due homage and which they were constantly quoting, the novelist Augusto Céspedes outlined the tasks of the Convention to be the election of a permanent executive, the writing of a constitution, and the setting of the tone of the new political era to follow.<sup>27</sup> The first problem had already been solved by the Junta de Gobierno, he said, and the second would develop out of the long sessions to come; however, the third required careful attention now, before the task was begun. The Convention was there not only to turn the military socialist rule into a *de jure* status; it had to change completely the chaotic pattern which Toro and Busch had developed and to establish a creative *de jure* regime which would not be forced to rely upon the whims of the Army, but upon a solid foundation of socialist civilian government. The "socialism" of the military was fraudulent and it had only frustrated the true socialist needs of the peoples, which the Convention would have to satisfy in the new order.<sup>28</sup> He saw Bolivia as a colonial nation under imperialist domination, made up of two generations:

. . . one which tries to maintain the colonial organization and another which wants to found a nationality, effective and free, economically free. Our crisis is complex, it is a crisis of two generations against a world of change. The older generation, which even now is dominant in politics, the economy, finances, society, though not in literature in which we new writers have taken charge, that ancient generation wants to resolve new problems with traditional systems. . . . And for its part, the new generation has still not been able to make for itself a system of convictions . . . and it vacillates before a reality which is still conducted and ordered by the convictions, by the laws, by the creeds, and above all, by the economic interests of the old capitalism of the old generation.

Hence we should not be surprised nor disconsolate if we find that from the Chaco War the revolutionary generation did not come forth perfectly equipped with ideas and solutions. That rather, because it participated in the catastrophe, which disturbed its psychic unity, its conviction in old beliefs and its serenity, it came forth with desires, with passions, not with plans, nor methods, nor systems. . . .<sup>29</sup>

In this state of ideological disorganization, the word "socialism" had become a beacon for this restless generation. But, charged Céspedes, it was a word exploited not only by the legitimate left, but by the defeated

<sup>27</sup> *Ibid.*, p. 59.

<sup>28</sup> *Ibid.*, pp. 60-61.

<sup>29</sup> *Ibid.*, pp. 63-64.

military leaders, many of whom were true revolutionaries, but most of whom were opportunists. Toro sabotaged the true socialist movement, according to the radical Céspedes, and Busch, he thought, might still continue to do the same if the Convention did not bind him by creating a new constitutional and political order which would dominate all military elements.<sup>30</sup> In this, Céspedes reflected the extreme distrust that the far left felt for the military, even in its most radical form. As for his other sentiments, he represented an authentic voice of the left speaking to his fellow generation of young revolutionaries, and while Céspedes was far from even representing the majority of the extreme left—he himself being somewhere between the moderate and far wings—yet he clearly perceived the historic moment in which the entire generation found itself and called for the Convention to break this ideological anarchy of the post-war years and give true meaning to the revolutionary spirit of the age.

However, the very background which Céspedes so ably described prevented the left from reaching any major unity at this point, or any revolutionary control. In the hectic months of the 1938 Convention, it found itself able to express only a part of the leftist platform in the new constitution and, as for its own organization, it continued in the chaotic fashion of the immediate post-war years. For the left had only been just nurtured to a developmental stage, and it needed the crucible of consistent defeat and frustration to forge it into a revolutionary movement of overwhelming power. But while the left never organized itself coherently enough in all its radical and moderate wings to dominate fully the Convention proceedings, it nevertheless took full advantage of the debates to propose and propagandize for all the revolutionary ideas abroad in the land, expressing most of them for the first time in Bolivian history in the hallowed halls of the Legislative Palace.

Having elected the executive and been well versed on its role, the Convention in the months of May and June and part of July became embroiled in organizational problems and in a host of left-over business from the last three years of non-parliamentary government. While an *ad hoc* Constitutional Commission began going over the minority and majority constitutional projects which the Toro Constitutional Commission had issued after several months of work,<sup>31</sup> along with several

<sup>30</sup> *Ibid.*, pp. 64 ff.

