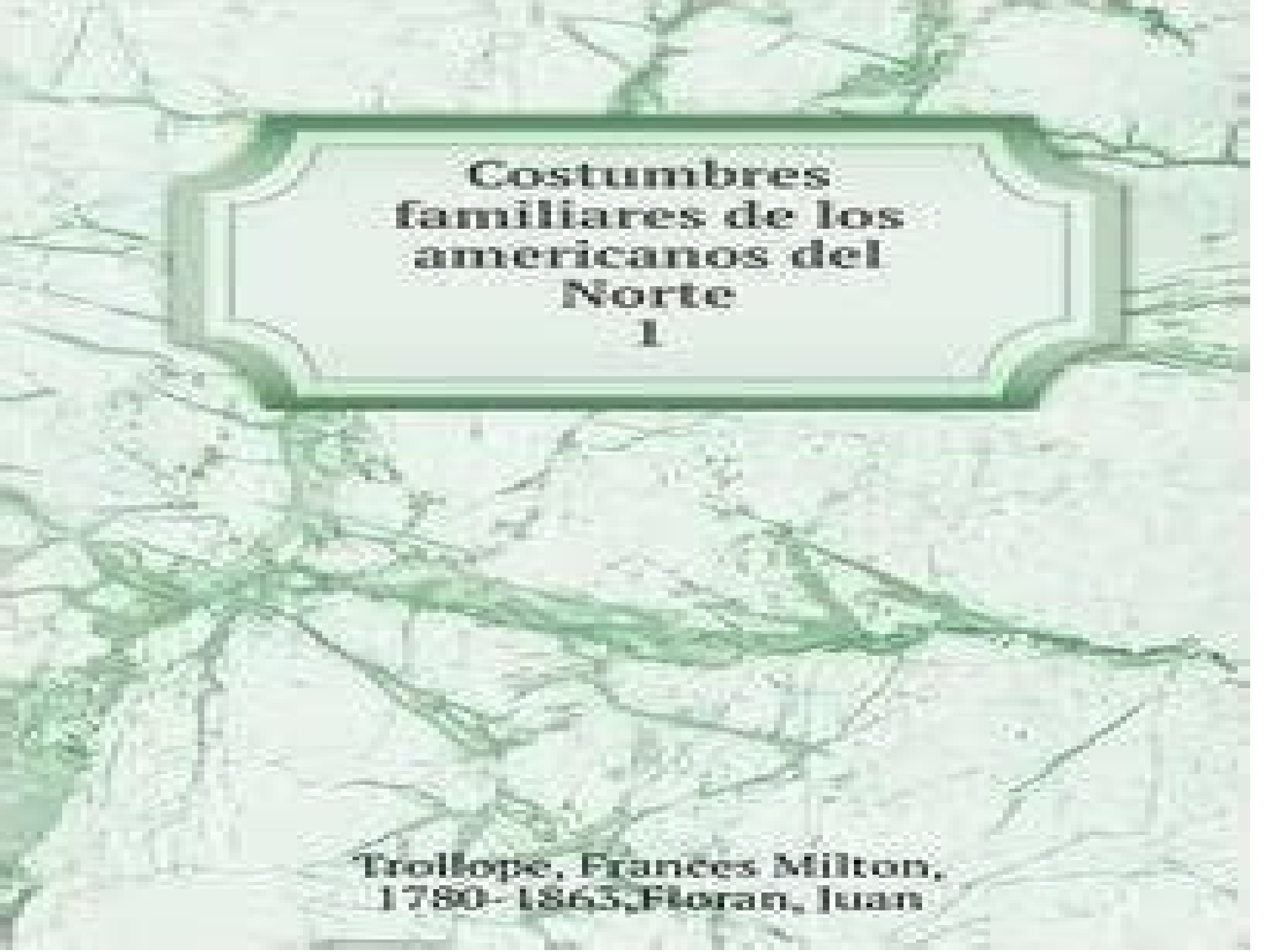


The background of the slide is a light green map of North America, showing the outlines of the continents and major water bodies. The map is centered and occupies the entire background.

