

In the Pursuit of Balance. Lucas Alamán's Proposals for Constitutional Reform (1830-1835)¹

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Abstract

This paper will analyse Lucas Alamán's proposals for the reform of the 1824 Mexican Constitution in the 1830s. It will argue that, contrary to the interpretations of many historians, during these years he did not advocate the adoption of a centralist system, or the abolition of representative government. Instead, it will show that Alamán's real interest lay in promoting radical changes in the distribution of power between the three branches of government. Through a close examination of his ideas, it will suggest that Alamán did not favour the adoption of the US checks and balances system, nor the division of powers established in the 1812 Spanish Constitution. Rather, Alamán wished to see Mexico adopt a version of the British balanced constitution.

Key Words: Lucas Alamán, reform, 1824 Mexican Constitution, balanced constitution, separation of powers

I. INTRODUCTION

1. Lucas Alamán (Guanajuato, 1792 – Mexico City, 1853) played a leading role in Independent Mexico's political life. Like many of his contemporaries he passed a number of years in Europe (1814-1820) and was able to read many of the most important Enlightenment authors. His writing make it clear he was familiar with the work of French thinkers such as Diderot, Montesquieu, Rousseau and Voltaire, Spanish thinkers such as Jovellanos, and British writer, Edmund Burke. While in Europe he served in the reconstituted Spanish Courts (1820-1821) and so had first hand experience of Spain's first attempts at constitutional government. As Secretary of

¹ A preliminary version of this text was presented in the panel "*In Search of Stability. Constitutions and Political Culture in Nineteenth-Century Latin America*" at the Annual Conference of the Society for Latin American Studies (SLAS), University of Newcastle, 13-15 April 2007. The author would like to thank all those present for the stimulating discussions that took place there.

Interior and Exterior Relations (1823-1825) he oversaw the drawing up of the 1824 constitution. He returned to this ministry on two further occasions (1830-1832 and 1853) and, between times, served frequently as a representative in the General Congress. Following the disastrous war with the United States (1846-1847), he edited the newspaper *El Universal* (1848-1850) and founded Republican Mexico's first political party: the Conservative Party in 1849. At the same time he dedicated himself to writing the monumental multivolume works, *Disertaciones sobre la historia de la República Mexicana* (published in three volumes between 1844 and 1849);² and, *Historia de México* (published in five volumes between 1849 and 1852).³

2. Despite his prominence in the political life of the early national period, Lucas Alamán's political ideas have been much misunderstood and misrepresented in Mexican historiography. This is partly because his thought has generally been interpreted almost exclusively with reference to the opinions he expressed in his historical works and as editor of *El Universal*, while his political career has usually been judged in relation to his collaboration in the last dictatorship of that favourite Mexican antihero, Antonio López de Santa Anna (1853-1855). As a result, the image presented to us by the traditional historiography is of a man who constantly espoused the same ideology throughout his thirty-one year career. He is forever a reactionary conservative, a decided enemy of representative government and democracy, and a keen autocrat with monarchical sympathies.⁴
3. Although historians such as Charles Hale, Josefina Zoraida Vázquez and Will Fowler have done much to question this picture of Alamán by pointing out the evolution of his opinions over time,⁵ most recent scholarship into his

² *Disertaciones sobre la historia de la República Mexicana: desde la época de la conquista que los españoles hicieron a fines del siglo XV y principios del XVI de las islas y continente americano hasta la independencia*, impreso por José Mariano Lara, Mexico City, 1844-1849. 3 vols.

³ *Historia de Méjico: desde los primeros movimientos que prepararon su independencia en el año de 1808, hasta la época presente*, impreso por José Mariano Lara, Mexico City, 1849-1852, 5 vols.

⁴ For example, Moisés González Navarro, *El pensamiento político de Lucas Alamán*, El Colegio de México, Mexico City, 1952; Alfonso Noriega, *El pensamiento conservador y el conservadurismo mexicano*, Universidad Nacional Autónoma de México, Mexico City, 1972, vol. 1, pp. 69-80, 108-115; and, José C. Valadés, *Alamán. Estadista y historiador*, Universidad Nacional Autónoma de México, Mexico City, 1977.