<sup>31</sup> This commission's project, which heavily stressed the corporate state ideology of the Toro period and was strongly influenced by German-Italian ideas in this aspect (*El Diario*, January 28, 1937, February 2, 1937), was merely presented to the Convention by Busch without formal endorsement, thus giving the Convention full freedom to work up its own charter. *El Diario*, June 9, 1938, June 10, 1938.

full-scale constitutional schemes presented by the Conventioneers themselves, the Assembly itself spent its time debating such things as railroad workers' pensions, special pension pleas from veterans and widows, and a host of local public works projects.

This seeming indecision, along with the fact that several conservative representatives wanted to prevent the Convention from ever considering a new Constitution, played into the hands of the conservative press, and especially *El Diario*, which began labeling the Convention as a waste of taxpayers' money and a do-nothing organization. So bitter did these attacks become that by July, *El Diario* itself was coming under full-scale attack in the Convention, with many of the representatives calling for outright suppression for such slanders and a full-scale confiscation of the newspaper, which they called an organ of the Oligarchy. In this, the Convention received a sympathetic hearing from the new Minister of Government in the Busch Cabinet, Captain Elías Belmonte, one of the most politically committed of the junior officers, and strongly inclined toward a Fascist position.<sup>32</sup>

Giving full support to the Convention's hostility toward *El Diario*, Belmonte noted that while the law of the land favored free press, he believed that the press should be controlled and censured for the social good.<sup>33</sup> The left supported these considerations and one deputy noted that the entire concept of a free press was a mockery when only 300,000 Bolivians out of 2.7 millions could even read, and charged that in Bolivia the newspapers merely represented economic power groups and were but tools for foreign imperialism.<sup>34</sup> Leading deputies in the newspaper attack were Eguino Zaballa, Fernando Siñani, who called for the confiscation, and Waldo Álvarez, who charged the paper with being an organ of the Patiño interests.<sup>35</sup>

In response to this attack, *El Diario* increased the tempo of its campaign against the Convention, calling for its outright dissolution as a useless organ. After bitter debate, the Convention approved a censorship law,<sup>36</sup> which brought the resignation of three civilians from the cabinet.<sup>37</sup> Busch, however, rejected the resignations, promising not to

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<sup>32</sup> Belmonte was one of the founders of the famous secret military lodge known as *RADEPA* which came to power in the mid-1940's under Villarroel. Zilveti Arce, *Bajo el signo*, pp. 23 ff.

<sup>33</sup> *Redactor*, II, 151-152.

<sup>34</sup> *Ibid.*, p. 153.

<sup>35</sup> *El Diario*, July 18, 1938, July 16, 1938.

<sup>36</sup> *Redactor*, II, 253-254; Díaz Machicao, *Toro, Busch, Quintanilla*, p. 83.

<sup>37</sup> *El Diario*, July 15, 1938.

carry the law into effect against any newspaper.<sup>38</sup> Also under extreme pressure from the newspapers and other traditional groups, Busch dropped Belmonte from the Cabinet and replaced him with his personal friend and moderate politician, Gabriel Gosálvez.<sup>39</sup>

With some of its hostility relieved by the outburst against *El Diario* and with the work of the *ad hoc* Congressional Commission completed, the Convention settled down to the long process of working out a new constitution for the nation. One of the first articles to be discussed and one which led to one of the most significant debates of the entire period, was the article which established the social nature of private property. While the conservatives were opposed to any but the classic definitions of inviolability of private property,<sup>40</sup> the moderate and extreme left demanded that Bolivia conform to the more modern European and Latin American constitutions, particularly the Mexican one of 1917, and limit classic liberal concepts of property with the proviso that it fulfill a social function.

While the final article was a moderate statement between the opinions of these two groups,<sup>41</sup> the radical left took advantage of the debate to propose some rather revolutionary reforms. Under the leadership of Balcazar, Eguino Zaballa, Victor Paz Estenssoro, and especially Walter Guevara Arce, the radicals proposed a formula whose first part read: "The State guarantees the right of property so long as it fulfills a social function,"<sup>42</sup> and in the second part called for outright land reform. This second part of their projected article called for the expropriation of unproductive *latifundias* and their parceling out among the agricultural peasants who worked them.<sup>43</sup> Walter Guevara Arce even went further and charged that to break up the *latifundias* into small individually owned plots would be to return to the liberal ideas of the past, and that they should rather be worked on a collective basis by the local Indian *comunidades*; in short, he advocated collectivization of agriculture.<sup>44</sup>

<sup>38</sup> *El Diario*, July 16, 1938.

