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Solving the Economic Dilemma of Developing Areas: The Example of Pan-Americanism at the Crossroads

Integration or Else

Georges D. Landau*

Upon considering the evolution of a century of world law, midway in which humanity now finds itself, one becomes at once aware of the inherent drama of this historic moment, set against the backdrop of the contemporary "revolution of rising expectations" that seek expression in legal and institutional formulae of international organization. To this widespread but elusive vision of universal welfare, actively promoted by international technocracy in a world where, as a starting point, scant welfare is available for general distribution, the overwhelming majority of mankind, from developing countries in widely varying stages of advancement towards self-sustaining economic growth, address themselves. Today, in addition to this development, a new concept is appearing on the horizon as the result of the trend away from nationalism and towards regional boundaries and the concomitant resurgence of the pan-national movements characteristic of the formative stages of the present constellation of nation states. The concept is that of integration, in the sense of the formation of geo-economic autarchic multinational complexes. While the ideology of integration holds a definite political connotation for the privileged states of the "have" group, it is viewed by those of the "have not" category, whether rightly or wrongly, as one of the principal instrumentalities, if not as a panacea, for the attainment of development, to which every other consideration becomes peripheral. The recent collapse of the imperial colonial structure and the subsequent atomization of sovereignties, which engendered largely

* Any opinions expressed in this article are the sole responsibility of the author and should not be attributed to the organization with which he is connected. Footnote citations have been supplied by the research staff of the Western Reserve Law Review.
nonviable political unities — typifying a centrifugally oriented cycle of history, in contrast with the centripetal orientation of the last century — has contributed markedly to this effect.

While it would be foolish to attempt to analyse so wide a subject as the juridical and institutional repercussions of the binomial "integration-development" within the narrow confines of such a short essay, there is one area of the globe where this dual phenomenon is actually taking place under such circumstances as to deserve the most careful consideration. This area is Latin America, which, coincidentally, stands presently at the crossroads of history, confronted with either becoming economically integrated or facing the possible alternatives and their implications for future generations.

The Latin American experience with integration, to be examined summarily both in retrospect and in its projections over the next quarter-century, is of course quite unique. Some conclusions may be drawn, however, that could incidentally cast light upon the prospects of other multinational communities also in the throes of development and confronted with similar choices as to their reciprocal interaction and their posture vis-à-vis the conflicting undercurrents rippling through our mid-twentieth century civilisation. In the following pages, an attempt will therefore be made to provide a brief historical sketch, structured along somewhat arbitrarily divided periods, of the factors affecting Latin America's imminent and momentous decision, and then to extrapolate its consequences. The standpoint will be that of the region's contribution to a century of world law.

I. ROMANTIC PHASE: FROM AMPHICTYONISM\(^1\) TO NONINTERVENTION (1892-1917)

A. Historical Disunity

Latin American integration has been occasionally viewed as a movement towards the reconstruction of past hemispheric unity, but it is nothing of the kind. The region has never had such unity, not even under Iberian colonial rule. It has always been an ethnic, social, and political archipelago with considerable disunity among its component islands. First, there was the basic dichotomy between the Spanish and Portuguese dominated halves of the continent,\(^1\)

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\(^1\) The "amphictyony" of ancient Greece was a league of tribes which originally maintained a central shrine, as in the Delphic Amphictyony. Deputies from each tribe or city came together in an Amphictyonic Council where they decided political as well as religious matters of common concern. *COLUM. ENCYC.* 69 (3d ed. 1963).
which apart from the formal superstructure of colonial control, expressed itself in unequal degrees of racial miscegenation with the indigenous populations (which in turn originated from differing stock) and with the imported contingents of African origin. There were North, Central, and South American groupings, continental and insular peoples, Pacific, Atlantic, and Caribbean interests, cultures of the mountains and of the plains, agrarian and mining economies, and different centres of colonial power around which all of these gravitated. One thing, however, that these colonies all shared, apart from loose spiritual affinities and a strong cultural affiliation with their respective mother countries, was the fact that they were outwardly turned and dependent for almost everything upon the remote metropolis.

The Napoleonic wars isolated the continent which would have been nearly cut off from the outside world were it not for the Royal Navy; this fortuitous circumstance gave the colonies self-rule and subsequent independence, either during the wars or at their termination when the Holy Alliance desired to reassert Spanish and Portuguese dominance over the colonies. This gave Latin America its first taste of collective introspection and of an inwardly turned awareness of its own identity.

In the aftermath of independence, there appeared in 1823 the Monroe Doctrine — partly attributable to Canning’s clever maneuvering in the grand tradition of British diplomacy — which was designed to counteract the threatening power of Metternich’s Alliance while at the same time transferring the economic dependence of the colonies to Britain herself. The Doctrine, which the United States conveniently endorsed and with enlightened self-interest made its own, contributed to this budding introspection. But the formal unity superimposed on the region during colonial rule had a flimsy foundation indeed, which was eroded through the emancipation movement. Political fragmentation ensued, and aggressively na-

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2 Between August and September of 1823, Canning’s government in London sounded out Ambassador Rush of the United States on the possibility of issuing a joint Declaration to the effect that neither country had territorial ambitions in Spanish America and jointly warning against such ambitions by any other power. Rush indicated that the United States would be willing only if the United Kingdom also recognized the independence of those states already independent of Spain, a condition “which American opinion would demand, but one which Canning neither would nor could yet fulfill.” *New Cambridge Modern History* 682 (Crawley ed. 1965). Instead, on the advice of Secretary of State Adams, President Monroe proclaimed by a special message on December 2, 1823, that the United States “would not allow any European Power to impose on independent governments, recognised by the United States, the essentially different political system of the Allied Powers.” *Ibid.*
tional States appeared, with scarcely any cohesion or sense of a common destiny.

