

# CONTEMPORARY CONSTITUTIONS AND CONSTITUTIONALISM IN THE DOMINICAN REPUBLIC

## The Basic Law Within the Political Process

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THE REVOLUTION OF APRIL 1965, and the subsequent landing of United States military forces focused an enormous amount of worldwide attention on the Dominican Republic. The frequently chaotic revolution, which quickly became a civil war, was made still more confusing by reports which at one and the same time referred to one side as the "rebels" or "constitutionalists" and to the other as the "loyalists" or "anti-constitutionalists." As the events of Dominican revolt, civil war, and United States intervention became disentangled, however, it became clear that the issue of "the constitution" and "constitutionalism" and the principles and forces of which these terms were symbols were perhaps even more important than any of the personalities or groups involved.

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Because many of the major conflicts seemed to revolve around questions of "constitutionalism," a comparison and analysis of the constitutions of 1962 and 1963 may help unravel the perplexing tangle of factors which led to revolution and civil war.<sup>1</sup>

As symbols, the constitutions should be compared and analyzed within their broader societal context. The 1965 revolution must not be seen as simply a conflict among principals who disputed the way in which the formal structure of government should be organized or who disagreed as to the legal or "constitutional" set of ruling principles—the "rules of the game." Rather, the constitutions of 1962 and 1963 came to symbolize widely divergent ways of life, opposing belief and value systems, and wholly different methods of organizing society and polity—ideas and arrangements which were so divergent and so opposed that they had ultimately caused the revolution to break out in the first place. This study, therefore, is concerned not just with a comparison and analysis of the structure and mechanics of the two constitutions but with their place in the broader political process as well.<sup>2</sup> These considerations may also enable us to better understand the context in which the new constitution of 1966 was promulgated.

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1. There is as yet no full and complete study of the revolution, though a number of such studies are currently in preparation. Several journalistic accounts have been published, as well as a variety of volumes which are aimed at promoting a particular point of view and a large number of polemical articles. See, among others, D. KURZMAN, *SANTO DOMINGO: REVOLT OF THE DAMNED* (1965); J. MALLIN, *CARIBBEAN CRISIS: SUBVERSION FAILS IN THE DOMINICAN REPUBLIC* (1965); D. MELENDEZ, *PASO A LA LIBERTAD* (1965); M. NIEDERGANG, *LA REVOLUTION DE SAINT-DOMINGUE* (1966); CENTER FOR STRATEGIC STUDIES, GEORGETOWN U., *DOMINICAN ACTION—1965: INTERVENTION OR COOPERATION?* (1966); T. Draper, *The Dominican Crisis*, XL COMMENTARY 33-68 (Dec. 1965); R. A. FERRERAS, *GUERRA PATRIA* (1965); A. LLANO MONTES, *SANTO DOMINGO: BARRICADAS DE ODIOS* (1966); J. C. ESTRELLA, *LA REVOLUCION DOMINICANA Y LA CRISIS DE LA OEA* (1965); N. CARLOS, *A GUERRA DA AMERICA LATINA* (1965); A. J. THOMAS, JR. & A. VAN WYEN THOMAS, *THE DOMINICAN REPUBLIC CRISIS 1965: LEGAL ASPECTS* (New York: The Association of the Bar of the City of New York, The Hammerskjold Forums, 1966); and D. BRUGAL ALFAU, *TRAGEDIA EN SANTO DOMINGO* (1966).

2. On the role of the constitution within the political process see L. P. BETH, *POLITICS, THE CONSTITUTION, AND THE SUPREME COURT* (1962); and *CONSTITUTIONAL LAW IN THE POLITICAL PROCESS* (J. R. Schmidhauser ed. 1963). For comparative perspective, see H. FINER, *THE THEORY AND PRACTICE OF MODERN GOVERNMENT* (1961); C. J. FRIEDRICH, *CONSTITUTIONAL GOVERNMENT AND DEMOCRACY* (1950); K. LOEWENSTEIN, *POLITICAL POWER AND THE GOVERNMENTAL PROCESS* (1957); H. J. SPIRO, *GOVERNMENT BY CONSTITUTION* (1959); and G. Sartori, *Constitutionalism: A Preliminary Discussion*, LVI AMER. POL. SCI. REV. 853-64 (Dec. 1962). For Latin America, see J. L. Mechem, *Latin American Constitutions: Nominal and Real*, XXI J. OF POL. 258-75 (May 1959); and J. L. Busey, *Observations on Latin American Constitutionalism*, XXIV THE AMERICAS 46-66 (July 1967).

THE CONSTITUTIONAL TRADITION, THE TRUJILLO ERA, AND THE  
CONSTITUTION OF 1962

The Dominican constitutional tradition is uncertain and unstable. Indeed, with twenty-nine constitutions, various provisional documents, two Spanish constitutions, and a variety of United States-imposed executive orders and institutional acts in a century and a quarter of independent history, the country is second to few nations of the world in the number of basic laws under which it has been governed.<sup>3</sup> The apparent large turnover of constitutions is somewhat deceptive, however, because of the Dominican practice of promulgating the document as a new constitution whenever an amendment is enacted. While most Dominican constitutions have been, in reality, only minor modifications of their antecedents, a number have embodied broad changes in the governmental system.<sup>4</sup> Most governments upon coming to power feel compelled to draft a new constitution, to change the "rules of the game" to suit their own conceptions and wishes. Some have rejected completely the framework within which their predecessors operated. As Sumner Welles concluded in his classic history of the first eighty years of Dominican independent life:

