

Moderation vs. Conservation: State Councils and Senates in Mexico's First Constitutional Proposals

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This essay discusses the institutions that constitution-writers in early Independent Mexico (1820s–1830s) established with the aim of protecting constitutional order from abuses by one or more of the powers of government. There were two guiding principles to these institutions: moderation and conservation. Moderating institutions should act as buffers between Legislative and Executive Powers to prevent either power encroaching onto the prerogatives of the other. Conservative institutions should undo unconstitutional acts and supervise constitutional order. The article shows Mexicans not only experimented with both types of institution, but also reworked them to create a new moderating instance within the Executive Power.

En este ensayo se discuten las instituciones constitucionales mexicanas establecidas en las décadas de 1820 y 1830 para impedir que los poderes de gobierno abusaran de sus facultades. Estas instituciones se construyeron a partir de dos principios: el de moderación y el de conservación. Las instituciones moderadoras debían mediar entre los poderes legislativo y ejecutivo para evitar que uno usurpara las prerrogativas del otro. Las instituciones conservadoras debían revocar los actos constitucionales y supervisar el orden constitucional. Se señala que los mexicanos experimentaron con ambos tipos de institución y, asimismo, crearon un nuevo organismo moderador dentro del poder ejecutivo.

Key words: Moderation, Conservation, Senates, State Councils, Mexico, Constitution, constitutional control, division of powers.

Palabras clave: moderación, conservación, senado, consejo de estado, México, constitución, control de la constitucionalidad, división de poderes.

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Independent Mexico's politicians agreed that their country need a stable political system in order to flourish. As the articles of Ana Romero-Valderrama and Frida Osorio Gonsen published in this volume show,¹ the accepted opinion amongst a large part of the political class was that this stability required two fundamental elements: 1) a written constitution which would provide the necessary institutional framework to regulate government and its employees; and, 2) the end to factional politics and "intrigue." The aim was to limit the behavior of politicians and government employees and prevent their personal interests from interfering with the exercise of their office.

This essay proposes to analyze the first point with relation to some of the issues raised by Osorio Gonsen's discussion of the Supreme Conservative Power (SCP) and its role within the 1836 Constitution. As she points out in her article, the history of the SCP is closely linked to the constitutional discussions in Mexico over the proper division of powers. Above all, it sought to overcome what was perceived to be the nation's colonial tradition of government via centralized and despotic authorities. The search for a constitutional project for the new nation, therefore, was driven by a desire to limit the prerogatives available to the head of the executive power and to introduce mechanisms that would prevent him overstepping them.

One of the key concepts used during the constitutional debate of the 1820s and 1830s was that of "moderation;" often in reference to a "moderate monarchy" (*una monarquía moderada*) or a "moderating Senate" (e.g. *Senado moderador*). In both cases, the idea of moderation implied the tempering, or the restraint, of power. As Andreas Timmermann has noted, the concept of moderation as a constitutional tool had roots in both Spanish scholasticism and eighteenth-century political French thought.² The second key concept was that of "conservation;" this generally referred to the proposal to establish a fourth institution within the division of powers to act as a constitutional guardian. This "conservative power" could be a monarch or a senate, and should have the prerogative to repeal the unconstitutional acts of the other powers. Emmanuel Sieyès and

1. See "Asociación e identidad 'imparcial': una propuesta alternativa a las logias masónicas en la administración de Guadalupe Victoria (1826–1828)" by Ana Romero-Valderrama; and "Seeking a Balance of Power through a Neutral Third Party Mechanism: The Mexican Supreme Conservative Power (1836–1841)" by Frida Osorio Gonsen, in this issue of *Mexican Studies / Estudios Mexicanos*.

2. Andreas Timmermann, "El concepto de 'gobierno moderado' como hilo conductor en el constitucionalismo temprano de Hispanoamérica," *Estudios de Historia Moderna y Contemporánea*, no. 44 (2013): 5–25.