B. Genesis of the Inter-American System

Then came the amphictyonists, who wished to bridge the streams separating the islands of the archipelago. There were several (San Martín, Miranda, Alberdi, and Monteagudo), but Bolívar, in addition perhaps to having the clearest image of the advantages of a Latin American confederal association, set about to put the idea into motion with his initiative of staging the Congress of Panama in 1826. The latter did not accomplish what it purported to, namely, the implementation of a treaty of perpetual union, league, and confederation (which was indeed signed but never ratified) of the young states of Latin America, but instead the Congress witnessed the genesis of what has since been described as the inter-American system, namely, a complex of principles, rules, and institutions standing for an accepted code of international behaviour based on the sovereign equality of states, the peaceful settlement of international disputes, the mutual guarantee of territorial integrity, and the codification of international law. Even the creation of an inter-American peace force was proposed at the Panama Congress.

Seen in its historical perspective, as contrasted with the European political panorama of the same period, the mere enunciation, sincere as it was, of these lofty ideals is indeed noteworthy, the paradox being that for too long the nations of Latin America have relied on an impressive array of juridical instruments embodying such

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8 José de San Martín (1778-1850), who, after serving as a guerrilla leader in Europe, joined in the liberation of much of what is now Argentina, Chile, and Peru from Spanish rule. DAVIS, MAKERS OF DEMOCRACY IN LATIN AMERICA 29-31 (1945).

4 Francisco de Miranda (1752-1816), who fought in the French Revolution and in the liberation of Venezuela, urged federation of all the provinces of Spanish America. Id. at 21-24.

5 Juan Bautista Alberdi (1810-1884) was active in Argentinian post-liberation movements for federation. Id. at 49-51.

6 Bernardo de Monteagudo (1785-1825) was active in the Argentine revolution and in the liberation of Chile and Peru, besides being the author of the famous "Essay on the Necessity of a General Federation Among the Hispanic American States" which was intended to be the basis for the 1826 Congress of Panama. Id. at 35-38.

7 Simón Bolívar (1783-1830), sometimes called "El Líder," led or participated in the liberations of Venezuela, Colombia, Peru, and Bolivia. Id. at 25-28. Bolívar's plan of a confederacy of all the Western Hemisphere republics is described in FENWICK, THE ORGANIZATION OF AMERICAN STATES 14-19 (1963).

8 See Treaty of Union, League and Perpetual Confederation Among the Republics of Columbia, Central America, Peru, and the United Mexican States, July 15, 1826, in 1 DOCUMENTS ON INTER-AMERICAN COOPERATION 56 (Burr & Hussey ed. 1955).
grandiose principles. Unfortunately, they were seldom put into effect, perhaps because they were thoroughly divorced from political realities and even more so from the underlying socio-economic conditioning factors. Between 1826 and 1890 the inter-American system was characterized by frustrated attempts, made at a number of international meetings of limited attendance, to strengthen the ties among the republics of the hemisphere according to a pattern of codified legal rules, many of which were highly inappropriate to a civilisation still in the crucible. There were other treaties of confederation, but as the danger of European intervention subsided, so did the sense of solidarity of the new republics, which were extremely conscious of their recently acquired national sovereignties. The nations of Latin America ignored relations with each other, becoming occupied with Europe and, increasingly, with the United States which was then emerging as a world power and a great industrial exporter in need of captive markets, as evidenced by the Open Door policy applied in the Far East.

This latter fact, and the implications of the United States' rather erratic wielding of the power it had unilaterally assumed under the Monroe Doctrine, generated a good deal of the hostility that came to be expected on the part of the smaller Latin American nations. This, then, became the phase of sporadic and defensive Pan-Americanism upon which the Latin countries' tacitly unified stand against the "colossus of the North" was based. The movement found its legal and institutional expression in the principle of nonintervention — to this day the bugaboo of the inter-American system — which pervaded the system during the period between 1826 and 1890, leaving its deep imprint upon subsequent United States-Latin American relations.

C. Legalistic Structure of Pan-Americanism

The year 1890 was a landmark one. Owing to the farsightedness of Secretary of State Blaine, it witnessed the successful closing of the First International American Conference, held in Washington, and the institutionalization of the inter-American system, developed in later years through a number of similar conferences which gradually picked up strength and momentum. Although the founding in that year of the Commercial Bureau of the American Republics, which gave rise to the establishment of the first international regional organization still in continuous existence, may be misleading in that one might suppose the newborn international union
would be of a predominantly economic nature, the underlying structural relationships were still mainly legalistic in their character and scope. However, the Bureau did perform some statistical and trade reporting services. In the traditional inter-American fashion, the treaty establishing procedures for regional economic cooperation adopted at the Washington Conference never went into effect due to lack of ratifications, but it is interesting to note that a proposal submitted to the Conference called for the creation of an inter-American bank — an idea which the United States declined to accept until 1958. Another proposal was aimed at the establishment of an inter-American customs union in which loomed large the precedent of the Zollverein and the political implications thereof.

In 1901, at a Second Conference held in Mexico City where the idea of a Pan-American Bank was again raised, the Commercial Bureau was reorganized as the International Bureau of the American Republics, which concerned itself mainly with the harmonization of national legislations and the codification of international law within the hemisphere. In 1910, at the Fourth Conference, held in Buenos Aires, the name of the organization was changed to the more expressive “Union of American Republics,” the Bureau being then rechristened as the Pan American Union. The following Conference was scheduled to have been held in 1915, but World War I intervened, forcing postponement until 1923. At that time, in Santiago, the functions of the Union were restated and the first political manifestations within the System became apparent, thus marking the transition from legalistic Pan-Americanism to political inter-Americanism. There, again, a recommendation was adopted calling for the creation of an Inter-American Organization for Economic and Financial Co-operation, but nothing ever came out of it.