It is therefore not surprising that the chief menace today to a continuation of orderly democratic government in the Dominican Republic lies in an utter disregard for the sanctity of the Constitution. Constitutional government, in brief, is to the average Dominican but an empty phrase. The Constitution originally proclaimed has been changed innumerable times merely to satisfy the selfish aspirations of the individual or the party in power. It has never been amended or reformed in the interest of the Dominican people as a whole. Instead of being regarded as the sacred charter of the people's liberties, the Constitution has been considered a legitimate source of advantage to the party or to the person in control, and has consequently been modified at frequent intervals without due reflection, and without proper consideration, solely to satisfy the desires or requirements of those enabled thus to advance them.<sup>5</sup>

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3. See *CONSTITUCION POLITICA: REFORMAS CONSTITUCIONALES* (Santiago de los Caballeros: Official Publication, 1944).

4. On this point see M. JORRIN, *GOVERNMENTS OF LATIN AMERICA* 284 (1953); and *CONSTITUTIONS OF THE AMERICAS* 904 (R. H. Fitzgibbon ed. 1928).

5. S. WELLES, *NABOTH'S VINEYARD: THE DOMINICAN REPUBLIC, 1844-1924*, at 904 (1928).

Constitutionalism—that is, loyalty to a set of governing principles rather than to the person or government that promulgates them—has become a matter of overriding importance in the Dominican Republic only in most recent years.

The Dominican Constitution of 1962 was, in essence, the same constitution which had been in effect during the extremely oppressive dictatorship of Generalissimo Rafael Trujillo and was not markedly different from the long line of constitutions which had gone before. The thirty-one year Trujillo regime had come to a violent end in 1961; but the constitution which he had promulgated remained in effect, changed only in certain particulars, chiefly those providing for the transfer of power to an interim Council of State and setting dates for the succession of a legitimately elected government. As such, the constitution of 1962 remained basically a Trujillo document, and a constant reminder to Dominicans of the evils of the former dictatorship. Furthermore, because this constitution was promulgated by the conservative Council of State, it also became identified, in a time of rising, revolutionary demands for reform, with the status quo and oligarchic rule. It soon became clear, given the aspirations and changing values of the Dominican population, that the basic law of the land was no longer relevant or appropriate.

In its surface aspects and structural elements this *trujillista* constitution, as the Dominicans considered it, like many of the twenty-odd constitutions that preceded it, did not appear to be an ill conceived document.<sup>6</sup> It asserted, as an immutable principle, that the country had a “civil, republican, democratic, and representative government.” On the United States model, the traditional three branches of government—executive, legislative, and judicial—were co-equal and independent in their respective powers and functions. An impressive list of human rights

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6. A comment should be made concerning constitutional history during the long Trujillo era. Five constitutions were technically in effect during his lengthy tenure. Trujillo had become president in 1930 under a constitution promulgated the previous year. This was supplanted by another in 1934 which, in turn, was superseded by the constitutions of 1942, 1947, and 1955. Most of these changes, however, involved only minor amendments; the formal, institutional structure of government during the Trujillo era and on into 1962 remained basically the same. The texts of these constitutions may be found as follows: 1929, CONSTITUCION DE LA REPUBLICA DOMINICANA (Santo Domingo: Imp. de J. R. vda. García, 1929); 1934, CONSTITUCION DE LA REPUBLICA DOMINICANA (Santo Domingo: La Nación, 1934); 1942, CONSTITUCION DE LA REPUBLICA DOMINICANA (Ciudad Trujillo: Imp. de J. R. vda. García, 1942); 1947, Fitzgibbon, *supra* note 4, at 299-320; 1955, DOMINICAN CONSTITUTION OF 1955 (1958); and 1962, CONSTITUCION DE LA REPUBLICA DOMINICANA (Santo Domingo: Sec. de Estado de Educación, Bellas Artes y Cultos, 1962). Where appropriate, the specific constitution being discussed will be referred to in the text or in the notes.

was included. In these and other respects, it would have appeared that the Dominican Republic was governed constitutionally by the entire formal structure of a Western democracy.

This appearance of constitutional democracy, however, bore little resemblance to Dominican political reality. For example, during the Trujillo era elections were held periodically but the returns were manipulated and the results systematically falsified. The legislature met frequently but only to rubber stamp, without discussion, measures demanded by the National Palace. The Supreme Court and the judicial system were similarly subservient, and the constitution itself was changed or reinterpreted when it was convenient for the dictator. Dominican constitutionalism during this period was thus a reflection of Trujillo's wish to rule absolutely but to do so within a constitutional framework. The letter of the constitution was upheld with great and perhaps excessive vigor, but the spirit of limited government, which constitutionalism implies, was altogether lacking. The entire system, as Jesús de Galíndez remarked, was a "constitutional parody."<sup>7</sup>

Latin American dictators have often attempted to give the semblance of constitutional democracy to their regimes, but Trujillo's techniques were somewhat different. Instead of merely paying lip service to the constitution, as many strong men have done, he made a mockery of it. Rather than maintaining only the external trappings of democratic rule, he appeared scrupulously to observe its precepts. To overcome some constitutional provision which restricted his authority, he would not ride roughshod over it but carefully and legally would amend its contents or see that it was reinterpreted. For this reason the constitution was purposely ambiguous; and when the ambiguities could not possibly be reinterpreted in a required new light, the basic document was either amended or rewritten, as occurred in 1934, 1942, 1947, and 1955. A vast gulf existed between the constitutional structure and the actual political realities of the dictatorship.<sup>8</sup>