<sup>39</sup> *El Diario*, July 22, 1938.

<sup>40</sup> See, e. g., *El Diario*, July 27, 1938.

<sup>41</sup> Article 17 states: "Private property is inviolable, provided that it fulfills a social function; expropriation can be imposed for reason of public utility, being authorized consistent with the law and previous just indemnification." (The official text of the constitution is reprinted in Félix Trigo, *Las constituciones*, pp. 421-455). Other articles of the final constitution, however, considerably deviated from the moderate tone of this particular article, and provided for a far more leftist interpretation of private property and government control; see especially articles 6b, and 106-130.

<sup>42</sup> *Redactor*, II, 529, the Espinoza *proyecto*.

<sup>43</sup> *Ibid.*, p. 530.

<sup>44</sup> *Ibid.*, pp. 533-535.

That these ideas were even advocated and hotly debated in a national Bolivian Congress was indicative of the major changes in the political atmosphere which had occurred as a result of the Chaco War, and while they were not accepted by the majority, their very propagation indicated that the far left had at last achieved an important public voice in the national political life.

While anticlericalism was endemic in the old Liberal party, the moderates and leftists succeeded in giving it a new impetus into the economic realm. Over the objections of the right, they successfully proposed that all Church property would henceforth be considered as equal to all other forms of private property and subject to the same taxations, indebtedness, restrictions, etc. Even on this issue the more radical deputies advocated the wholesale confiscation of all Church property and its devolution to State control, a move which was rejected by the majority.<sup>45</sup>

Nor were the internal property-holders the only group considered by the Convention. In a strong anti-imperialist frame of mind after the recent confiscation of the Standard Oil Company,<sup>46</sup> the Convention passed, with surprisingly little debate, articles which declared that no foreign enterprise operating in Bolivia could appeal to foreign powers in their disputes with the State and that they were to be considered bound by all the laws regulating national companies;<sup>47</sup> that no foreigner could own, lease, etc. any soil or subsoil rights to any property within fifty miles of the frontier;<sup>48</sup> and finally that only the State or its representatives could export oil from Bolivia, whether publicly or privately produced.<sup>49</sup> In the debate over this latter article, there was even an unsuccessful call by the far left for the inclusion of the word minerals, thus proposing that all tin would be sold abroad by the State, and not by the private companies.<sup>50</sup>

As deputy Victor Paz Estenssoro noted, "the monopoly of exportation of minerals by the State is the only measure capable of operating a

<sup>45</sup> See debate, *ibid.*, pp. 615-635.

<sup>46</sup> This had been carried out by the Toro government in March, 1937. *El Diario*, March 16, 1937. For a survey of the whole issue see: Herbert S. Klein, "American Oil Companies in Latin America: The Bolivian Experience," *Inter-American Economic Affairs*, XVIII (Autumn, 1964), 47-72.

<sup>47</sup> Articles 18 and 110 of the Constitution.

<sup>48</sup> Article 19.

<sup>49</sup> Article 109.

<sup>50</sup> *Redactor*, IV, 91. The *convencionales* also attacked the penchant of private road builders, notably Nicholas Suárez in the Oriente and Simon Patiño on the Altiplano, of preventing the public from using their roads and specifically provided that any road in the nation, whether publicly or privately built, was open to the free use of all (Article 26). For this debate see *Redactor*, II, 600 ff.

radical and profound revolution in the social-economic structure of Bolivia." There is no question that this represented the closest thing to outright nationalization, and probably was the most feasible immediate plan which the left could hope to pass. But even Paz Estenssoro realized that the left did not have the power to implement such a radical procedure and noted that the mining *superestado*, as he called it, would never allow such a law to be put into practice and would "put into play all its resources to avoid that it be carried into effect, and, as it has a power greater than that of the State itself, it is capable of creating a difficult situation, preventing the moderately socialist Constitution that we are voting from being sanctioned and promulgated."<sup>51</sup>