D. Nonintervention: Influence Upon “Politzization” of the System

It is a matter of speculation whether the abandonment by the United States in 1917 of its policy of noninvolvement in European affairs — erroneously labelled “isolationism,” since for a century the United States had been very much involved in Latin American affairs — contributed in some way to a growing self-assurance on the part of the Latin republics, which were still somewhat timid with

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9 The precedent was the Treaty of Berlin concerning economic integration, or “Zollverein Treaty,” promulgated July 8, 1867, by the states of Baden, Bavaria, Hesse-Darmstadt, the North German Confederation, and Württemberg, ratified Nov. 6, 1867, 19 Martens Nouveau Recueil (ser. 1) 123.
regard to their already formidable northern neighbour. At any event, this period of "politisation" of the inter-American system, at least until 1933, was characterized by repeated attempts on the part of the Latin American states to curtail the unilateral exercise of power by the United States, bringing the latter within the framework of some type of inter-American discipline. In 1933, after the catastrophic effects of the great depression and yet still under the soothing effects of the still paternalistic but well-meant "Good Neighbour" policy, the states succeeded in reinstating the principle of nonintervention. Thus ended the platonic and romantic era of the inter-American system. It was replaced in Latin America by an acute if frustrating grasp of the harsh realities of Realpolitik, which World War II, with its emphasis on the strategic significance of that part of the world, served to enhance.

In 1945, at the Conference of Chapultepec in Mexico, the members of the inter-American system managed to preserve the integrity of the regional organization\(^\text{10}\) which, although the eldest in continuous existence, was threatened with absorption into the United Nations. After the war, and with the ensuing great schism of the cold war, which in turn spurred the conclusion of the Rio Treaty\(^\text{11}\) (Inter-American Treaty of Reciprocal Assistance) in 1947 and became the model for the Brussels, NATO, Baghdad, SEATO, and other treaties for collective self-defence on the periphery of the then Sino-Soviet bloc, Latin America again experienced what practically amounted to economic and political oblivion by the United States. The Marshall Plan was intended exclusively for Europe, for example, and herein lies one of the grievances most often voiced by Latin American political leaders.

In 1948, in response to the pressing need to modernize the inter-American system, symptomatically, in the midst of a bloody revolution in the Colombian capital, the Charter of Bogotá was signed, substituting for the older institutions the Organization of American States (OAS)\(^\text{12}\) which until recently continued practically unchanged. Thereafter, there was almost exclusive concern with avoiding contagion of the hemisphere by international Communism, a policy which did not, however, prevent the fall of Cuba to Com-

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\(^{11}\) See Act of Chapultepec, March 6, 1945, in 2 DOCUMENTS ON INTER-AMERICAN COOPERATION 159 (Burr & Hussey ed. 1955).

communist domination. Until a decade after its creation, the OAS, despite its sponsorship of certain activities in the economic and social fields, was dedicated chiefly to the promotion of hemispheric peace and security.

II. Threshold of a Phase of Growth in Inter-Americanism (1967)

In order to understand the present juncture in inter-American relations, it is necessary to make a short recapitulation of the preceding two decades.

In its slow and painful evolution from amphictyonism to the formulation of a policy of nonintervention as one of the supporting pillars of inter-American juridical relations, the system, while undergoing a number of substantial modifications, retained a predominantly legalistic and political character which, while responsible for several important contributions to world law during the past century, notably with reference to the settlement of international disputes, had scarcely kept up with the times.

A. Discontentment With the Status Quo

If governments were lethargic and had failed to ratify, and a fortiori to give effect, to the numerous agreements they so readily seemed to have accepted, the failure was of course to be blamed on them and not on the OAS. Nevertheless, the latter, clinging to somewhat archaic conceptions and procedures, became the target of a considerable amount of criticism on the part of informed public opinion in Latin America. This was due partly to dissatisfaction with the postwar failure on the part of the United States to implement any programme of economic assistance to the southern part of the continent even remotely similar to that extended under the Marshall Plan, which meanwhile had proved a remarkable success and, incidentally, had led to a boom in Western European countries which then promptly initiated tariff discriminations favouring African over Latin American exports. Moreover, Latin Americans also felt an indefinable sense of powerless alienation in the face of a titanic match of forces between super-powers, which dramatically illustrated the ever-widening gap between industrialized and less advanced economies.

Naturally, there were other factors involved, such as the steady decline in the revenue accruing from exports of raw materials and the deterioration in the terms of trade, which caused disastrous eco-
nomic crises in basically dualistic societies such as all the Latin American countries, which were mostly dependent for their very survival upon the prices that their primary commodities could bring in world markets. Increasing popular unrest, internal political instability, and a consistent erosion in the standards of living of the middle classes, under steadily worsening and seemingly uncontrol-

able inflationary conditions, reflected a discontentment which finally and forcefully echoed in the meeting halls of the inter-America

can system.

The Economic Agreement signed at Bogotá, which unfortunately remained inoperative, and the Charter of Bogotá, containing several provisions on economic and social standards to be followed by the American states, were a concrete outcome of this spirit and led to the establishment of rudimentary machinery for handling such matters. It may be said that from that viewpoint the new Charter represented for the OAS what the related provisions of the Weimar Constitution meant in 1919 for a Germany and Europe ravaged by war. Since then, the Organization has not ceased to expand its concern with the economic and social problem areas.

B. Establishment of the Alliance for Progress

In 1958, Brazilian President Kubitschek proposed "Operation Pan America" (OPA), a scheme calling for a reappraisal of inter-

American policy and advocating a series of measures which resulted from the recognition of underdevelopment as a problem of common concern; the greatly increased provision of economic assistance to Latin America through multilateral channels — in effect, a call for an injection of economic substance into a weakening alliance, not unlike the idea of the Colombo Plan for South and Southeast Asia — was therefore reached. The United States responded with the establishment of the Inter-American Development Bank, designed to finance Latin American development projects. However, it was not until 1961 that the United States under President Kennedy launched a more comprehensive programme, the Alliance for Progress, which was institutionalized under OAS auspices in the form of a Declaration and Charter at the Punta del Este Conference of August 1961.
This new inter-American programme for social development, as the Alliance has been described, represented a radical and far-reaching departure from all preceding policy; for example, it made economic planning a respectable and indeed a welcome proposition. The Alliance meant that Latin America should undergo basic structural reforms if the alternative of violent revolution, whether internally or outwardly stimulated, was to be prevented. Support for regional plans of economic integration, a concept already enjoying considerable popularity, was one of the points provided for in the Charter of Punta del Este. It is interesting to observe that as early as 1924, Victor Haya de la Torre, founder and leader of the Peruvian political party APRA (Popular Revolutionary American Alliance), advocated integration of all Latin American republics as a vital necessity; in 1964, it was the same party that took the initiative of convening in Lima the first meeting of the Latin American Parliament, composed of delegates of various national legislative assemblies.