A careful reading of the constitution reveals that despite the elaborate system of paper checks and balances between the three branches of government, Trujillo alone had virtually absolute power. Contained in the constitution were provisions that in effect gave him *carte blanche* authority to rule as a constitutional dictator. In addition to the broad

7. J. DE GALINDEZ, *LA ERA DE TRUJILLO* 189 (1956).

8. See G. ORNES, *TRUJILLO: LITTLE CAESAR OF THE CARIBBEAN* 22-28 (1958). See also R. D. CRASSWELLER, *TRUJILLO: THE LIFE AND TIMES OF A CARIBBEAN DICTATOR passim* (1966).

powers granted in most Latin American constitutions to the chief executive, Trujillo enjoyed a sweeping range of emergency powers, faced no restrictions on the number of terms he could rule, could appoint and remove almost all public officials without congressional approval or consent, could declare a state of siege and suspend human rights, could rule by decree, and could act in any way he saw fit so long as it was for purposes of "public service" and in the "national interest."<sup>9</sup>

The principal function of the Dominican Congress was not to carry out those functions listed in the constitution but only to give legislative sanction to programs and policies previously decided by Trujillo. When he declared a measure urgent, the law was passed instantaneously, and at his request the Congress approved measures which concentrated power in his own hands. No bill was initiated without the prior consent of Trujillo's office unless it was an expression of homage to *el jefe*. The legislators did not discuss or debate proposals; their sole responsibility was to vote affirmatively. The Congress was thus only one of several mechanisms whose existence helped lend the appearance of democracy to the dictatorship.<sup>10</sup>

Many of the laws were designed specifically to strengthen Trujillo's personal economic and political power. Several constitutional reforms, for instance, were enacted to justify de jure procedures already practiced by the regime de facto.<sup>11</sup> Trujillo had special laws enacted conferring extraordinary powers on his office or giving him a special legal or constitutional position as a "super-president," so that he could safely step down in favor of a compliant puppet. Other laws were aimed specifically at aiding his private life or regulating his family affairs, another made it a crime to resign a government position while Trujillo was abroad, and various tax exemptions and financial provisions were designed to favor his vast commercial, agricultural, and industrial enterprises.<sup>12</sup>

Trujillo's principal method of controlling the governmental machinery was the constant shuffling and reshuffling of political officeholders. He kept a signed but undated resignation for all public employees, and officials frequently arrived at work only to find that Trujillo had filled in the date and that they had "resigned." Anyone who gained a position of influence could expect to be replaced before he could consolidate his

9. See especially articles 49 and 54 (Constitution of 1955).

10. C. A. Thomson, *Dictatorship in the Dominican Republic*, XII FOREIGN POLICY REPORTS 33 (April 15, 1936).

11. ORNES, *supra* note 8, at 26-27.

12. GALINDEZ, *supra* note 7, at 193-95.

hold and build up a political following independent of the dictatorship. No potential opposition power centers were allowed to develop; everyone was kept isolated and atomized. As Germán Ornes wrote, "no place in the pyramid of command is for keeps and no authority except Trujillo's is more than provisional."<sup>13</sup>

Throughout his rule, Trujillo used the above procedure to continuously shuffle government employees in all the deliberative or decision-making bodies formally established by the constitution. Thus, his cabinets were not policy-making bodies or even half-way effective administrative agencies, but a group of very temporary assistants. During Trujillo's third term, for example, which is chosen not because it is exceptional but because the figures are readily available, there were sixty-one cabinet changes in a five year period.<sup>14</sup> Similarly, no legislator could ever be certain that he would be allowed to fulfill his mandate. Following Trujillo's second inauguration in 1934, there were always considerably more resignations from the Congress during a given term than there were members.<sup>15</sup>

The shuffling of magistrates and judges in the court system followed a parallel pattern. Criminal judges, supreme court justices, and the personnel of civil courts all had to submit signed but undated resignations on the day they took office. Thus, although the supreme court was constitutionally given the power of judicial review, it could not act independently and did not pass on the constitutionality of Trujillo's legislation.<sup>16</sup> In addition, Trujillo family members and friends of the regime received preferential treatment in the courts, and brother Virgilio Trujillo was reported to have earned the title of Señor Supreme Court because of his frequent placing, for a fee, of the family name behind one side in a law suit.

A striking feature of the Trujillo constitution of 1955, and also that of 1962, involved the position of the Roman Catholic church. Article 11 of the earlier charter stated: "Relations between the Church and the State are regulated by the concordat between the Holy See and the Dominican Republic, in accordance with the Law of God and the Catholic

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13. ORNES, *supra* note 8, at 260. See also CRASSWELLER, *supra* note 8; and C. O. PORTER & R. J. ALEXANDER, *THE STRUGGLE FOR DEMOCRACY IN LATIN AMERICA* 147-48 (1961).

14. GALINDEZ, *supra* note 7, at 235.

15. *Id.*, at 210-18; and T. Draper, *Trujillo's Dynasty*, V *THE REPORTER* 20-26 (Nov. 27, 1951).