⁵ Charles A. Hale, *El liberalismo mexicano en la época de Mora*, Siglo Veintiuno Editores, Mexico City, 14th edition, 1999 (1st English edition, 1968); Josefina Zoraida Vázquez, "Centralistas, conservadores y monarquistas, 1830-1853," in Humberto Morales and Will Fowler, *El conservadurismo mexicano en el siglo XIX, 1810-1910*, Benemérita Universidad Autónoma de Puebla/University of St. Andrews/Secretaría de Cultura, Gobierno del Estado de Puebla, Puebla, 1999, pp.115-133; and, Will Fowler, *Mexico in the Age of Proposals*, Greenwood Press, London and Connecticut, 1998, pp. 75-84.

political thought has continued to focus upon the latter period of his life.⁶ The writing he published before the 1840s has still to be investigated in any real detail. This paper seeks to offer the first step towards remedying this neglect. It will study the political ideas Alamán expressed in two essays published in 1830 and 1835. The first originally appeared in stages in the newspaper *Registro Oficial* between September and October 1830 and was later republished in 1835 under the title *Reflexiones sobre algunas reformas a la Constitución Federal de la República Mexicana*.⁷ The second was one of two essays that Alamán wrote to defend his participation in the government of Anastasio Bustamante (1830-1832). He had served as Bustamante's minister of Relations and, in 1833, was impeached by the General Congress for his part in the execution of the former president, Vicente Guerrero. This pamphlet was also published in 1835 with the title, *Examen imparcial de la administración del general vicepresidente D. Anastasio Bustamante. Con observaciones generales sobre el estado presente de la República y consecuencias que éste debe producir*.⁸

4. Both texts are primarily concerned with the question of constitutional reform. During the first half of the 1830s this was probably the most important theme in political debates. It was generally considered that the 1824 Constitution had not been capable of establishing strong, stable governmental institutions for the Republic. Between 1827 and 1833 the Presidency changed hands three times as a result of direct rebellion. These years also witnessed numerous other unsuccessful insurrections that jeopardised the integrity of the governments in Mexico City. During the administration of Anastasio Bustamante, many projects for reform were presented and discussed in the General Congress, however no changes could be made to the constitution before the government was overthrown at the end of 1832. After 1834 the topic returned to centre stage and dominated political discussion until 1835, when the General Congress decided to establish itself as a constitutive power, abolish the Federal Constitution, and begin work on a second charter. This came into force in 1836 and is generally known as the *Siete Leyes*, as it was set out in the form of seven fundamental laws.⁹
5. Alamán's two essays represent his contribution to this debate. Both pieces include an extensive examination of the problems he considered inherent to

⁶ The most recent example is Elías Palti, *La invención de una legitimidad. Razón y retórica en el pensamiento mexicano del siglo XIX (Un estudio sobre las formas del discurso político)*, Fondo de Cultura Económica, Mexico City, 2005, pp. 215-287.

⁷ Reimpreso por Ignacio Cumplido, Mexico City, 1835.

⁸ Republished in *Documentos diversos (inéditos y muy raros)*, compiled by Rafael Aguayo Spencer, Editorial Jus, Mexico City, 1946, vol. 3, pp. 236-275. It should be pointed out that the first essay was published anonymously on both occasions. Even so, the ideas it presented are so similar to those expounded in the second as to make it more than obvious that Alamán was the author.

⁹ For more details on this debate see, Catherine Andrews, "El debate político de la década de 1830 y los orígenes de las *Siete Leyes*", in Cecilia Noriega and Alicia Salmerón (Eds.), *Constituciones e historia constitucional*, Instituto Mora, Mexico City, in press.

the Federal Constitution and a series of suggestions for its improvement. However, only the *Reflexiones* includes a detailed list of possible modifications to various articles of the constitution. As a result, this paper will debate both his general ideas and his specific proposals for reform. In the discussion, the following it will become evident that Alamán espoused the principal tenants of liberal constitutionalist philosophy: the separation of the powers and representative government. He was wary of democracy and wanted to limit political participation to those who had some kind of stake in society. However, it will be clear that his command of constitutionalist knowledge was somewhat patchy. He was unaware of the “checks and balances” theory that underpinned the US Constitution, for example. As a result, although he wrote admiringly of the work of Alexander Hamilton, James Madison and John Jay in the Federalist Papers, many of his arguments are more similar to those presented by their adversaries, the AntiFederalists. In fact, his understanding of constitutionalist theory appears to be gleaned by way of the works of French anglophiles like Charles Secondat de Montesquieu and Jean Louis de Lolme, and, possibly, also from the English jurist, William Blackstone. Perhaps as a result, he disliked the French and Spanish attempts at introducing a pure separation between the branches of government in their constitutions of 1791 and 1812, believing that these constitutions gave too much weight to the legislative power and, therefore, allowed it to govern despotically.

6. This paper is divided into two parts. The first will undertake a discussion of the criticisms Alamán levelled at the Federal Constitution while the second will examine the comparison he makes between it and the US charter. Finally, the third will analyse the specific proposals for reform made by Alamán in 1830, and will demonstrate how he tried to reform the Mexican constitution so that it would better follow the principles of constitutionalism set forth by Montesquieu, Blackstone and De Lolme.