This whole debate led to a major attack on the entire mining industry, with sharp criticisms of the labor conditions at the mines,<sup>52</sup> on the flight of capital and small returns to the State, on the international holdings of Patiño—especially in Far Eastern tin mining—which it was charged led to his anti-Bolivian actions in the recent depression, and on the impersonal nature of the mining super-state whose real powers lay outside the nation.<sup>53</sup> As to the possibilities of overturning the radical legislation proposed, Augusto Céspedes noted that if the Convention approved such legislation, the Executive would be empowered to carry it through, and even if this were unsuccessful, at least the prescription for future action had been proposed and would be carried out by others at a later time, as the Mexican Constitution of 1917 had been.<sup>54</sup> While the majority of the deputies eventually defeated this proposition, it was far from buried by the rightist opposition, and within a year it became the most crucial political issue of the day.<sup>55</sup>

While defeated on many revolutionary proposals of immediate action, the leftist elements in the Convention nevertheless succeeded in having written into the Constitution for the first time in Bolivian history the general socialist principle that the State should assume direct control over the economy of the nation so as to insure the human dignity of its citizens. In the Constitution's chapter on the "Economic and Financial Regime," Article 106 opened by declaring that "The economic regime should essentially respond to principles of social justice, which

<sup>51</sup> *Ibid.*, IV, 91-92.

<sup>52</sup> *Ibid.*, p. 95.

<sup>53</sup> *Ibid.*, pp. 96 ff.

<sup>54</sup> *Ibid.*, p. 104.

<sup>55</sup> This idea was incorporated into the famous June 7th decree of the Busch government in 1939. See Díaz Machicao, *Toro, Busch, Quintanilla*, pp. 101-102; Céspedes, *El dictador*, p. 202.

have as their aim to secure for all the inhabitants a dignified existence as human beings." And to achieve these aims, it provided;

The State will be able to regulate, through law, the exercise of commerce and industry, with overriding power, when the security or public necessity require it. It will also be able in these cases to assume the supreme direction over the national economy. This intervention will be exercised in the form of control, inducement or direct management.<sup>56</sup>

The left also succeeded in placing into the Constitution the proposition that the State recognize (i. e., legally guarantee) the free association of a professional and syndical nature, and the collective contract of labor.<sup>57</sup> The right to strike as a means of legitimate defense by the workers was acknowledged<sup>58</sup> and despite the cries of destroying confidence in foreign capital markets and forcing all national business to close,<sup>59</sup> the Convention approved the call for legislation to determine the participation of workers and employees in the profits of the enterprises.<sup>60</sup> In a rather packed article,<sup>61</sup> the Constitution declared that the State would provide obligatory security for accidents, sickness, forced work stoppage, maternity, etc., and that it would declare minimum hours, wages, annual vacations, and medical benefits. In short, that the government would establish complete social legislation to deal with the protection of labor and welfare of the people.

In keeping with this social aim, the Convention, with only a minimum of debate, wrote up an entire chapter in the Constitution on "The Family." This chapter proclaimed State responsibility for the health, education, and welfare of the child, of the equality among all children (of legal or non-legal union), and the placing of matrimony, the family, and maternity under the protection of the law.<sup>62</sup> Another chapter dealing with the "Cultural Regime" declared that education was one of the prime functions of the State, officially incorporated into the Constitution the system of university autonomy, and proposed a State scholarship program and a plan for the promotion of national culture.<sup>63</sup>

The essential aim of the Convention in all of these articles and chapters

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<sup>56</sup> Article 6 on rights of citizens, provided that all persons had the fundamental right "to dedicate themselves to labor, commerce and industry only on condition that they do not prejudice the collective good."

<sup>57</sup> Article 125.

<sup>58</sup> Article 126.

<sup>59</sup> *Redactor*, IV, 215 ff.

<sup>60</sup> Article 127.

<sup>61</sup> Article 122.

<sup>62</sup> Articles 131-134.

<sup>63</sup> Articles 154-164.

was to commit the State definitively to full responsibility for the health, education, and welfare of all its peoples. And as one constitutional scholar noted, the Constitution of 1938 "has been, with absolute certainty, the first modification of social importance which our Charter has experienced since the initiation of republican life. . . ." <sup>64</sup> Whereas all previous constitutional conventions had been concerned with delimiting the forms and powers of the central government and with defining the powers of the national and local administrations, involving themselves in classic liberal definitions of limited constitutional government, the 1938 Convention irrevocably broke this mold. For the first time in republican history, it was proclaimed that the function of the State was to provide for the complete social welfare of all its citizens. The classic liberal laissez-faire minimal government was now replaced by the socialist concepts of an active State intervening in all areas of life, to provide for the collective good of its citizens. The deputies of 1938 were initiating a whole new method of constitutional writing, which has been properly called "social constitutionalism."