16. ORNES, *supra* note 8, at 255 and GALINDEZ, *supra* note 7, at 240.

tradition of the Dominican Republic." The Concordat, signed in 1954, granted vast concessions to the Church and provided for close cooperation between Church and state in a number of areas. In this fashion, the mutually advantageous arrangement which had long governed the relations between the two was formalized.<sup>17</sup> The omission of this provision in the 1963 basic law would have serious consequences.

Voting in Trujillo's Dominican Republic was obligatory, and failure to vote was interpreted as an expression of inexcusable opposition toward the government. Opposition parties, except when encouraged by Trujillo, did not function legally after 1930 and opposition candidates did not run. In keeping with the constitutional facade, elections were regularly held, campaigns conducted, and ballots formally cast and counted. Eventually, however, the electoral board no longer bothered to distinguish between the number of votes cast and the number received by the official Dominican Party. Unless Trujillo had some special reason for promoting competition, the regime's candidates received 100 per cent endorsements.<sup>18</sup>

According to the Dominican constitution, municipalities were supposed to exercise a measure of self government. But these centers of possible independent activity, like all other organizations and institutions in the country, were under the absolute control of the dictatorship as well. Trujillo maintained the appearance of local autonomy while at the same time centralizing decision-making and concentrating authority in his own hands. Indeed, no group, no association, no geographic or social entity was allowed to function independently of the regime; all were subjected to the absolute personal authority of the Generalissimo.<sup>19</sup>

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17. The text of the Concordat is in Z. CASTILLO DE AZA, *TRUJILLO Y OTROS BENEFACIORES DE LA IGLESIA* 239-57 (1961). See also H. J. Wiarda, *The Changing Political Orientation of the Church in the Dominican Republic*, VII A J. OF CHURCH AND STATE 238-54 (Spring 1965).

18. Reports of some of the campaigns and elections may be found in A. H. Sinks, *Trujillo: Caribbean Dictator*, V AMER. MERCURY 167 (Oct. 1940); O. Hardy, *Rafael Leonidas Trujillo Molina*, XV PACIFIC HISTORICAL REV. 409-16 (1946); E. Gruening, *Dictatorship in Santo Domingo: A Joint Concern*, CXXVIII THE NATION 584 (May 23, 1934); C. Beals, *Caesar of the Caribbean*, XLVIII CURRENT HISTORY 33 (Jan. 1938); A. C. Hicks, *Election Day in Santo Domingo*, CLXIV THE NATION 543-44 (May 10, 1947); and J. de Galindez, *Un reportaje sobre Santo Domingo* LXXX CUADERNOS AMERICANOS [Mexico] 37-56 (Mar.-Apr. 1955). The official electoral returns may be found in the GACETA OFICIAL.

19. J. B. BLANDFORD, *PUBLIC ADMINISTRATION IN LATIN AMERICA* 34-35 (1955); and GALINDEZ, *supra* note 7, at 241.



It is clear from this description that the actual nature and functions of the governmental institutions of the Trujillo era did not very closely correspond to the constitutional provisions. The constitution, indeed, was employed as a smokescreen to help disguise the excesses of the dictatorship. Yet, it would not be possible to understand fully the Trujillo regime by examining only the constitutional facade and the perversion of constitutionalism practiced by the regime. For Trujillo's was not just an uncomplicated traditional dictatorship based on the control of the armed forces and the governmental machinery, but a system of domination that reached into all aspects of the Dominican's existence. Trujillo was not just a typical *caudillo*, or man on horseback, but came to employ techniques of control that were more characteristic of the modern totalitarian state.

Trujillo employed the huge military apparatus and several specialized espionage agencies to impose a technologically advanced, all-pervasive terror on the population. A single party provided the dictator with a personal apparatus to further cement his control over politics and the governmental system. He established a near-monopoly over the national economic life, and through his economic might was able to dominate the vital day-to-day existence of almost the entire population. No socio-economic sector or interest group was able to function independently of his authority. While Trujillo's political philosophy was probably not a full-fledged totalitarian ideology, when combined with his control over education, the press, the national intellectual life, the communications media, and his mutually reinforcing arrangement with the Church, it gave him an effective command of much of the thought processes of the nation. While these dictatorial controls were obviously not spelled out in the constitution, it came to symbolize all that was hated in the Trujillo regime.<sup>20</sup>

The dictatorship was overthrown in 1961, but the Trujillo constitution remained in effect. It was modified to meet the exigencies of the moment—legislative and executive power devolved upon an interim seven-man Council of State which took office on January 1, 1962, and was to remain in power until February 27, 1963. The constitution was also amended to provide for a return to a legitimately elected government, and elections were scheduled for December 20, 1962. A few of the more

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20. For a more complete analysis of these controls and their implications both for the Dominican Republic and for the theory of dictatorship, see H. J. WIARDA, *DICTATORSHIP AND DEVELOPMENT: THE METHODS OF CONTROL IN TRUJILLO'S DOMINICAN REPUBLIC* (Gainesville: University of Florida Press, forthcoming).

atrocious articles were changed;<sup>21</sup> but, in essence, the constitution of 1962, promulgated technically as a new constitution by the Council of State, was not substantially different from those which had been in effect during the Trujillo era. A constitutional convention was supposed to be convened by August 16, some four months prior to the scheduled elections, in order to draft a new document more in keeping with the wave of democratic sentiment now sweeping the country in the wake of the end of dictatorship. The Council was beset by issues it deemed more pressing and postponed the convention, thus deferring the matter until the inauguration of the elected government.<sup>22</sup>