Benjamin Constant are considered the principal creators of this idea.³

There were three distinct moments in the constitutional debates of the 1820s y 1830s in which the ideas of moderation and conservation were popular: the first occurred during the Empire of Iturbide; the second during the constitutional debates of 1823–1825; while the third moment arose during the early 1830s as part of the discussion over possible reforms for the 1824 Constitution. Even so, very few moderating or conservative bodies were actually included in Mexico's first constitutions. The Senates in Yucatan, Xalisco and Tamaulipas's constitutions constituted one example; the Supreme Conservative Power (SCP), created by the *Siete Leyes* or 1836 Constitution, another. This essay will concentrate on the constitutional proposals made before the abolition of the 1824 Federal Constitution. My aim is to provide a genealogy of the constitutional ideas of moderation and conservation in Mexico in order to contextualize Osorio Gonsen's study of the SPC.

Moderating and Conservative Senates in Spain (1808–1820)

Within Spain, the idea of moderation was first employed by the Duke of Almodóvar in the description of the English Constitution he included as an appendix to his translation (and reworking) of Reynal's *Philosophical and Political History of the Settlements and Trade of the Europeans in the East and West Indies* (1770).⁴ In this appendix, Almodóvar explained the elements of balance in the English Constitution and highlighted the special role of the House of Lords within the division of powers: it was "a body of nobles [. . .] essential for a Constitution such as the English one," working "to uphold the rights of the King and those of the people, forming a barrier against their respective usurpations."⁵

The occupation of Spain by the troops of Napoleon Bonaparte in 1808 and the subsequent abdication of the throne by Charles IV and Ferdinand VII pushed the Spanish political elite into a debate over

3. A good introduction to this idea and its history can be found in: Lucien Jaume, "Sieyès et l'esprit du jury constitutionnaire: une reinterprétation," *Historia Constitucional* 3 (2002): 171–92, accessed September 19 2016, <http://www.historiaconstitucional.com/index.php/historiaconstitucional/article/viewArticle/175>.

4. "Prefacio para lectores apresurados," in Pedro Jiménez de Góngora y Luján Almodóvar del Río, *Constitución de Inglaterra*, ed. Jesús Vallejo (Madrid: Boletín Oficial del Estado: Centro de Estudios Políticos y Constitucionales, 2000), XI–XII. All translations in this article are my own.

5. Almodóvar del Río, *Constitución de Inglaterra*, 153.

the proper constitution for the Monarchy. In this context, Gaspar Melchor Jovellanos recommended a bicameral legislative power based on a division between a popular chamber and second higher chamber in which the nobility and clergy might sit. Just as Almodóvar had done, his proposal emphasised the importance of a chamber of nobles as a manner of balancing the relationship between monarch and the popular chamber. Most of all, Jovellanos envisaged the second chamber as “a firm bastion in defence of the Constitution,” able to protect the people from “the Supreme Power’s arbitrariness and tyranny” and to provide “constant force of inertia, against the excessive pretensions” of the “democratic spirit.”⁶

Constitutional projects that suggested adopting moderating second chambers did not find favour in the political climate of the Spanish revolution (1808–1814). In contrast, the Bayonne Statute, published in 1808 for Joseph Bonaparte’s government, championed a conservative senate, very similar to that established in Imperial France. This Senate was composed of the adult Spanish princes and twenty-four other individuals named by the monarch from amongst his ministers, the General Captains of the Navy and Army, ambassadors, state counsellors and royal counsellors (art. 32). Perhaps its most important mandate was its ability to suspend the constitution on the petition of the king in case of “armed uprising or unrest that endanger[ed] state security” or “take other emergency measures” required to restore order” (art 38).⁷