Costumbres familiares de los americanos del Norte I

**Trollope, Frances Milton,
1780-1863, Florán, Juan**

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Frances Milton Trollope



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Los inicios de la justicia constitucional en los Estados Unidos (1787-1864). Vol. 1º. Del Bonham's Case de Sir
Edward Coke (1610) a John Marshall y Marbury v. Madison (1803) , The work *La Justicia Constitucional Su devenir a*
lo largo de un siglo y medio 1787 1938 through four extensive volumes aims to carefully study the evolution of constitutional
justice in the century and a half that has elapsed since the North American Constitution of 1787 until 1938 the Austrian
Constitutional Court's last year of operation given that in 1938 following the invasion of Austria by Nazi troops the Austrian
Federal Republic ceased to exist and with it obviously the Constitutional Court an institution whose paternity must be
attributed to Kelsen The first volume of this work focuses on North America with a time frame between 1787 and 1864 the
year of the death of the Chief Justice of the Supreme Court Roger Brooke Taney whose Court like the one that preceded him
under the Chief Justiceship of John Marshall declared a federal law unconstitutional Although the transcendental question of
whether the Federal Convention of Philadelphia recognized judicial review that is the judicial power to control the
constitutionality of laws it has been and still is today highly controversial by American doctrine For our part we are inclined

to think in line among many other authors with the great Harvard Professor James B Thayer that in the aforementioned Constitutional Convention it was admitted that the courts had the power to disapply a law to the case before them because of its unconstitutionality In this first volume of course we devote a preliminary chapter to the various historical precedents of judicial review of the constitutionality of laws paying particular attention to the figure of that great English judge who was Lord Edward Coke and the famous *Bonham's case* 1610 which would have such a great impact on the English colonies in America also taking into account the review of colonial legislation carried out by the Privy Council and its occasional application of the *ultra vires* principle The figure of James Otis and his intervention in the *transcendental Writs of assistance case* 1761 also deserves very particular attention In the following chapter after analysing the first cases of exercise of judicial review by state courts we pay close attention to the Constitutional Convention in Philadelphia and its position before judicial review after which we go on to analyse in some detail the discussion that arose in some state Conventions for ratification of the Federal Constitution very particularly in the New York Convention which led to criticism of the Constitution of the anti federalist Brutus and the replies of Alexander Hamilton in *The Federalist Papers* This chapter closes with the analysis of the Judiciary Act of 1789 The third chapter examines in some detail the future of the judicial review in what is usually identified as the pre Marshall Court 1789 1801 taking a look at some of the most relevant cases from the litigation arising from the *Invalid Pension Acts* 1792 and 1794 to *Cooper v Telfair* 1800 without forgetting the exercise of judicial review by some state courts The study of the Federalist Alien and Sedition Acts 1798 and the disproportionate Republican reaction to those laws reflected in the Virginia and Kentucky Resolutions closes this chapter The two subsequent chapters focus their attention on the Marshall Court 1801 1835 successively analysing the background of the *Marbury* opinion chapter four which we believe is essential for a better understanding of the *Marbury v Madison* case the judgment itself to which we dedicate extensive attention with the study among other aspects of the two argumentative blocks the different critical considerations raised by John Marshall's argument and of the various arguments both of a general nature and taken from the literal text of the Constitution on which the Chief Justice was going to base the doctrine of judicial review In the second volume the work analyses the contract clause the outstanding *Fletcher v Peck* opinion 1810 and the control of the constitutionality of state legislation by the Marshall Court which gives rise to studying the progressively broader interpretation of the aforementioned constitutional clause in subsequent years which would lead to such transcendental cases as that of *Dartmouth College* 1819 or that of *Ogden v Saunders* 1827 all of them are the subject of a detailed study Chapter seven and the last of this second volume focuses on the judicial review in the Taney Court in which originally the emphasis is placed on the *Dred Scott v Sandford* opinion 1857 which is the object of very careful attention As this judgment is difficult to understand if it is not framed in the historical development of slavery in North America and the legal status of people of colour the chapter pays particular attention to them studying from the Fugitive Acts and the reaction of some States through the Personal Liberty