The mechanics and superficial aspects of the constitution in effect, it should be recalled, did not seem particularly inappropriate or badly contrived. It did after all provide for a civil, democratic, and representative government; guaranteed a long list of political and human rights; and defined the powers and duties of the several institutions of government. But by this time the constitution had become an intensely emotional issue. For many Dominicans, it continued to be a reminder and a symbol of the Trujillo dictatorship—not just of the abuses of constitutionalism which the regime practiced but also of the terror, corruption, fear, tyranny, thought-control, murder, crime, torture, etc. which the entire Trujillo era now represented. The constitution was one of the few monuments to the slain dictator which remained standing. As a symbolic document the constitution of 1962 aroused bitter, deepseated, and widespread opposition; it could scarcely serve as a rallying cry for Dominican nationalism, patriotism, and national aspirations.<sup>23</sup>

The 1962 document furthermore came to be identified with the moderate, middle-of-the-road government of the Council of State which promulgated it. The Council was closely identified in the popular mind with the moderately conservative, business-oriented National Civic Union Party (UCN), and this identification became an albatross around

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21. For example, the Trujillo constitution contained an article calling for the development and beautification of the capital, Ciudad Trujillo (formerly Santo Domingo, the oldest city in the New World), which the dictator had caused to be renamed after himself. The comparable article in the new 1962 constitution was changed so that it called for the development and beautification of *all* the cities of the country.

22. See Henry Wells, *The OAS and the Dominican Elections*, VII ORBIS 150-63 (Spring 1963) and J. B. MARTIN, *OVERTAKEN BY EVENTS: THE DOMINICAN CRISIS FROM THE FALL OF TRUJILLO TO THE CIVIL WAR* 156-61 (1966).

23. The debate on the constitution may be followed daily in the Dominican press, especially during the summer of 1962. Particularly valuable in gauging this rising public sentiment are the party newspapers of the Left opposition: *El 114*, *Tribuna Democrática*, *El Radical*, *PNR*, and *El Popular*.

the necks of both the Council and the Party. In a time of rising demands for revolutionary changes, the Council was popularly thought of as a do-nothing government. The Council had, in fact, initiated some notable reforms, but it was not willing to seriously disturb the status quo or initiate the basic reforms that would likely lead to the restructuring of the economic, political, and social order. The Council increasingly became a symbol of oligarchy and *trujillismo*, and the constitution of 1962 which it promulgated came to be opposed by reform-oriented groups who felt a new, more democratic basic charter was required.<sup>24</sup>

#### REVOLUTIONARY REFORM AND THE CONSTITUTION OF 1963

Juan Bosch and his Dominican Revolutionary Party (PRD) won the December 20, 1962, elections by an overwhelming majority. Pledged to a wide range of reforms, the Party and its candidates interpreted their victory as a mandate to build a free and democratic system of social justice, and to carry out the greatly needed reforms that the Council had barely begun. Bosch and the PRD promised not only political democracy but social and economic democracy as well. The incoming President was a democratic-Leftist who believed in carrying out far-reaching reforms through democratic means. The new constitution would hence have to be revolutionary. As Bosch himself stated:

The people voted for us not because I have gray hair and blue eyes but because of the ideas of the party. . . . These ideas were revolutionary . . . and there cannot be a democratic revolution in this country if we do not have a revolutionary constitution which will permit us to make revolutionary laws.<sup>25</sup>

The revolutionary constitution of 1963, as drafted by the PRD-dominated Congress (with the advice of United States Supreme Court Justice William O. Douglas), did not differ substantially from the previous constitution in so far as the mechanics of government were concerned: the traditional three-part division of powers was retained and the func-

24. The best source on the Council's rule is MARTIN, *supra* note 22, at pt. 1. See also R. Evans, Jr., *First Steps in Dominican Democracy*, XXVIII THE REPORTER 21-23 (January 3, 1963); J. Buchanan, *Dominican "7" Caught in Crossfire*, Miami Herald (May 12, 1962, §A, at 1); and Tad Szulc, *Trujillo's Legacy: A Democratic Vacuum*, N. Y. Times, Sept. 2, 1962 (Magazine), at 9ff.

25. Quoted in J. Losada, *Juan Bosch entre dos juegos*, 25 VISION [Mexico], 22-23 (May 31, 1963).

new constitution which provided for profit-sharing and which favored labor at the expense of employers.<sup>32</sup>

In a letter to the editor of the country's major newspaper, which gave it front-page coverage, the same three business groups suggested that investment capital would be frightened away by a constitution which was vague on the subject of expropriation and collectivization.<sup>33</sup> Less than a week later the Dominican Association of Landowners and Agriculturists joined the other business associations in opposing the new constitution. In a two-page advertisement, they pointed out that the constitution represented a "grave danger." They stated that adoption of the proposed text would lead to a waste of national wealth, the impossibility of attracting new investment capital, the disappearance of many concerns, and the lowering of income not only for business but for the workers as well. The advertisement concluded by appealing for a constitution that would bring harmony to all groups and classes, and which would restore national unity.<sup>34</sup>

The PRD-dominated assembly which was drafting the new constitution accepted some of these criticisms and modified, to a minor extent, the most objectionable articles. These modifications did not appease the businessmen and landowners who continued to criticize several key paragraphs as being ruinous to the economic structure of the entire country. Specifically, they objected to article 16 which gave the Congress, in which Bosch's party had more than a two-thirds majority in both houses, virtual *carte blanche* power to oversee contracts and regulate the economy in the "national interest," and to articles 23 and 28 which limited landholdings.<sup>35</sup> The proposed constitution was not revised further, however, and was promulgated despite these strenuous objections. The business and landowning interests thereupon began to work for the overthrow of the government.