For its part, the Cadiz Constitution, adopted by the Spanish Constituent Cortes in 1812, opted for a unicameral legislative power. It did, however, share one thing in common with the Bayonne Statute: the creation of the State Council as part of the executive power. In Bayonne, the Council was to be made up of between thirty and sixty members appointed by the King (art. 52). In Cadiz, the Council was to have forty members, named by the King from a list drawn up by Cortes (art. 231). In both cases the Council was to be an advisory body to the King. The Cadiz Constitution established that the King

6. Gaspar Melchor de Jovellanos, *Memoria en que se rebaten las calumnias divulgadas contra los individuos de la Junta central y se da razón sobre la conducta y opiniones del autor desde que recobró su libertad* (La Coruña: en la oficina de Francisco Cándido Pérez Prieto, 1811), 122.

7. “Estatuto de Bayona (6 de julio de 1808),” accessed 3 August 2016, <http://biblio.juridicas.unam.mx/libros/2/804/10.pdf>. For more details see, Ignacio Fernández Sarasola, “La primera constitución española: El Estatuto de Bayona,” *Revista de Derecho: División de Ciencias Jurídicas de La Universidad Del Norte*, no. 26 (2006): 89–109; and, Ignacio Fernández Sarasola, “La forma de gobierno en la Constitución de Bayona,” *Historia Constitucional*, no. 9 (2008): 61–80.

should hear the advice of the Council “in all grave matters, especially before approving or vetoing laws, declaring war and signing treaties” (art. 236).⁸

During the absolutist restoration (1814–1820), new proposals for moderation appeared. In 1819, a group rebelling against Ferdinand’s absolute monarchy proposed the adoption of a moderate monarchy in the style of Benjamin Constant.⁹ The constitutional project – known as the “Beitia Plan” established four powers: a legislative, composed of a temporal chamber (elected by the property-owning classes) and a perpetual chamber (named by the King); an executive, composed of the ministers of government; a neutral power, or monarch; and a judicial power, composed of judges with life-long tenure. The role of the neutral power was to be “the maintenance of balance between the legislative, executive and judicial powers” (art. 112). Its prerogatives were to include: the calling and dismissal of the legislative chambers; the appointment and dismissal of ministers; the right to pardon; and the appointment of judges (art. 113).¹⁰

Moderating and Conservative Senates During Iturbide’s Empire

After Mexico declared independence in 1821, its political elites applied themselves to the task of drawing up a new constitution. The Plan of Iguala, which had inaugurated Agustín de Iturbide’s independence movement, proposed that the new government should “be a moderate monarchy in accordance with the kingdom’s particular [. . .] constitution.”¹¹ The Treaties of Cordoba, a peace treaty signed between Iturbide and the Spanish *jefe político*, Juan O’Donojú, indicated that new nation would adopt the Constitution of Cadiz while it worked on its own constitutional settlement.¹²

8. *Constitución política de la monarquía española. Cádiz 1812* (Mexico City: Tribunal Electoral del Poder Judicial, 2012).

9. Claude Morange, *Una conspiración fallida y una Constitución nonnata (1819)* (Madrid: Centro de Estudios Políticos y Constitucionales, 2006). For a discussion of Constant’s idea of moderation see, Aurelian Crăiuțu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748–1830* (Princeton, N.J.: Princeton University Press, 2012), 198–237.

10. “Acta constitucional de los españoles de ambos hemisferios,” quoted in *ibid.*, 409–434.

11. “Plan del Sr. Coronel D. Agustín de Iturbide,” arts. 3–4. accessed August 3, 2016, <http://www.loc.gov/rr/hispanic/mexico/iguala.html>

12. “Tratados de Córdoba,” accessed August 3, 2016, <http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/tratcord.pdf>