II. LUCAS ALAMÁN'S CRITICISMS OF THE 1824 CONSTITUTION

7. In the 1830s Alamán appeared to have little doubt that the principal causes of the Mexican Republic's chronic instability could be found in the 1824 Federal Constitution. Both the *Reflexiones* and the *Examen imparcial* set forth a two-fold theory to explain this. In the first place, he suggested that Independent Mexico's difficulty in establishing an orderly government was due to the fact that it had not founded its new institutions upon the practices and customs of government during the colonial period. Alluding directly to Edmund Burke's indictment of the actions of the French National Assembly in his *Reflections on the French Revolution*, he contended in the *Examen imparcial* that Mexico found itself in “anarchy” because, by establishing the Federal Republic, it had elected to destroy “all that had previously existed”

in order to build a system “absolutely different from, and even entirely contrary to, everything that we had known [...] until now”.¹⁰

8. To further demonstrate his point he went on to compare Mexico’s experience with that of the neighbouring United States. For him, the success of the latter in creating a stable political environment was not the result of the innate superiority of federal system, as had often been argued by his contemporaries. Rather he considered that the United States had achieved stability because its present form of government “left completely intact the essence of its primordial constitution”.¹¹ He pointed out that the thirteen colonies had always been independent of one another. Each had their own local government and their own particular statutes, based upon the customs and practices of the original settlers had brought with them from England, to regulate them. As a result, he argued, the colonies had enjoyed considerable autonomy in their relationship with the political authorities in London and had plenty of experience in self-rule. In his opinion, therefore, in the United States, federalism represented a continuance of the colonial form of government in the new framework of the independent republic.¹²
9. According to the analysis presented by Alamán in the *Reflexiones* and *Examen imparcial*, the second problem inherent in the 1824 Constitution was that it did not institute an adequate division, or the appropriate balance, between the different branches of government. In both texts, he insinuated that, although the constitution ostentatiously modelled itself on the US charter, in reality it followed the ideas of the first French constitution of 1791 by way of its Spanish imitation: the 1812 Constitution of Cádiz.¹³ In the

¹⁰ All translations in this paper are my own. Lucas Alamán, “*Examen imparcial*” *op. cit.*, p. 245. Alamán prefaces these remarks by clearly acknowledging their source: “Edmund Burke, in his profound reflections on the French revolution has announced, in what can only be called a prophetic manner, the whole series of events that we have seen in our country and in others, and as his observations are so suited to our circumstances, whatever I take from his brilliant pen will enrich and reinforce this essay”, *ibid.* pp. 243-244. Obviously his diagnosis of Mexico’s ills echoes Burke’s argument that the transformation of the Third Estate into the National Assembly in 1789; its subsequent proclamation of the Rights of Man and of the Citizen; and, its decisions to abolish the traditional privileges of the Church and the nobility, destroyed the foundations of traditional government in France and left it in financial and political chaos. There are innumerable editions of this work. I have consulted the following, Edmund Burke, *Reflections On The Revolution In France And On The Proceedings Of Certain Societies In London Relative To That Event In A Letter Intended To Have Been Sent To A Gentlemen In Paris*, London, Printed for J. Dodsley in Pall Mall, (2nd ed.) 1790. Alamán used a quotation from Burke as the epigraph to the *Examen imparcial*. This was written in English and Spanish. It appears that Alamán had read an original version of the text. The first Spanish translation of Burke appeared in Mexico in 1826.

¹¹ Lucas Alamán, “*Examen imparcial*” *op. cit.*, 243-244.

¹² *Ibid.*, pp. 443-445; y, *Reflexiones sobre algunas reformas a la Constitución Federal de la República Mexicana*, Reimpreso por Ignacio Cumpido, Mexico City, 1835, pp. 2-3.

¹³ In the *Reflexiones*, for example, he wrote, “As much as we might have tried to alter its wording, and as much as we might have tried to fit into the United States’ costume, the 1812 Spanish Constitution appears disguised in all our federal institutions”. Lucas Alamán, *Reflexiones*, *op. cit.*, p. 9. For its part, the *Examen imparcial* states: “The model [...] that we used when constructing the nation was the United States, but [the 1824 constitution] barely shows a touch of this model; what

Examen imparcial he seemed to imply that both these European charters had proved incapable of founding stable government because their writers had not followed the good examples present in the US and English systems, but rather had been seduced by “all the misplaced metaphysics of last century’s speculative philosophers”. As a result, he maintained, neither one of them had distinguished “properly” between the powers nor had established “a convenient balance between them”.¹⁴ Excessive power was concentrated in the legislative branch, in his opinion, while the executive and judicial powers were not given enough. In this way, no provision was made to curb any of the abuses in which the legislative might incur. By adopting these constitutions, he concluded, France and Spain had done nothing more than swap “the tyranny of one” for “the infinitely more intolerable tyranny of the many”; a fate that Mexico had the misfortune to share under the 1824 Constitution.¹⁵