The Bosch regime had thus secured the concerted opposition of two of the most important groups in Dominican politics. This opposition was, of course, not solely due to the constitution; but the constitution clearly gave the opposition a focus. The constitution helped lead to a coup both

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32. The text is in *El Caribe*, January 31, 1963, at 2. See also KURZMAN, *supra* note 1, at 92.

33. The text is in *El Caribe*, Feb. 5, 1963, at 1. See also J. R. Hernández, *El porte de la Libre Empresa*, *El Caribe*, Jan. 31, 1963, at 6.

34. The text is in *El Caribe*, Feb. 10, 1963, at 10-11.

35. The text is in *El Caribe*, April 13, 1963, at 13. See also PARTIDO DEMOCRATA CRISTIANO, *UN INFORME: SEIS MESES DE GOBIERNO*, 27 DE FEBRERO-27 DE AGOSTO, 1963, at 4 (1963).

because of what it said and what it omitted, and because it was so different from the previous constitutions. It provided the first concrete issue on which the more traditional sectors of the population, who looked upon Bosch as a dangerous radical who threatened their special privileged place in the society, could concentrate their protests. Constitutional questions also served as a convenient smokescreen behind which these groups could disguise their more selfish reasons for subverting the government. The military might of the armed forces soon joined with the spiritual and moral leadership of the Church and with the economic power of the business-landowning interests to overthrow the constitutional government.<sup>36</sup>

In their first acts after the coup of September 25, 1963, the armed forces dissolved the Congress, turned power over to a civilian Triumvirate, and annulled the Bosch-PRD constitution to pave the way for the restoration of the 1962 basic law. In the period that followed, Bosch and many of his followers were exiled or jailed; organizations associated with the ousted government were persecuted and deprived of a voice in national decision-making; and the Dominican Republic returned to rule by a small wealthy and privileged elite who were more concerned with the preservation of the traditional order than with reform. Abuses of power—such as graft, terrorism, and indiscriminate jailings—reached proportions which to many Dominicans were reminiscent of the Trujillo era.<sup>37</sup> As the political situation thus degenerated, sentiment grew among all sectors of the population—labor, peasants, middle class, students, as well as, ironically, business elements and the armed forces—for a return to constitutionality. Most Dominicans did not have very detailed or sophisticated knowledge of the technical differences between the two constitutions; but “constitutionalism” in its broadest sense—symbolizing freedom, social justice, national development, the absence of oppression—soon be-

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36. Though the constitutional status of the armed forces was basically unchanged in the 1963 constitution, the military was equally apprehensive concerning the Bosch regime and were clearly influenced by the constitutional arguments put forth by the other opposition groups. The White Book which the armed forces issued to justify the coup included documents from both the Church and business-agricultural leaders criticizing the constitution, for example; and the military was decidedly exorcised by many of the same issues that preoccupied the other more traditional groups. See *LIBRO BLANCO DE LAS FUERZAS ARMADAS Y DE LA POLICIA NACIONAL DE LA REPUBLICA DOMINICANA: ESTUDIOS Y PRUEBAS DOCUMENTALES DE LAS CAUSAS DE MOVIMIENTO REIVINDICADOR DEL 25 DE SEPTIEMBRE DE 1963*, esp. 144-46 and 189-91 (1964).

37. See H. J. Wiarda, *Trujilloism Without Trujillo*, CLI THE NEW REPUBLIC 5-6 (Sept. 19, 1964); and republished in Spanish as *Trujillismo sin Trujillo*, 15 PANORAMAS [Mexico] 4-7 (May-June 1965).

came a rallying cry for all those opposed to “*neo-trujillismo*” and in favor of democratic government. It was these forces which ultimately caused the outbreak of the revolution of April 1965.

While it would be erroneous to state that the differences between the constitutions of 1962 and 1963 were the sole issues at stake in the revolution, constitutional issues provided a focus around which much of the conflict swirled. The two constitutions also served as symbols for other issues—democracy versus dictatorship, social reform versus the status quo, tyranny versus freedom, and so forth. To North Americans or Englishmen, who have come to take constitutional government for granted, it is difficult to convey the intense appeal which “constitutionalism” had for the Dominicans, who have never enjoyed more than fleeting periods of constitutional and democratic rule. The so-called “rebels,” who favored the restoration of the constitution of 1963 and were therefore also known as “constitutionalists,” sought with the greatest scrupulousness to follow constitutional procedures and declared unequivocally that they would accept no settlement until the 1963 document was restored. Most journalists who covered the upheaval mistakenly assumed that the return of Juan Bosch to the presidency was the major objective of the “constitutionalists.” In fact, the reinstatement of Bosch was only one part, though a major part to be sure, of the more important issue of the return to constitutionalism. It was also politically advantageous on the part of those who began the revolt to stand for constitutionalism rather than just for Bosch, since not all of the many Dominicans who favored constitutionalism necessarily wanted Bosch back in the presidency. By the same token the civil-military junta was steadfastly opposed to the restoration of the 1963 constitution and sought to maintain the 1962 document.<sup>38</sup>