During Iturbide's empire (1821–1823), many different proposals for constitutions circulated.¹³ Two in particular outlined plans for Senates with both conservative and moderating elements. The first, drawn by Cuban exile Antonio José Valdés, proposed adopting a moderate monarchy.¹⁴ He proposed that government should be undertaken by three institutions: Emperor, Senate and a House of Representatives. The representatives would be elected popularly but indirectly, with income requirements both for voter and candidates. For its part, the Senate should contain the imperial princes, the Empire's archbishops, a senator elected for each province, and twenty-four others named by the emperor (art. 27). He declared his project imitated three estates present in the English constitution, with the Senate playing the moderating role of the House of Lords as buffer between Emperor and the representatives.¹⁵

Valdés's constitution envisaged the Senate as a Constitutional guardian: it should supervise "the conservation of individual liberties and the liberty of the press." Like the Bayonne Senate it should "have the right to suspend the constitution or parts of it"—on petition of the emperor—"in case of armed uprising or unrest that compromises the security of the state" (art. 38). Finally, it should also be the court in which all impeachments of "imperial persons, ministers, state counsellors, members of the Supreme Tribunal of Justice, its own members and the representatives" are heard (art. 39).

Juan Wenceslao Barquera called for a division of power in which moderation was a key element. He held that a constitution should ensure the right "balance of weights [. . .] capable of ensuring the authority of magistrates and laws in the most vigorous possible way."¹⁶ In this arrangement, there would be an elected lower chamber, a Senate and a monarch; and each would have the ability to check the actions of the other. The monarch should have a suspensive veto over law bills on two occasions, which could be overturned in Congress if it

13. Catherine Andrews, "Constitutional Projects for the Division of Powers in Mexico During Iturbide's Empire, 1821–1823," *Journal of Latin American Studies*, 46, no. 4 (2014): 755–784.

14. Antonio José Valdés, "Constitución del imperio o proyecto de organización del poder legislativo por Antonio J. Valdés, individuo de la Comisión de Constitución de Congreso. México, 1822," in *La República Federal mexicana. Gestión y nacimiento*, ed. Manuel Calvillo (Mexico City: Departamento del Distrito Federal, 1974), 621–25.

15. A. [Antonio] J. [José] V. [Valdés], *República Mexicana*, (México: Pedro de la Rosa, Impresor del Gobierno, 1822), 40.

16. Juan Wenceslao Barquera, *Lecciones de política y derecho público para instrucción del pueblo mexicano* (Mexico City: UNAM, 1991), 113–114.

received a favourable vote on the third time of debate (arts. 33–34). The Senate was to advise the monarch on his executive appointments. Barquera's emperor would also have had the right to dissolve the legislature in case of emergency.¹⁷

Barquera also proposed making the Senate a conservative power or constitutional guardian: it should judge the constitutionality of the legislative and executive branches' actions and overturn those which breached constitution law. Moreover, it was to supervise constitutional reform: it should decide when "all judicial and legal formalities had been met" during this process and to convene an assembly in which to discuss them.¹⁸

The legislature should be elected indirectly, with one deputy representing every forty thousand people.¹⁹ The Senate should be chosen from amongst those "of the most propriety, wisdom and good name." They should be of a "mature age" and have given "decided signs of patriotism," a quality he hastened to add could not be measured by "employments, honours or rewards." They would receive a salary that would permit them to live independently, but could aspire to "no other employment, honours, pensions or titles" and would conserve their seats for life. Barquera wanted to ensure that the members of his Senate would be independent of the executive: not able to be swayed through the promise of further honours, nor threatened by the loss of their seat.²⁰

Moderating the President

Iturbide's Empire came to an end before any constitutional project could be enacted. Between April 1823 and October 1824 a new round of constitutional debate was held, this time with the aim of writing a constitution for a Republic. While the idea of a moderating or conservative senate was eventually rejected by the second Constituent Congress, its attraction as a possible way to guarantee constitutionality was clear during the debates.

Before it was forcibly dissolved by opposition from the Provincial Deputations in June 1823, the first Constituent Congress produced a constitutional project for new the Mexican Republic. This plan adopted a four-way division of powers between the executive, the Conservative Senate, the National Congress and the Tribunal of

17. *Ibid.*, 188.