C. A Latin American Common Market

While it is difficult to pinpoint such information, it seems probable that active, pragmatically oriented lobbying for the idea of a Latin American Common Market started in the year before the Treaties of Rome were signed. In 1956, the United Nations Economic Commission for Latin America (ECLA), under the vigorous leadership of Raúl Prebisch (who coined the slogan that the countries of Latin America should "grow inwardly"), and after several years of study of the hemispheric economic situation, began to press with success for such regional economic integration. The basic rationale was, and still is, that since Latin America is a continent with one of the highest net rates of demographic growth, with a projected population of over 600 million by the end of the century, it is necessary to establish capital goods industries, and all the intermediary industries, in order to absorb this extraordinary supply of manpower. Other considerations were brought into play: the need to achieve economies of scale, attainable only through the expansion of the market; the wish to reduce dependence of the region on foreign countries or, more elusively, a sense of solidarity springing from a common ethnic, cultural, or political heritage; and, po-

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15 Ibid.
16 Established by the United Nations Economic and Social Council Resolution 106 (VI) of February 25 and March 5, 1948.
Economists in a number of countries went on record as favouring on technical grounds the idea of a common market. The fact that Western Europe had in 1958 shifted to free currency convertibility, whereas the reciprocal trade relations among Latin American countries were still structured by an intricate network of bilateral trade agreements, made obvious the necessity for an overhaul in this already obsolete system, and ECLA worked in that direction. In 1957, the OAS sponsored an Economic Conference, held in Buenos Aires, at which the governments of the Latin Republics agreed on the need for the establishment, in a selective, gradual, and progressive manner, of a regional common market. There followed a number of meetings of experts where this concept began to take shape. The Buenos Aires Conference deserves special mention also because it was the first occasion on which the Pan American Union expressed itself in favour of a supranational method of integration.

(1) Practical Problems of Regional Integration.—Nevertheless, the practical problems posed by the concept of regional economic integration in Latin America seemed nearly insurmountable. From an economic standpoint, aside from the lack of communications over the great geographic distances involved, there is to be noted the similarity of export products, the dependence upon a few staple commodities, mostly agricultural, the comfortable protection afforded to infant industries by high tariff barriers, the scarcity of trade within the region, the absence of a highly motivated entrepreneurial class with an export mentality, and the almost total absence of reliable statistical data. From the political and institutional standpoint, there should be noted the exacerbation of nationalistic feelings which seem to militate against integration, as would opposition of some powerful segments of the private sector, the predominant exalted notion of sovereignty, the unsatisfactory state of the legal instruments and the striving for interdependence and cooperation across national boundaries, and the lack of appropriate infrastructural procedures and a qualified bureaucracy well trained to handle the complex technical issues arising from the integration process.

(2) Schemes for Integration.—Despite all these adverse factors, two distinct schemes for regional economic integration were
launched almost simultaneously in Latin America at ECLA’s prod-
dring and largely as a manifestation of self-defence against the dis-
criminatory preferences granted by the European Economic Com-
munity (EEC) countries to their former colonies which, now as
sovereign states, were associated with the Community. The schemes
were: the Latin American Free Trade Association (LAFTA), estab-
lished by the Treaty of Montevideo, 18 which was signed in 1960
originally on behalf of seven states but which has now been ex-
tended to all eleven South American Republics (Argentina, Bolivia,
Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay,
and Venezuela); and the Central American Common Market
(CACM), created by Costa Rica, El Salvador, Guatemala, Hon-
duras, and Nicaragua, by virtue of the General Treaty for Central
American Economic Integration signed at Managua in 1960 follow-
ing a series of previously concluded partial agreements such as the
Multilateral Treaty of Free Trade and Central American Economic
Integration signed at Tegucigalpa in 1958. 19 Each of these sub-
regional arrangements has its own institutional apparatus and pro-
cedures.

In the case of Central America, the Common Market idea has
strong political underpinnings, with a view to the ideal of restoring
the former Central American Federation (excluding Panama, which,
having been founded in 1903, never was a member of the Federa-
tion), of which the individual countries of the isthmus regard them-
selves as dismembered parts. The establishment of the Organiza-
tion of Central American States (ODECA) in 1951 by the Charter
of San Salvador heralded the same pattern of increasingly close
subregional cooperation. Indeed, it was under the aegis of ODECA
that a Special Committee studied at San Salvador in June of 1964
a Guatemalan proposal aimed at the establishment of a Central
American Economic Community, complete with parliamentary, ex-
ecutive, and judicial organs. ODECA should normally have con-
stituted the ideal forum for the preliminaries to Central American
integration, but it was not of great avail for the purpose.

Just as in the case of Mexico and South America, whose early
integration talks were propitiated not by the OAS but by a theo-
retically non Latin agency — ECLA, which was a part of the United
Nations — the role of catalyst for the coming into being of the

18 For the text of the treaty, see INTERNATIONAL REGIONAL ORGANIZATIONS 345
(Lawson ed. 1962).

19 ECONOMIC INTEGRATION TREATIES OF CENTRAL AMERICA 1-20 (ROCAP ed.
Guatemala 1966).
Central American Common Market was again reserved to ECLA, in June of 1951, at its period of sessions held in Mexico City. Subsequently, still with ECLA assistance at the Secretariat level, there was established, in 1952, a Committee for Economic Cooperation of the Central American Isthmus, which conducted the actual planning for the Common Market.

(3) Legal vs. Economic Integration.—This raises an interesting issue. Both in LAFTA and in CACM, the architects of the integration schemes were economists, not diplomats or legally trained politicians, and the framework for their painstaking preparatory labour was provided by a distinctly economically oriented agency such as ECLA. In both cases, there existed organizations which in principle should have provided more appropriate stages for the discussion, in legal-institutional terms, of issues of such political transcendence as those posed by regional integration; however, they were hardly used.