Laws to the Kansas Nebraska Act of 1854 without forgetting the Missouri controversy the Mexican War and the David Wilmot Proviso 1846 as well as the later Missouri Compromise 1850 The political interference over the judgment by President James Buchanan Taney's supposed opinion of the court the different concurring opinions and in a very particular way the two dissenting opinions of Justices McLean and Curtis are the subject of a very special attention as well as the reactions triggered by the judgment and the situation of the Supreme Court before the Civil War In the third and fourth volumes of the work the aim is to study the future of constitutional justice in Europe with particular attention to the situation in France the European impact of liberal democratic constitutionalism which finds its paradigm in the Constitution of the Church of Saint Paul of Frankfurt Frankfurter Paulskirchenverfassung of 1849 which contemplated a constitutional jurisdiction with broad powers constitutional justice in the two Swiss Constitutions and the Constitution of the Austro Hungarian Empire of 1867 which would lead to the institutionalization of the Reich Court Reichsgericht considered by Battaglini as the first attempt to institutionalize a Constitutional Court We will also pay particular attention to Jellinek and his important booklet *Ein Verfassungsgerichtshof für Österreich* 1885 What has been called the Weimar laboratory will also be the object of careful study and as could not be otherwise Kelsen and his extraordinary scientific work which in the present case would find its culmination in the Austrian Constitutional Court Obviously we will not leave aside the exciting controversy between Carl Schmitt and Hans Kelsen Along with the previous one we will examine some transcendental aspects of the evolution of the United States Supreme Court from the entry into force of the Reconstruction Amendments to the New Deal cases and President Roosevelt's Court packing plan of February 1937 And finally we will not stop paying attention to constitutional justice in Latin America whose interest seems to us beyond any doubt Francisco Fernández Segado *La obra La Justicia Constitucional Su devenir a lo largo de un siglo y medio 1787-1937* pretende a través de tres extensos volúmenes estudiar detenidamente la evolución de la justicia constitucional en el siglo y medio transcurrido desde la Constitución norteamericana de 1787 hasta 1937 último año de funcionamiento del Tribunal Constitucional austriaco dado que en 1938 a raíz de la invasión de Austria por las tropas nazis la República Federal Austriaca dejó de hecho de existir y con ella obviamente el Tribunal Constitucional institución cuya paternidad ha de atribuirse a Kelsen El primer volumen de esta obra se centra en Norteamérica delimitándose temporalmente entre 1787 y 1864 año de la muerte del Presidente Chief Justice de la Corte Suprema Roger Brooke Taney cuyo Tribunal al igual que el que le antecedió bajo la presidencia de John Marshall declaró una ley federal inconstitucional Aunque la trascendental cuestión de si en la Convención Federal de Filadelfia se reconoció la judicial review esto es la facultad judicial de controlar la constitucionalidad de las leyes ha sido y todavía hoy lo es altamente controvertida por la doctrina estadounidense por nuestra parte nos inclinamos a pensar en la línea entre otros muchos autores del gran Profesor de Harvard James B Thayer que en la citada Convención Constitucional se admitió que los tribunales disponían de la facultad de inaplicar una ley al caso de que estuvieran conociendo por razón de su inconstitucionalidad En

este primer volumen por su puesto dedicamos un capítulo preliminar a los diversos precedentes históricos de la revisión judicial de la constitucionalidad de las leyes prestando una particular atención a la figura de ese gran juez inglés que fue Lord Edward Coke y al célebre *Bonham's case* 1610 que tan gran impacto tendría en las colonias inglesas de América atendiendo asimismo a la revisión de la legislación colonial llevada a cabo por el Privy Council y a su ocasional aplicación del *ultra vires* principle. Una muy particular atención merece asimismo la figura de James Otis y su intervención en el trascendental *Writs of assistance case* 1761. En el siguiente capítulo tras analizar los primeros casos de ejercicio por los tribunales estatales de la judicial review prestamos una detenida atención a la Convención Constitucional de Filadelfia y a su posicionamiento ante la judicial review tras lo que pasamos a analizar con cierto detalle la discusión suscitada en algunas Convenciones estatales de ratificación de la Constitución Federal de modo muy particular en la Convención de Nueva York que propició las críticas a la Constitución del antifederalista Brutus y las réplicas de Alexander Hamilton en *The Federalist Papers*. Cierra este capítulo el análisis de la Judiciary Act de 1789. El capítulo tercero examina con cierto detenimiento el devenir de la judicial review en la que se suele identificar como la pre-Marshall Court 1789-1801 llevando a cabo un recorrido por algunos de los casos más relevantes desde los litigios suscitados por las Leyes de Pensiones de Indultos 1792 y 1794 hasta el caso *Cooper v Telfair* 1800 sin olvidar el ejercicio de la judicial review por algunos tribunales estatales. El estudio de las Federalistas *Alien and Sedition Acts* 1798 y de la desmesurada reacción Republicana frente a esas leyes plasmada en las *Virginia and Kentucky Resolutions* cierra este capítulo. Los tres capítulos subsiguientes centran su punto de atención en la Marshall Court 1801-1835 analizando sucesivamente el background de la *Marbury opinion* capítulo cuarto creemos que imprescindible para la mejor comprensión del caso *Marbury v Madison* la sentencia propiamente dicha a la que dedicamos una amplia atención con el estudio entre otros aspectos de los dos bloques argumentales de la misma de las diferentes consideraciones críticas suscitadas por la argumentación de John Marshall y de los diversos argumentos tanto de carácter general como entresacados del texto literal la Constitución en los que el Chief Justice iba a fundamentar la doctrina de la judicial review. A su vez en el Capítulo sexto se analiza la contract clause el caso *Fletcher v Peck* 1810 y el control de constitucionalidad de la legislación estatal por la Marshall Court lo que da pie para estudiar la progresivamente más amplia interpretación de la citada cláusula constitucional en los años subsiguientes que propició a casos tan trascendentales como el de *Dartmouth College* 1819 o el de *Ogden v Saunders* 1827 todos ellos objeto de un detenido estudio. El capítulo siete y el último de este primer volumen pone su foco de atención en la judicial review en la Taney Court en la que primigeniamente se pone el acento en el caso *Dred Scott v Sanford* 1857 que es objeto de una muy detenida atención. Como esta sentencia es difícilmente comprensible si no se enmarca en el devenir histórico en Norteamérica de la esclavitud y del estatuto jurídico de las personas de color el capítulo presta particular atención a los mismos estudiando desde las Leyes de Fugitivos y la reacción de algunos Estados a través de las *Personal Liberty Laws* hasta la *Kansas Nebraska Act* de 1854 sin olvidar la controversia de Misuri la guerra de México y el