18. *Ibid.*, 200.

19. *Ibid.*, 159.

20. *Ibid.*, 197–200.

Justice. Within this arrangement, the popularly elected Congress was clearly designed to be the most important branch of government and the idea of moderation was not present.²¹

However, the Senate had clear conservative elements. It was explicitly charged “to watch over the conservation of the constitutional system;”²² and should act as the court of impeachment for the other members of government.²³ Even so, it had very reduced ability to question the constitutionality of laws, since its objections could be overturned by a simple majority vote in Congress (art. 8).

During the debates of 1823 and 1824, a different proposal for a constitutional guardian appeared. For example, Prisciliano Sánchez proposed the creation of a popularly elected Senate as a component part of the executive power (art. 20). The function of this Senate would be to “supervise the observance of the constitution;” although its main prerogatives were to ratify the actions of the executive power. Rather like the State Council of the 1812 Cadiz Constitution, it was to advise the executive power in diplomatic matters; to endorse the executive’s proposal for the declaration of war or the agreement of a peace treaty; to confirm the executive ministerial appointments; and to agree to the executive’s recalling of Congress.²⁴ Sánchez’s Senate was neither a conserving nor a moderating Senate for the whole constitution, but a council of the executive power, whose main duty was to moderate or temper the actions of the President.

The idea of a body or council to supervise the presidency reappeared in the debates in the Second Constituent Congress. It was introduced by Miguel Ramos Arizpe as a counterproposal to the idea of a triumvirate executive power in January 1824.²⁵ However, once the Congress had decided for an executive composed of a President and Vice-President, the proposal lapsed. The Constitution of 1824 adopted a division of powers that was superficially very similar to

21. “Plan de la Constitución política de la nación mexicana por la Comisión de Constitución del Congreso, México, 16 de mayo de 1823,” in *La República Federal*, 701–24.

22. *Ibid.*, 713.

23. The wording of article 8 which details the Conservative Senate’s prerogatives is vague. However, it appears to suggest that the Senate should also be able to convoke an “extraordinary congress” and “direct a constitutional militia” in certain circumstances. My interpretation is that this final clause echoes the measures Bayonne and Valdés envisaged for the Senate in case of rebellion.

24. Prisciliano Sánchez, “El Pacto Federal de Anáhuac (Julio de 1823),” in *La República Federal*, 478–94.

25. “Sesión del Congreso Constituyente de 20 de enero de 1824,” *Águila Mexicana*, no. 281, January 21, 1824.

that of the US constitution of 1787: a two-chamber legislative; a two-person executive; and a Supreme Court as the head of the Judicial Power.²⁶ Even so, the Constitution did not make use of US-style checks and balances in any meaningful way; instead it gave preponderant power and prerogatives to the legislative. Neither did the Constitution entrust the Senate with any of the attributes of a conservative power. Only in the recesses of Congress, when half the Senate was to form a Council of Government to act as a permanent commission of Congress, did the Constitution charge the senators to “super-
 vise the observance of the Constitution” (art. 116, part 1). Its duties, however, clearly marked it as a simple replacement for the legislature during its absences.

In contrast, the idea of a conservative senate did materialize in at least one of the state constitutions: the Yucatecan Constitution of 1825. This constitution established a senate as a component of the executive. The membership would be composed of four popularly elected members (one of whom could be an ecclesiastic); the Treasurer General of the state (named by the State Legislature); and the Vice-Governor, who would preside its sessions (art. 126). The prerogatives of the senate were partly consultative: the Governor could seek the advice of the Senate on any matter (art. 137, part. 3) but its role was principally to safeguard the constitution. The Senate must be consulted before the Governor employed his suspensive veto (art. 137, part. 2); it had the prerogative of proposing constitutional reform to Congress (art. 137, part 1); it was to be the body in which all impeachment charges against government employees and ministers were held (art. 137, part 6); and it was to serve as the final instance of appeal in deciding whether sentences from the states’ tribunals had been dictated in the correct constitutional manner (art. 137, part 7).²⁷