One may pause here to raise the question of whether this does not reflect, in part, the increasing marginalization of the legal profession, which may render it incapable of coping with the crucial contemporary issues of development. In evaluating the contribution of a society in a state of flux, as Latin America, to a century of world law, one realizes that its achievements of even the recent past in the field of public and private international law — and the distinction itself is steadily being blurred into irrelevance — bear little or no relationship to the pressing needs of developing communities. They have to engender their own legal instrumentalities for achieving social justice under the rule of law, one of the goals which integration seeks to accomplish.

Hence, the inadequacy of institutional arrangements conceived in the light of obsolete principles and norms and the need to permeate them with the rejuvenating sap of new legal concepts was teleologically predicated upon the realities of the quest for economic progress and political feasibility. These dual factors are the essence of the integrationist ideology and, inspiring its rupture with the past, reflect themselves in juridical terms through the gradual evolution of a new legal system which cuts across the conventional barriers of international and municipal law, reaching as far as the governance of individual conduct. This is the gist of the notion of community law, peculiar to the higher levels of economic integration and perhaps the most meaningful legal innovation of our times.
D. Interplay of Sovereignty and Supranationalism

The year 1967 is of extreme importance in the context of inter-American international relations, precisely because the statesmen and peoples of Latin America have arrived at the threshold of the decision of whether or not to set up a true community. While the affirmative seems to be a foregone conclusion, it remains to be seen what form it will take, being dependent upon the interplay of sovereignty and supranationalism in the light of a federalist overtone. Thus far, neither LAFTA nor CACM have made any significant contribution to the legal theory or practice of regional economic integration. However, in order to understand the peculiar circumstances surrounding the possible merger of these two processes, it would be useful to dwell, albeit superficially, on the salient features of the two systems.

(1) Political Unification.—Throughout the Central American integration process, one perceives a consciousness of the long-term implications of common institution-building which has been implemented in such diversified areas as monetary and banking policies, higher education and technology, travel, and communications. Although the common market itself has thus far been singularly successful in the attainment of its economic goals, even though nearly every factor conspired against this result, there is a general feeling that this is but a preparatory stage for the accomplishment, by the devious conduit of functionalism, of a much grander design, namely, that of political unification which implies the reestablishment of the Federation in the isthmus (conceivably including Panama).

The process of Central American economic integration, involving as it does a rearrangement of economic factors so as to achieve optimum utilization regardless of limitations imposed by political boundaries over economic space, is itself a precursor to political unity. Two wholly unrelated examples are illustrative: those of the German Zollverein, and the experience of the United States with the implementation of the Interstate Commerce Act. Apart from the irrevocable character of the tariff concessions themselves, which step by step are bringing closer together the quite heterogeneous countries of the region (which had until then repeatedly failed to achieve integration by endogenous fiat), there is being

20 For a discussion of this Treaty, see note 9 supra and accompanying text.
spun, still slowly but with gathering speed, a veritable spider’s web of institutional links.

Taken in the aggregate, these are shaping a texture of basic unity of purpose, against the background of which the isolated attitudes of statesmen or the short-term changes in national policy somehow lose their apparent importance. As will be seen shortly, this increasing substratum of unity within the subregion is an asset and a liability when confronted with the presently increasing prospect of integrating the Central American Common Market into the wider scope of a Latin American Economic Community.

(2) Growth of Bilateral Trade Agreements.—As to the Latin American Free Trade Association, it has already been indicated that it was created on the basis of a multilateralized most-favoured-nation agreement\(^2\)\(^2\) in order to supersede the previously existing network of bilateral trade agreements linking most of the republics of South America and Mexico. Thus, from the outset it responded to a need for the facilitation of intra-zonal commercial intercourse rather than to any deeper economic commitments. Yet the Treaty of Montevideo, for all its built-in flexibility, contains embryonic provisions\(^2\)^\(^3\)\(^2\) (e.g., art. 61) of a programmatic nature, calling for the ultimate achievement of an economic community in approximately 1973 after the initial growth period of twelve years. One of the few comparative advantages that underdeveloped have over developed nations is that the former often can skip stages of evolution, and it seems possible that just that may happen in the case of LAFTA, which might quite conceivably progress from a rather loosely knit free trade zone moulding together a group of distinctly dissimilar countries to a true economic union, without going through the intermediate steps of a customs union and a common market.

Meanwhile, LAFTA has few distinctive traits. It is plagued by a slow, cumbersome, and orthodox mechanism of negotiated instead of automatic linear tariff reductions, by the very few opportunities for imaginative leadership remaining to the small cluster of technocrats in its Secretariat, by the overall economic difficulties afflicting South American exports, and notably by the obdurate unwillingness of governments to let themselves be ruled by anything resembling an integration authority endowed with powers of decision *erga omnes*, that is to say, supranational faculties of any and

\(^{2}\) See note 18 supra and accompanying text.

all kinds. Yet LAFTA is unobtrusively making headway, although at far too slow a pace for the demands of the area. Its greatest value, pertaining also in part with respect to the Central American set-up, may perhaps be of an educational nature, namely, it trains politicians and entrepreneurs to think in terms of a common goal rather than in self-interested, particularistic terms. As in development itself, the absence of an integrationist ideology, intelligible and agreeable to the major social forces, is a great handicap, for in its absence it becomes exceedingly difficult to motivate ardently nationalistic sectors of the population to broaden the purview of their movement and transpose it into regional terms.

The two mechanisms for Latin American regional economic integration, LAFTA and CACM, are sometimes accused of alienation and of attempting to import procedures that may have proved successful in Western Europe but are claimed to be inappropriate for the hemispheric ecology. Neither regional arrangement has yet to make any major novel contribution to the law of integration; even in Central America one finds only the faintest glimpse of supranational authority — the expression itself being proscribed from polite technocratic conversation lest it should shock a stray government representative. This evidences eo ipso the institutional autonomy of LAFTA and CACM from the European paradigm. On the other hand, paradoxically enough, the flexible structure of LAFTA, for instance, has been studied with great interest by representatives of some African and Southeast Asian groupings of developing nations which are potentially interested in forming similar free trade associations.