While many rightists held that such social issues should not be written into a constitutional charter, but should rather be reserved for secondary legislation, the left refused to give ground. Over and over again, they claimed that such concepts had to be written as minutely as possible into the basic national charter, and that even if this type of legislation was not immediately enacted, the Constitution of 1938, unlike the previous constitutions of Bolivia, had to provide a blueprint for the future and as complete a statement as possible on the goals of the new revolutionary generations. And while the right continually succeeded in watering down the more revolutionary aspects of such legislation, nevertheless a fundamental beginning was made, a beginning that, over and over again, would bear rich fruit in the years to come.

As the debate progressed, two rough groupings began to be discerned on major issues. These were, first of all, a Right, composed of the few Liberals elected, plus the few clerics in the Assembly, and based heavily on the *grupo oriental*. This latter coalition was made up of most of the delegates from the eastern lowland provinces and had a distinctly conservative, regionalist orientation with a strong anti-Indian bias. Further, there were the splinter *Republicano Socialista Antipersonalista* led by Gabriel Gosálvez, which stood against the more leftist tendencies of the Saavedra-dominated wing of the old Republican party.

The Left was made up of a coalition of small parties of various

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<sup>64</sup> Oscar Frerking Salas, "Las cláusulas," p. 64.

orientations. This Left coalition, known variously as the *sector izquierda* or *sector obrero*, included such labor leaders as Fernando Siñani and Waldo Álvarez, the local *Frente Popular* group of Potosí, the *Grupo Izquierda* of Cochabamba, and a recently salvaged left-wing group of former Baldivieso socialists known as the *Partido Socialista Independiente* (PSI). This latter group included such figures as Victor Paz Estenssoro, Augusto Céspedes, and Walter Guevara Arce, and was to be the direct precursor of the *Movimiento Nacionalista Revolucionario*. At the extreme end of this left sector were such intellectuals as Alfredo Arratia of the Popular Front of Potosí and, surprisingly, considering his later career, Walter Guevara Arce of the PSI, both of whom led the fight for land reform.

A leader in the earlier demand for breakup of the latifundias, Walter Guevara Arce was also a key figure in the Convention's extremely important debate over the proposed chapter on "Peasantry" whose first article called for legalizing the ancient Indian *comunidades*, which, since pre-Columbian times, had formed the basic unit of the agricultural population (that is, of three-quarters of the nation) and which since the beginning of the Republican era had been denied all legal rights by the Bolivian government.<sup>65</sup>

Guevara Arce and Alfredo Arratia, in their defense of the *comunidad* and attacks on the latifundias, pounded out the thesis of Mariátegui, that the problem of the Indian is the problem of land, and not a question of education or anything else.<sup>66</sup> To Republican Socialist charges that the country was underpopulated and that therefore there existed no problem of land reform, as the official party platform read,<sup>67</sup> and to *Orientalistas* charges that the entire problem was one of colonization, the left bitterly replied that the problem of land reform was a vital one for Bolivia and one that could not be denied.<sup>68</sup> Guevara Arce demanded:

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<sup>65</sup> At first basing itself on the Liberal beliefs of Simón Bolívar, who sought to create a small propertied peasantry in his famous decrees of Trujillo and Cuzco of 1824 and 1825 respectively (Miguel Bonifaz, "El problema agraria indígena en Bolivia durante la época republicana," *Revista de Estudios Jurídicos, Políticos y Sociales* [Sucre], VIII, no. 18 [diciembre de 1947], 66-73), the republican legislation established the non-recognition of the juridical existence of the *comunidad*, which was charged with being a reactionary institution. This legal attitude permitted the whites and *cholos* in practice to destroy the property rights of these communities and to dramatically expand the latifundia system with the open aid of the State, which refused to protect in law the property rights of the *comunidad*. See: Arturo Urquidí Morales, *La comunidad indígena* (Cochabamba, 1941), pp. 79 ff.; also José Flores Moncayo, *Legislación boliviana del indio, recopilación 1825-1953* (La Paz, [1953]).