More popular amongst the states was a version of the advisory State Council established in the 1812 Cadiz Constitution. One example is the Council of Government in the 1825 Zacatecas constitution. This council was made up of the Lieutenant Governor, a magistrate from the state Supreme Court and the Treasury Secretary. It too was

26. “Constitución Federal de los Estados Unidos Mexicanos sancionada por el Congreso General Constituyente, 4 de octubre de 1824,” in *De la crisis del modelo borbónico al establecimiento de la República Federal*, eds. Gloria Villegas Moreno and Miguel Ángel Porrúa Venero, vol. 1 of *Leyes y documentos constitutivas de la nación mexicana* (Mexico City: Instituto de Investigaciones Legislativas: Cámara de Diputados, LXI Legislatura, 1998), 335–61.

27. “Constitución política del estado libre de Yucatán,” in *ibid.*, 730–52.

charged with “supervising the observance of the Constitution;” advising the Governor on a general basis; and, giving its verdict on whether the Governor should use his suspensive veto to block legislation (art. 117).²⁸ The constitutions of Xalisco and Tamaulipas included a popularly elected senate (Xalisco, art. 127) and a popular elected Council of Government (Tamaulipas, arts. 124 and 130) as part of their executive power. This body was charged with bringing any infractions of the constitution to the attention of Congress; advising the Governor in matter of government; and commenting on the government’s plans for public expenditure before it was submitted to the state legislature.²⁹

The “Compensating” Senate

During the debates on the reform of the Constitution of 1824, there were a number of recommendations in favor of a moderating power. For example, in a 1835 speech Guadalupe Victoria pronounced in favor of the adoption of “an intermediary or moderating body [. . .] that would maintain the balance between the legislative and executive powers, preventing their mutual usurpations and judging the disputes that arise between them.”³⁰ The most detailed proposal of this nature came from Lucas Alamán, who in a series of essays published in the newspaper *Registro Oficial* in 1830 and later republished as the pamphlet,³¹ set out a plan to reform the Senate of the 1824 Constitution. His aim was to create a “Compensating Senate,” a moderating body positioned between the executive and legislative powers capable of preventing the excesses of both. In many ways, his proposal represented a return to the ideas presented by Valdés and Barquera in 1821: a mixed power with both moderating and conservative functions able to control both executive and legislative powers, and not focus exclusively on checking the executive as had the 1824 Constitution.

28. “Constitución política del estado libre de Zacatecas,” in *ibid.*, 752–78.

29. “Constitución política del estado libre de Xalisco,” and “Constitución política del estado libre de Tamaulipas,” in *ibid.*, 709–730 and 680–701.

30. Guadalupe Victoria, *Voto particular del senador Guadalupe Victoria sobre el proyecto de ley en que se declara que las actuales cámaras tienen facultad para variar la forma de gobierno* (Mexico City: Imprenta del Águila, dirigida por José Ximeno, 1835), 6–7.

31. See the transcript of this pamphlet in Catherine Andrews, “Reflexiones sobre algunas reformas a la Constitución Federal de la República Mexicana,” *Revista Mexicana de Historia de Derecho*, no. 25 (2012): 185–214.

Alamán proposed removing the Senate from the legislative power and making it an independent body. If the Chamber of Deputies was to represent the people, the Senate should represent the interests and opinions of a people with previous experience in government. He stipulated that senatorial seats should only be available to those who had followed “any public literary career,” or to those who had made careers in the Church or the army. He also thought it was important that prospective candidates had experience in government and suggested that previous service in one of the judicial, legislative or executive powers at state or national level would also qualify a citizen for a senatorial seat.³²