This does not mean to imply that certain institutionalised patterns of international trade can be applied with equal propriety to diverse multinational conglomerations of developing countries, since obviously a host of underlying factors have to be taken into account when setting up such an arrangement. What is good for LAFTA may not be good for the Caribbean Free Trade Agreement (CARIFTA), the West African Customs Union, the Arab or East African Common Markets. The only generally valid conclusion one is entitled to draw at this stage from this proliferation of regional integration schemes and their actual practice is that there exists a positive nexus, hinging at the very least upon the market's sheer size and its relevance to productivity, between regional economic integration and the take-off of developing countries into self-sustained economic growth. The realization of this phenomenon in the mid-
1960's marks the new drive towards integration in Latin America. What distinguishes this area from others grappling with comparable development problems is the awareness that, in projecting its integrative institutions, Latin America has available to it the multiple resources of the inter-American system — the region's most important contribution to this century of world law.

The Latin American Free Trade Association, in addition to its extraordinarily unwieldy negotiation procedure and the difficulties inherent in the decision-making process within an organisation of an intergovernmental character, has been plagued since its very inception by an ill-defined concept of reciprocity, the practical application of which makes it evident that some of the members of the Association were indeed, to paraphrase George Orwell, more equal than others. Basing the differential levels of preferential tariff concessions upon a fallacy, namely, a two-step classification of countries by relative quantitative indexes of economic development within the area, the Treaty of Montevideo, as if by design, ignored the wide heterogeneity of LAFTA members.

(3) **Economic Impetus to Political Movements.**—With the benefit of hindsight, one might argue that it would have been more realistic to classify countries at the outset according to differential qualitative grades of sectoral development, but this approach apparently was not perceived by those who pioneered the Treaty in the late 1950's. Be that as it may, the tensions generated by this glaring oversimplification and the resulting unfair treatment created serious rifts within LAFTA which have lately found expression in a subregional movement of subtle political undertones, the recent meeting in Bogotá of the Presidents (or their representatives) of Chile, Colombia, Ecuador, Peru, and Venezuela. This led to the Declaration of Bogotá, adopted on August 16, 1966, which among other things sought to establish within LAFTA preferential treatment of an intermediate category of countries, placing them between the higher and lower brackets of relative industrial advancement.

In an historical light, it is interesting to observe how the course of Latin American economic integration derived considerable impetus from external sources. In the context of the great diplomatic campaign which was undertaken with a view to the formation of a united front of developing nations (ultimately materialised as the very vocal "Group of 77") at the United Nations Conference on
Trade and Development (UNCTAD) held in Geneva in 1964, there were several rallying points for the countries of Latin America.

One of these was the Conference of Alta Gracia, held earlier in 1964 in Argentina, at which a charter was adopted containing the collective grievances to be presented at UNCTAD in coordinated action by the Latin Republics, against trade and tariff discrimination on the part of the industrialised nations. More importantly, the charter asserted the immediate connection between trade liberalisation and development. The OAS, through successive annual meetings of its Economic and Social Council (IA-ECOSOC) (Mexico, 1962; Sao Paulo, 1963; Lima, 1964; Buenos Aires, 1966) similarly provided a continued stimulus to integration by considering specific ways of promoting its rapid implementation, not only as a commercial programme but also as a full-fledged hemispheric policy with its predicted widespread ramifications. The IA-ECOSOC provided an appropriate focus for the airing of differences and the formulation of increasingly widening areas of agreement. However, the more industrialised countries, such as Argentina, Brazil, and Mexico, viewed and still view integration primarily as a means to liberalize trade, while the other countries construe it, in varying degrees, as a remedy for their more deep-seated economic afflictions.

The first meeting of the Foreign Ministers of LAFTA member states took place late in 1965, thus giving birth to an institutionalised body not originally foreseen in the Treaty of Montevideo. The thrashing out of the difficulties involved in the process of integration, the very habit of candid multilateral discussions among economic experts eventually resulting in the shaping of a loose form of esprit de corps overcoming national allegiances, equaled to some extent the earlier effect dramatically accomplished by the neo-functionalist doctrines of the Schuman and Monnet Plans in the European Communities and, incidentally, also equaled the appeal of a unified Europe as a political third force.

There, too, could be seen the fruits of ceaseless prodding by technocrats, notably those connected with ECLA, the increasing emphasis given to integration projects such as joint multinational undertakings and the financing of exports of capital goods by the Inter-American Development Bank; the encouraging initial response to UNCTAD; the assurance found in the Punta del Este Charter that under the Alliance for Progress Latin American integration would indeed be Latin and would therefore not entail the overpowering participation of the United States; the realization, espe-
cially under the influence of the Central American example, that integration could be accomplished without compromising national sovereignty; and, last but not least, widespread discontent with the seeming fruitlessness of LAFTA negotiations. All of these factors, and a few others, taken in the aggregate could not help but produce an impact and a desire for creative change on the part of the politically articulate intelligentsia of Latin America.

E. Intensification and Expansion of the Integrative Process

Dissatisfaction with the institutional deficiencies and the unnervingly slow progress of LAFTA, as well as a statesmanlike intuition of things to come should the whole of Latin America become economically integrated, thus giving a new and definitely Latin slant to inter-Americanism, prompted President Frei of Chile to address a letter in 1965 to four distinguished Latin American economists occupying the posts of key policy-making responsibility in the hemisphere's economic affairs, in which he expressed his concern with the ponderous and inadequate character of the machinery available for the management of integration and requested their technical advice, in an individual capacity, on how to overcome the problems and accelerate the process.

Three months later the four experts — Prebisch, by then Secretary-General of the United Nations Conference on Trade and Development (UNCTAD); Mayobre, Executive Director of ECLA; Herrera, President of the Inter-American Development Bank; and Sanz de Santamaría, Chairman of the Inter-American Committee on the Alliance for Progress (CIAP) established in 1962 as an agency within the OAS — replied to President Frei's letter in the form of a joint statement sent to the Heads of State of the Latin American Republics. In this report they set forth their views on the urgent need for intensification and expansion of the integrative process, conceived as a prerequisite to development, within ten years, along the framework of a regional common market as typified by the adoption inter alia of a common customs tariff applicable to imports originating outside the area. They went beyond that common market concept by advocating a series of complementary measures, pertaining to the domains of investment, monetary, and financial policy, which could better be equated with the notion of a continental economic community. This document proved to be a turning point in the dynamic drive towards Latin American economic integration because subsequently things swiftly began to hap-
pen. It should be obvious that this was only made possible by the considerable amount of preparatory work that had been performed over a period of years, paving the way for both this rather bold statement of policy and the subsequent chain of events.