Proviso de David Wilmot 1846 as como el posterior Missouri Compromise 1850 Las interferencias políticas sobre la sentencia por parte del Presidente James Buchanan la supuestamente opinion of the court de Taney las diferentes concurring opinions y de modo muy particular las dos dissenting opinions de los jueces Mc Lean y Curtis son objeto de una particular atenci n al igual que las reacciones desencadenadas por la sentencia y la situaci n de la Supreme Court ante la Guerra Civil En los vol menes segundo y tercero de la obra se pretende estudiar el devenir de la justicia constitucional en Europa con particular atenci n al caso de Francia el impacto europeo del constitucionalismo democtecr tico liberal que encuentra su paradigma en la Constituci n de la Iglesia de San Pablo de Frankfurt Frankfurter Paulskirchenverfassung de 1849 en la que se contemplaba una jurisdicci n constitucional con amplias atribuciones la justicia constitucional en las dos Constituciones suizas y la Constituci n del Imperio austro h ngaro de 1867 que propiciar a la institucionalizaci n del Tribunal del Imperio Reichsgericht considerado por Battaglini como el primer intento de institucionalizaci n de un Tribunal Constitucional Particular atenci n prestaremos asimismo a Jellineck y su importante op sculo Ein Verfassungsgerichtshof f r sterreich 1885 El que se ha dado en llamar el laboratorio de Weimar ser asimismo objeto de detenido estudio y como no pod a ser de otro modo Kelsen y su extraordinaria obra cient fica que lo que ahora interesa encontrar a su culmen en el Tribunal Constitucional austriaco Como es obvio no dejaremos de lado la apasionante pol mica entre Carl Schmitt y Hans Kelsen Junto al anterior examinaremos algunos aspectos trascendentales del devenir de la Corte Suprema norteamericana desde la entrada en vigor de las Enmiendas de la Reconstrucci n hasta los New Deal cases y el Court packing plan del Presidente Roosevelt de febrero de 1937 Y en fin no dejaremos de prestar atenci n a la justicia constitucional en Am rica Latina cuyo inter s nos parece fuera de toda duda Francisco Fern ndez Segado *Guide to Microforms in Print* ,1995 **Jewish Folklore and Ethnology Review** ,1993 **Costumbres Familiares de Los Americanos Del Norte** HardPress,Trollope Frances Milton 1780-1863,2013-01 Unlike some other reproductions of classic texts 1 We have not used OCR Optical Character Recognition as this leads to bad quality books with introduced typos 2 In books where there are images such as portraits maps sketches etc We have endeavoured to keep the quality of these images so they represent accurately the original artefact Although occasionally there may be certain imperfections with these old texts we feel they deserve to be made available for future generations to enjoy *Costumbres familiares de los Americanos del norte, obra escrita en inglés por Mistress Trollope y traducida por Don Juan Floran...* Frances Milton Trollope,1835

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