This Senate should moderate between President and Congress. It was no longer to have the prerogative of proposing legislation but should revise and approve bills emanating from the Chamber of Deputies. It was also to be an advisory body for the President and a supervisory council that would approve his appointments. All law bills presented by the president should first pass through the Senate before being discussed in the Chamber.³³ Alamán particularly wanted the Senate to take on the conservative function: to “supervise the observance of the constitution,” although he did not specify how this should be achieved.³⁴ It would take charge of impeachment hearing against the members of Congress. He proposed that senators should be impeached in the Supreme Court of Justice, whose ministers, in turn, should only be tried in the Chamber of Deputies.³⁵ In this way, no one institution could hold the others to ransom; each could only check the behaviour of one of the others.

Conclusions

This article demonstrates that the politics of constitutional control (as they are now called) were widely debated during the first two decades following Mexico's independence. Politicians did not trust their colleagues to respect the constitution if there were no adequate methods of enforcing the rules. As events proved them correct this wariness only increased. In 1822 Iturbide forcibly dissolved the Constituent Congress elected that year and appointed a smaller junta to take up the job of writing a constitution. After 1824, the legitimacy of the Federal Constitution was undermined by extra constitutional acts

32. *Ibid.*, 212, art. 28.

33. *Ibid.*, 213–214, arts. 41, 116.

34. Andrews, “Reflexiones sobre algunas reformas,” 195.

35. *Ibid.*, 195.

by successive Congresses. These included the enactment of laws expelling Spaniards in 1827 and 1829; the nullification of numerous votes following the 1828 election in order to remove the winning candidate, Manuel Gómez Pedraza, from the contest; the conferral of extraordinary powers on President Guerrero in 1829; and the frequent expulsion of political undesirables (most infamously in the 1833 *Ley de Caso* which expelled a list of politicians who had collaborated in Anastasio Bustamante's recent government, plus "anyone else in the same position").³⁶

In this context it is worth noting that during Iturbide's empire, proposals for moderating and conservative bodies started from the belief that both the executive and legislative powers needed to be kept in check. Valdés and Barquera, for example, envisaged senates that would act as buffers between both powers. After 1823, the emphasis shifted to controlling the executive power. Almost all the proposals made during the constituent period made the senate part of the executive and particularly charged it with moderating the actions of the president. In the 1830s, as Alamán's proposal indicates, the need for controlling both powers appeared to regain currency. The idea of a fourth power in the 1836 Constitution appears to follow this trend. Even so, it is worth remembering that the 1836 constitution also included a Government Council (4th Law, art. 21) as an integral part of the Executive Power, made up of thirteen members, which the President must consult before proposing legislation, commenting on law bills (using a suspended veto), or issuing pardons (4th Law art. 17).³⁷ As a result, the President faced both an internal moderating body, plus an external conservative power. It is clear that the architects of the 1836 Constitution retained a great deal of distrust in the presidency.

Looked at from a regional perspective, Mexico's experimentation with the ideas of moderation and conservation are far from unique. As Andreas Timmermann has shown, a number of the newly independent nations in Latin America experimented with constitutions which sought to include moderating or conserving bodies as a means

36. Catherine Andrews, *Entre la espada y la constitución. El general Anastasio Bustamante (1780–1853)* (Mexico City: Universidad Autónoma de Tamaulipas, Instituto de Investigaciones Históricas, Unidad Académica Multidisciplinaria de Ciencias, Educación y Humanidades; Instituto de Investigaciones Parlamentarios del H. Congreso del Estado de Tamaulipas, XI Legislatura, 2008), 220.