<sup>66</sup> See, e.g., *Redactor*, V, 213-215. Also see: José Carlos Mariátegui, *7 ensayos de interpretación de la realidad peruana* (6th ed.; Lima, 1958), pp. 29 ff.

<sup>67</sup> *Redactor*, V, 270.

<sup>68</sup> *Ibid.*, pp. 270-272.

"How to resolve the problem of the Indian? The Honorable Arratia has already indicated it. The solution is not in educating him; the problem of the Indian is the problem of the land. . . . There are millions of men without a piece of earth against persons who have enormous portions of unworked land. The essential thing is that the Indian have land. . . ." <sup>69</sup>

Guevara Arce went on to threaten prophetically that if the Convention did not make these constitutional provisions for peaceful land reform then someday a revolutionary socialist party would arrive which by blood would impose an even more revolutionary solution on the nation. "If today we do not make this pacific revolution, tomorrow will come the violent revolution. . . ." <sup>70</sup> The actual legislation they proposed for the *campesino*, as the leftists deliberately called the Indians, was a major piece of radical legislation which would have recognized not only the legal personality of the comunidad,<sup>71</sup> but proposed outright land reform, providing that 50 Indians could solicit for the expropriation of a particular latifundia which would be turned over to them by the State.<sup>72</sup> In the rather heated debate the free-labor system of *pongueaje* <sup>73</sup> was attacked harshly by the left, to the point where one deputy of the so-called *sector obrero* alluded to the fact that *pongos* were used for more things than manual labor by the *paceña* society, an allusion which caused a complete breakdown of the session and a temporary expulsion of the deputy.<sup>74</sup> Attacked both in and outside the halls of the *Palacio Legislativo*, charged with communism and being wreckers of private property, and under the threats of government closure,<sup>75</sup> the left lost ground and the right wing of the Convention succeeded in wiping out the portions of the *Campesino* Chapter which provided for land reform and special constitutional protection for the Indian. They succeeded in replacing them with watered down pious desires to im-

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<sup>69</sup> *Ibid.*, p. 277. Almost all of the deputies were constantly referring to the Mexican Constitution of 1917 when dealing with the problem of foreign investment and the Indian, and Guevara Arce even went so far as to quote the works of Frank Tannenbaum on the Mexican Revolution, *ibid.*, p. 281.

<sup>70</sup> *Ibid.*, p. 282.

<sup>71</sup> Article 165.

<sup>72</sup> *Redactor*, V, 283-285.

<sup>73</sup> For a description of this harsh system see: Rafael A. Reyeros, *El pongueaje, la servidumbre personal de los indios bolivianos* (La Paz, 1949); and Remberto Capriles Rico and Gastón Arduz Eguía, *El problema social en Bolivia, condiciones de vida y de trabajo* (La Paz, 1941), pp. 42-43.

<sup>74</sup> *Redactor*, V, 287-289.

<sup>75</sup> *Ibid.*, p. 335.

prove education and legislate on these subjects, taking into account local regional differences.<sup>76</sup>

Now, under intense pressure from Busch who, temporarily leaning to the right, threatened adjournment, the Convention hastily completed the constitution in the last days of October, 1938. Thus, after five hectic months of tremendously creative activity, the *Convención Nacional* quietly dissolved itself and the nation once again returned to the relatively quiet days of non-parliamentary government.

But the end of the Convention in no way ended its impact. For, as the early speakers had rightly predicted, the Convention had set the tone and provided the guidelines for the future generations of the nation. It had finally and definitively destroyed the classic-style constitutional charter of economic liberalism and limited constitutional government, and openly proclaimed the positive role the government must take in providing for the welfare of its people in all aspects. This was unquestionably the most basic idea which emerged in the national consciousness in the post-war period, and it was this desire which the *convencionales* succeeded in writing into the fundamental charter of the nation. The Constitution of 1938 was in essence a catalog of human rights and social responsibilities. That this revolutionary new constitution would not endure as long as the 1880 charter it replaced, was clearly recognized by the men who wrote it, for they fully realized that new generations would define in far more radical terms the needs and obligations of the State. But even as new constitutions were written in the following decades, they represented, more than anything else, appendages to the 1938 charter, appendages which reflected the ever growing power of the leftist and labor movements in Bolivian society.

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<sup>76</sup> Articles 166 and 167.