As symbolic documents the two constitutions took on added importance. For the “constitutionalists” the 1962 basic law symbolized the Trujillo dictatorship and the oligarchic rule of the pre-Bosch Council of State and the post-Bosch Triumvirate and all the corruption, oppression, tyranny, and so forth, which had been a part of these periods; while that of 1963 represented freedom, democracy, and the prospect of social justice. On the other hand, General Antonio Imbert, the junta leader, described the 1963 constitution as “Godless and Communistic”;

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38. See the many declarations of the two sides as published in their newspapers, especially *La Nación* and *Patria* of the “constitutionalists”; as well as Szulc, *Dominican Diary*, *supra* note 24, *passim*; L. Winfrey, *Constitution Key to Dispute*, *Miami Herald*, June 20, 1965, §A, at 17; and D. Kurzman, *Dominican Constitutionalism*, XLIX *THE NEW LEADER* 9-10 (July 18, 1966).

and while there was no great emotional attachment to the 1962 document on the part of those who favored the junta, they did tend to see in it a symbol of peace, order, stability, and the traditional status quo.<sup>39</sup> The constitutions of 1962 and 1963 thus did not represent only conflicting ideas concerning governmental structures and institutions but rather symbolized wholly different and opposed conceptions of society, sets of fundamental values, and ways of life.

## CONCLUSIONS AND IMPLICATIONS

A constitution is not simply a neutral document which impartially spells out the respective powers of the several branches of government, but is an intimate part of the dynamics of the political process and cannot be divorced from the emotional conflict, the give-and-take, the hurly-burly of everyday politics. This is particularly true in developing nations like the Dominican Republic where the entire population is now for the first time being politicized and mobilized and where "constitutionalism," instead of the traditional lip service to constitutional principles, has become in most recent years a major issue of social and political conflict. The constitutions of 1962 and 1963 were not just the subject of more-or-less peaceful conflicts of interest among differing individuals and organized groups, but were important factors in provoking violent discord, in polarizing the society, and in contributing to the near-total breakdown of the system into revolution and civil war.

The differences between the combatants in the revolution concerning the constitutional question and the issues that revolved around this key dispute were so deep and so bitter that no compromise solution could be found. Indeed, the two sides were so far apart that no basis for negotiation—let alone agreement—could be found. For the two constitutions defined in written form the most basic disputes between the two factions. The constitutions of 1962 and 1963 not only differed structurally, but were also symbolic reflections of the regimes' ideologies. Representatives of the United States and Organization of American States, who labored to resolve the conflict, sought eventually to avoid further divisive con-

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39. See Brugal, *supra* note 1, *passim*. Brugal was public relations director for the Imbert "Government of National Reconstruction," and his book contains a number of valuable, previously unpublished documents.



frontations over the basic constitutional issues and took no public position on which constitution they preferred.<sup>40</sup>

The controversy was not settled definitively; the best that could be accomplished after lengthy negotiations was to avoid an either-or decision on the question of the two constitutions until an elected government could deal with it. After some three months of discussion, coupled at times with strong pressure on the part of the United States, the two sides signed an "Act of Reconciliation," which outlined how peace might better be restored, and an "Institutional Act," which was to serve as an interim constitution.<sup>41</sup> Under the Institutional Act Héctor García Godoy was installed in the presidency and elections were scheduled for June 1, 1966.

During García Godoy's interim rule sporadic but violent clashes continued to take place between the "constitutionalists" and the "loyalists." But García Godoy survived this series of crises and presided over the holding of the scheduled elections. The elections were won by moderate Joaquín Balaguer and his *Partido Reformista*, and the new government was inaugurated on July 1, 1966. In accord with a provision of the Institutional Act, the incoming Balaguer administration soon issued a call for a wholly new constitution.<sup>42</sup> The issue again provoked a great deal of discussion in the Dominican Republic: the pro-Bosch and pro-PRD "constitutionalist" forces generally argued that the 1963 constitution should be used as a model (or even reinstituted) while the more traditional sectors found this totally unacceptable.<sup>43</sup> A brief comment on the new constitution, based on the preceding discussion, would be an appropriate way to terminate this paper since the issues involved illustrate clearly the constitutional-political dilemmas which the country faces.

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40. U.S. Ambassador to the OAS Ellsworth Bunker, who headed the OAS Commission in the Dominican Republic seeking to resolve the political impasse, at one time stated that this was the thorniest problem he had worked on in his long diplomatic career. On the negotiations carried out during the summer of 1965 to try to reach a compromise solution see the paper in preparation by A. F. Lowenthal of Harvard University.

41. The text of the Institutional Act is in *N. Y. Times*, September 1, 1965, at 10.

42. *Listin Diario*, June 11, 1966, at 1.

43. See especially M. Bobea Billini, *Como será Elaborada la nueva Constitución de la República?*, *El Caribe*, March 12, 1966, §A, at 14; *La Nueva Constitución*, *El Caribe*, June 13, 1966, at 8; and *El Caribe*, October 8, 1966, §A, at 1. Additional discussion of the new constitution may be found in the major Dominican newspapers during the last six months of 1966.