37. "Leyes constitucionales, 20 de diciembre de 1836," in *Entre el paradigma político y la realidad*, eds. Gloria Villegas Moreno and Miguel Ángel Porrúa, vol. 2 of *Leyes y documentos constitutivas de la nación mexicana* (Mexico City: Instituto de Investigaciones Legislativas: Cámara de Diputados, LVI Legislatura, 1997), 202–34.

of guaranteeing constitutionality.³⁸ The Peruvian Constitution of 1823 adopted a Conservative Senate charged with: overseeing the constitution; deciding whether an impeachment case could be heard against government ministers and elected officials; and offering advice to the president in all matters, especially related to war and peace (art. 90). The president must also consult the Senate before remitting comments on law bills (art. 63).³⁹ The 1824 Brazilian Constitution attempted to make the monarch in the style of Benjamin Constant's neutral (conservative) power, and gave him wide-ranging faculties, including that of dissolving the legislative power, or extending its session (art. 101) and suspending magistrates while complaints against them were investigated (art. 154).⁴⁰ Meanwhile in Colombia and Venezuela there were multiple attempts to introduce the concept of moderation into the different constitutional texts that were written after 1811.⁴¹ The constitution Simón Bolívar drew up for Bolivia in 1826 established a three chamber legislative power: the Tribunes, the Senators and the Censors. The first two were to be elected by popular vote on a regular basis, while the third was to be composed of life-long members. The principal attribution of the Censors would be to guarantee constitutional order, protect the liberty of press and "condemn those who usurp public authority, great traitors and, famous criminals to eternal disgrace" (art. 60).⁴²

There was much experimentation with the idea of moderating and conserving bodies during the first years of independence in Latin America. The large number of Senates, Councils and fourth powers,

38. See Timmermann, "El concepto de 'gobierno moderado' como hilo conductor en el constitucionalismo temprano de Hispanoamérica," and Francisco Eissa-Barroso, "El poder moderador en América Latina: El fracaso de una alternativa de diseño constitucional" (B.A. diss., Centro de Investigación y Docencia Económicas, 2004).

39. "Constitución política de la República Peruana sancionada por el primer Congreso Constituyente el 12 de noviembre de 1823," *Archivo Digital de la Legislación del Perú*, accessed March 8, 2016, http://www.leyes.congreso.gob.pe/Documentos/constituciones_ordenado/CONSTIT_1823/Cons1823_TEXTO.pdf.

40. "Constituição Política do Império do Brasil," Casa Imperial do Brasil, accessed August 3, 2016, <http://www.monarquia.org.br/PDFs/CONSTITUICAODOIMPERIO.pdf>. For an excellent discussion of Brazil's assimilation of the concept of a moderating power, see Christian Edward Lynch, "O discurso político monárquico e a recepção do conceito de Poder Moderador no Brasil (1822–1824)," *Dados*, 48, no. 3 (2005), 622–654; y Christian Edward Lynch, "O momento monarquiano: o conceito de Poder Moderador e o debate político brasileiro do século XIX," (Ph.D. diss., Instituto Universitário de Pesquisas do Rio de Janeiro, 2007).

41. Timmermann, "El concepto de 'gobierno moderado,'" 16–18.

42. "Constitución de Bolivia de 1826," *Hugo San Martín Comisión de Constitución*, accessed August 2, 2016, http://comisiondeconstitucion2002-2003.awardspace.com/cpehistoria/cpe_1826.htm.

their different compositions and faculties, show quite clearly that the old historiographical trope that constitution-writers in Latin America copied uncritically US, French or Spanish constitutional models following independence is far from true. A more proper description of the constitution-writing process would be to recognize how Latin American politicians assimilated and transformed the available precedents, reworking them according to their interests and requirements. The emphasis on the control of the executive power in Mexico is one such example. Francisco Manuel Sánchez de Tagle's attempts to create a Supreme Conservative Power is another. In Mexico, at least, the concerns of its political class to introduce effective ways of checking the abusive behavior on the part of the powers of government, would eventually lead to the development of the writ of *amparo*: perhaps one of the most original contributions of Mexican jurisprudence to constitutional law.⁴³

43. Héctor Fix-Zamudio, "Breve introducción al juicio de amparo mexicano," in *Ensayos sobre el derecho de amparo* (Mexico City: UNAM, 1993), 19–55.