At this point, a need was felt for embodying into binding legal engagements the Latin American aspirations to the fruits of modern economic and social welfare to be attained by the combination of integration and development. These widespread desires, coupled with political considerations which in any event would have demanded a drastic overhaul of the ailing inter-American system, led to the reform of the Charter of the OAS along the guidelines laid down by the Second Special Inter-American Conference held in Rio de Janeiro in 1965 which adopted the Economic and Social Act of Rio de Janeiro.24 This document is particularly important because in it the American Republics for the first time formally and emphatically recognised that the economic integration of the developing countries of the hemisphere, that is to say, all of Latin America, should constitute one of the fundamental goals of the international regional organization and that their respective policies should be reformulated accordingly.

These principles were put into draft rules on economic and social matters to be included in a reformed Charter of the OAS, planned at a long period of sessions by a Special Committee set up for the purpose in Panama City from February through April of 1966. Subsequently, in February of 1967, the Third Special Inter-American Conference convened in Buenos Aires and basing itself almost entirely on the draft adopted in Panama, approved the amendments to the charter contained in the Protocol of Buenos Aires, a legal instrument in treaty form and subject to ratification.25

Thus, in addition to a good number of other advanced economic and social standards, most of which stem from the principles of the Alliance for Progress enunciated in nonbinding form at Punta del Este, the Charter of the OAS, as amended, in effect attributes to the achievement of a Latin American common market "in the shortest possible time"26 a high degree of priority among the objectives of the inter-American system.

The Eleventh Meeting of Consultation of Foreign Ministers of the American States, held in Buenos Aires simultaneously with the

26 This thought was added in the recent and as yet unpublished amendment to the charter. ORGANIZATION OF AMERICAN STATES CHARTER art. 40, 119 U.N.T.S. 3, 20.
Third Special Conference, and entrusted with the preparation of the agenda for the hemispheric Meeting of the Heads of State, held at Punta del Este in April of 1967, included among the guidelines for this purportedly historic meeting concrete recommendations with respect to regional economic integration, conceived in terms of a collective instrumentality for the achievement of Latin American development. A definite timetable has been set requiring that the Common Market be perfected during the period between 1970 and 1985. This is to be obtained by means of the organic improvement and gradual mutual convergence, by successive stages of cooperation, union, and integration, of LAFTA and CACM, into which other countries of the region should be incorporated. It is understood that this process will also encompass the infrastructure of integration proper, that is to say, the progressive harmonization of economic policies and institutional arrangements, including municipal law systems in the relevant substantive sectors such as those of commercial, fiscal, labour, customs, and monetary law. It was up to the presidents of the American republics to pass judgment on these recommendations, which they approved at the meeting held at Punta del Este in April of 1967.

In this manner, the inter-American system, having recognised the interdependence of integration and development, will henceforth provide the institutional framework and, it is hoped, the required impulse for regional economic integration under the aegis of the Alliance for Progress. The OAS finds itself now on the verge of embarking upon a bold and dynamic adventure: that of creating unity out of diversity and thus bringing a whole civilisation into the modern age. The shaping of an economic community in the New World will be as decisive for the future of the hemisphere as were Bolívar’s initiatives in 1826 and the First International Conference of American States in 1889-90. This year of 1967, beyond doubt, marks the threshold of a new era in Pan-Americanism.

III. THE CRITICAL PHASE: FROM COOPERATION TO COMMUNITY (1968-1992)

A. Vital Function of the Jurists

There is already some evidence to the effect that Latin American jurists are not insensitive to the great demands that will be made upon them by the metamorphosis from functional cooperation of intergovernmental institutions into a community of nations. Draw-
ing freely upon the valuable juridical heritage of the inter-American system, but without confining themselves to past procedures that may have become anachronistic in the formidable transition from an individualistic society to a social age, as Radbruch\(^\text{27}\) once defined it, the jurists are in the privileged position of being able to freely create new legal-institutional concepts and to evidence the viability of integrated development under the rule of law as an alternative to that obtained by any variety of totalitarian extremism. This, indeed, may be their notable contribution to a century of world law.

Prior to the actual drafting of a general treaty of economic integration setting up the proposed Latin American Economic Community — itself a challenging and necessarily time-consuming task (even though in view of the fast pace of Latin American development, normal time requirements would have to be telescoped) — the jurists working on this range of subjects were confronted with another preliminary challenge which, had it not been successfully overcome, might have jeopardised the whole enterprise. This is because deeply ingrained misconceptions as to the nature and scope of the notion of sovereignty, prevailing even to this day in Latin American political theory, can be seized upon as convenient weaponry in the arsenal of almost any glib politician anxious to criticise or any entrepreneur whose vested interests might seemingly run contrary to economic integration.

It is unnecessary to dwell here on the complex historical and psychological reasons for this. Suffice it to mention that, as an empirical rule, it seems that the less advanced a country is from the standpoint of political and economic development, the more exalted is its concept of its own national sovereignty, a philosophy which sometimes leads to almost grotesque paradoxes. This applies to Latin America just as it does to any developing region having undergone colonial domination: hence the importance of the ultimate solution found within the legalistically inclined Latin American situation, a solution which other developing regions may perhaps find helpful in settling their comparable problems.