Since constitutions and constitutionalism are so intimate a part of the dynamics of the political process, especially in the Dominican Republic, it could not be expected that the new constitution would be a neutral document, free from partisan conflicts. And, indeed, the debate in the Constituent Assembly (consisting of the members of both chambers of the Congress meeting jointly) between the representatives of the Dominican Revolutionary Party and Balaguer's *Reformistas* (who had a large majority) was often bitter and acrimonious. At one time the PRD delegation walked out in protest.<sup>44</sup> Nevertheless, the views of the opposition were listened to and sometimes even incorporated into the text. In addition, different groups in the society were consulted concerning articles affecting their interests, and the entire process of constitution-drafting and promulgation was accomplished peacefully and within a democratic framework.

The constitution which resulted was itself clearly a product of group consultation, of the more pragmatic and compromising context in which it was worked out. President Balaguer, as the leader of the majority party within the Assembly, called the finished product "realistic," a "reflection of the nation's history," "progressive but not utopian," and "free of controversial materials which could provoke fear or desperate anxiety in vast sectors of the population."<sup>45</sup> The constitution was indeed all of these things. As in all Dominican constitutions from 1844 onward, the opening articles stated that government was civil, democratic, and representative; the traditional human and political freedoms were enumerated; and the classic three-part division of powers was retained. At the same time a long section on social justice for the poor and downtrodden was included; but the articles in this section were clear and unambiguous, did not seem to threaten private property, gave workers and employers equal rights in disputes, and in general, while being reformist in tone, did not constitute an assault upon, or an intimidation of, the propertied or more traditional elements.

Reflecting nationalistic sentiment, furthermore, the constitution contained an article condemning foreign intervention in internal Dominican affairs; but also included was an article prohibiting subversive prop-

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44. See *El Caribe*, October 15, 1966, at 1. The text of a communique issued by the minority party explaining the reasons for the walkout may be found in the same source, at 20.

45. See the reports of Balaguer's speech to the nation in *El Caribe* and *Listin Diario*, December 6, 1966, at 1. See also F. C. Álvarez, *La Constitución del Estado Según la ve El Presidents*, *El Caribe*, December 10, 1966, §A, at 14.

aganda, which helped placate the armed forces and the Church. The fundamental law promulgated by the Balaguer government contained no mention of the Concordat signed by the dictator Trujillo and the Holy See, the omission of which in the Bosch-PRD constitution of 1963 had caused the Church to join in the movement to topple the government; but neither did it contain the "Communitistic" articles which business, landowners, the Church, and other elements had objected to so strenuously in 1963. In fact, the new constitution had something for nearly everyone and few items to which anyone could violently object; it found a middle position or remained silent on almost all the issues that had proved to be so controversial in the 1962 and 1963 constitutions. It reflected the fact that whereas Bosch was an idealist who wanted his and the Party's ideals expressed in the constitution without adequate regard for the political consequences, Balaguer was preeminently a politician who was always willing to accept less than the "ideal" and to occupy a more-or-less consensual position in the middle of the road.<sup>46</sup>

The promulgation of the 1966 constitution and Balaguer's first year and a half in office under the new basic law may well have helped reduce the level of social and political tension in the Dominican Republic. Balaguer's success in surviving in office longer than any of the previous post-Trujillo governments is due in large part to the compromise, middle-of-the-road nature of his policies and to the fact that the 1966 constitution was far less controversial and less radical than its predecessor. At the same time, Balaguer benefited from the fact that he had beaten Bosch in the elections and that his government was considered by almost all Dominicans to be legitimate and constitutional. An examination of the moderate to liberal press during this period, such as the weekly news magazine *Ahora* and the daily newspapers *El Nacional* and *Listín Diario*, which had been pro-constitutionalist and sometimes outspokenly pro-Bosch, reveals that at least this sector of Dominican opinion, and undoubtedly others as well became more favorably disposed toward Balaguer when his government became "constitutional." This seems to demonstrate again that the Balaguer constitution had a symbolic or political value intrinsic to it which augmented or altered what would otherwise have been the expected reaction to the regime per se.

Though it is yet too early to assess with confidence either the impact which the new constitution will have on the political process, the extent

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46. The text of the new constitution may be found in *Listín Diario*, November 29, 1966, at 8-10.

to which it will be adhered to by the various sectors active in the nation's politics, or even the possibility of Balaguer lasting out his term of office, this seems to have been precisely the kind of constitution which the Dominican Republic required. Most needed was a constitution which incorporated the best features of previous documents and which was expressed in moderate, non-inflammatory terms. For the Dominican Republic remains a deeply divided, highly fragmented nation in which the possibilities of armed violence and the renewal of civil strife are ever present. To prevent these divisions from becoming so pronounced as to result in revolution, a constitution was required which could not be associated with Trujilloism and dictatorship and which, conversely, did not symbolize revolution and anarchy; which was reformist and nationalistic in its orientation, but which was acceptable to the more traditional elements; which, in short, was a cohesive force in the political system rather than a further divisive force. A basic law was needed that symbolically and practically would be an agent, not of conflict, but of consensus. The fact that Balaguer was himself moderate, willing to compromise, democratically elected, and with, thereby, a strong claim to legitimacy, and that his constitution seemed to meet these major requirements, may serve to further increase the possibilities for the success of constitutional government and democratic development in the Dominican Republic.