B. **Supranational Powers of an Integration Authority**

If it is assumed that any multinational common market arrange-

\(^{27}\) Gustav Radbruch (1878-1949), the Minister of Justice under the Weimar Republic in Germany and a jurisprudent, has had his works translated into English. The Legal Philosophy of Lask, Radbruch, and Dabin 49-224 (Wlik ed. 1950); Radbruch, Anglo-American Jurisprudence Through Continental Eyes, 52 L.Q. Rev. 538 (1963).
ment will have to rely for its effectiveness on decisions and normative instruments emanating from an executive integration authority endowed with supranational powers, it becomes readily apparent that the concept of supranationality must somehow be reconciled with that of inalienable national sovereignty, deeply entrenched in Latin American constitutional law. The solution of this dilemma was devised by a group of Latin American jurists at a meeting held in Bogotá in February of 1967, under the auspices of the Inter-American Institute of International Legal Studies. The jurists, all distinguished constitutional and international lawyers, after mature consideration of the constitutions in force in all of the American Republics and bearing in mind the example of the Europe of the "Six" as well as the international practice of their own countries, unanimously concluded that they could find no intrinsic incompatibility between constitutional provisions asserting the paramountcy of national sovereignty and the contemplated attribution of supranational powers to an integration authority.

This result, the practical importance of which in the inter-American context should not be underestimated since in effect it paved the way for the adoption and ultimate ratification of a treaty conferring such powers are deemed essential to the effective functioning of a regional economic community, was achieved by means of an ingenious functional exegesis of the constitutional instruments considered in the light of the most recent doctrines of international law. The point of departure was the concept of the state as an entity sovereign under law and dedicated to the promotion of general welfare. If a group of states were, by common consensus, to pool certain resources and then establish for their management an agency upon which they would confer, in equal proportions, certain well-defined prerogatives inherent in the exercise of sovereignty, with a view to achieving a level of development and hence of general welfare not otherwise attainable, they would thereby not only retain their sovereignty but also would be exercising it in its fullest scope and for the very purposes for which they held it. Once this postulate is adopted by the various states, as indeed it was in time for its submission to the meeting of the Heads of State, the decks will have been, figuratively speaking, cleared for action, and the spectre of national sovereignty which has for many decades haunted the inter-American system will subside into its normal and more manageable proportions. Integration may still be difficult to achieve, but at least no quixotic myths will stand in its way.
C. Hazards and Potential Benefits of Integration

As to the prospects of Latin American integration over the next quarter-century, to forecast with any degree of accuracy, or rather to try and formulate any kind of educated guess, presents well-nigh insuperable difficulties, so many and varied are the imponderables involved. The path to union is fraught with hazards, not the least of which may be premature disenchantment such as has eroded the potential of LAFTA in the face of mounting difficulties as the process follows its increasingly costly course. Whereas it is relatively easy to predict the institutional pattern the economic community presently being envisaged might adopt, it is far more difficult to foresee the positions in which it might find itself as a function of the vagaries of international relations of one or two decades hence.

It is safe to assume, for instance, on the basis of the previous experience of the inter-American system, that the Latin American Common Market would someday encompass all Central and South American and Caribbean Islands sovereign states, a present list consisting of twenty-four countries to which at least five more would be added in the near future. On the other hand, if the present Central American Common Market is allowed, as it now seems likely, to retain its identity within the hemisphere-wide structure and provided the present drive for political reunification of the isthmus is achieved, it is plausible to think that the republics of Central America would be stimulated into forming a federation, the accomplishment of which will merge at least five sovereign states.

Furthermore it is possible to conceive that as a result of this ecumenic action, which in its wake would bring about serious problems in the span of command, the regional community might be divided, for the sake of managerial convenience, into geo-economic subregions, surrounded by appropriate safeguards to prevent any internal disruptive effects. These subregions might, hypothetically, be equated with Mexico and Central America, the Caribbean States, the Pacific Andean States, the River Plate Basin States (including Bolivia), and Brazil, with the latter possibly being subdivided into a northern and a southern zone. Again, there would not foreseeably be anything to hinder the economic community from acquiring political overtones and thereby assuming a confederal character and, ultimately, perhaps that of a sui generis federation under the broader pallium of a truly Atlantic Alliance spanning the globe from one pole to another and extending to both shores of the Atlantic Ocean.

It is also now quite realistic to imagine that within a few years
there will have been evolved an interinstitutional right of legation, so that missions would be accredited to the larger economic communities in existence by that time, presumably in Europe, Africa north and south of the Sahara, Central, South, and Southeast Asia, together with Australasia, and, not surprisingly, North America. Moreover, it is within the realm of possibilities to imagine that, by virtue of the vastly increased potentialities of telecommunications and the electronic means of information retrieval which will become available to the proposed central integration authority within the Latin American economic community, a remarkable degree of normative uniformity may be achieved within the area through the harmonization of legal systems and the impact upon them of an expanding superimposed body of community law.

In more immediate terms, it is also fair to suppose that the Latin American Economic Community would equip itself with the complex institutional paraphernalia peculiar to integration movements. It would probably institute the following community organs: a regional Executive Authority charged with the central and sectoral planning, as well as with the control of the common market, and responsible for the supervision of administrative agencies which would in turn be entrusted with the management of the trade, financial, and monetary activities of the community and of its resources (social, industrial, and agrarian); a politically oriented Board of Representatives of member states, in the nature of an ultimate policy-making body for the community; an elected Parliamentary Assembly representing hemispheric public opinion, designed to serve as a forum for debate and, in some measure, control of the policies laid out by the Board and implemented by the Executive Authority; a Court of Justice to provide the highest judicial and arbitral instance for the settlement of grievances stemming from the application of community law; and an Advisory Council, composed along quasi-corporative lines, to represent the sectoral interests of the entrepreneurs and labour within the area. Other foreseeable ancillary bodies, such as a Productivity Agency, handling also matters related to the application of science and technology to regional integration and development, might gradually be evolved. All these various interrelated organs of the community would eventually find themselves in a position to make distinctive contributions to this century of law, by means of community norms superimposed, in a variety of substantive fields, upon the international and municipal law systems, filling their gaps and possibly succeeding where,
principally in the direction of the humanisation of development, the other systems had failed.

In short, the fascinating thing about Latin American integration is that so much remains to be done and there is so very little as a starting point. As to the possible alternatives to regional economic integration, they are indeed grim, for one only has to ponder what the lives of an estimated 600 million inhabitants of Latin America by the end of the twentieth century would be like under any other present or proposed system.