III. THE ROLE OF THE US CONSTITUTION IN ALAMÁN’S ANALYSIS

10. These comments seem to suggest that Alamán preferred the US Federalist doctrine of a partial division of powers regulated by checks and balances to the “pure” separation of powers theory followed by the French revolutionaries in 1791. However, if we examine the arguments Alamán developed to demonstrate the validity of his hypothesis; it quickly becomes clear that he did not fully comprehend the doctrine of checks and balances which underpinned the US Constitution. In fact, his characterisation of the US system resembled more closely the model of the British “balanced constitution”, idealised in the works of Charles Secondat de Montesquieu, William Blackstone and Jean Louis De Lolme, than it did to the constitutional arrangement established in the 1787 charter.

11. Nowhere is this more evident than in Alamán’s discussion on the organisation and prerogatives of the General Congress. He was adamant, for example, that the 1824 constitution had not copied the bicameral organisation adopted by its US counterpart; but rather had followed the unicameral option favoured by the French in 1791 and the Spanish in 1812. From his point of view, the Mexican Republic’s General Congress could only

we have seen employed in reality has been the Spanish constitution, which in itself was nothing but an imitation of the French Constituent Assembly [of 1791], Lucas Alamán, “*Examen imparcial*”, *op. cit.*, p. 246.

¹⁴ Lucas Alamán, “*Examen imparcial*” *op. cit.*, p. 246.

¹⁵ *Ibid.*, p. 247. It is important to point out that Alamán was not the only one expressing these views in the 1830s. For a more wide-ranging analysis of the political discussion on the weaknesses of the Federal Constitution during this period, see, Catherine Andrews, “*Discusiones en torno a la reforma de la Constitución Federal de 1824 durante el primer gobierno de Anastasio Bustamante (1830-1832)*”, in *Historia Mexicana*, vol. 56, no. 3, 2006, pp. 71-116; and, Catherine Andrews, “*El debate político de la década de 1830*” *op. cit.*

be regarded as a single chambered assembly “divided into two sections”.¹⁶ In the first place, he noted in the *Reflexiones* that both houses had the same popular origin. The Chamber of Deputies might be elected by a popular vote while the Senate was chosen by the state legislatures; but, since the latter were also the result of popular election, he argued, the original electoral power remained the same. Moreover, because the only difference in requirement for occupying a senatorial seat rather than a place in the lower house was an age gap of five years, he considered that both chambers of the General Congress were made up of the same kind of people. With a hypothesis very similar to those expressed by the AntiFederalists in their opposition to the Philadelphia convention’s plans the US Senate, he declared that it was evident that such a situation implied that both sets of representatives could easily be affected by “some of the same interests”, and so were also likely to follow “the same tendencies and preoccupations” in their debates.¹⁷

12. For Alamán, the “popular character” of both houses of Congress also meant the 1824 Constitution was incapable of self-restraint or control. Above all, he wrote in the *Examen imparcial*, it lacked the moderating voice of the propertied classes. In defence of this view, he went on to quote the following passage of Burke:

13. Nothing is a due and adequate representation of a state that does not represent its ability, as well as its property. But as ability is a vigorous and active principal, and as property is sluggish, inert and timid, it never can be safe from the invasions of ability, unless it be, out of all proportion, predominant in the representation. [...] The characteristic essence of property, formed out of the combined principles of its acquisition and conservation, is to be *unequal*. The great masses therefore which excite envy, and tempt rapacity, must be put out of the possibility of danger. Then

¹⁶ Alamán, *Reflexiones*, *op. cit.*, p. 9.

¹⁷ *Ibid.*, pp. 9-10. Emphasis in the original. Compare these arguments to the following piece published by the Federalist Farmer in January 1788: “To produce a balance and checks, the constitution proposes two branches in the legislature. But they are so formed, that the members of both must generally be the same kind of men –*men having similar interests and views, feelings and connections*– men of the same grade in society, and who associate on all, occasions (probably, if there be any difference, the senators will be the most democratic.) Senators and representatives thus circumstanced, as men, though convened in two rooms to make laws, must be governed generally by the same motives and views, and therefore pursue the same system of politics. *The partitions between the two branches will be merely those of the building in which they fit*”, << <http://anti-federalist.org/af63.htm> >>, page consulted 27 February 2007 (My emphasis). A fairly comprehensive collection of what have come to be known as the Antifederalist Papers can be found at this site. Of course, both these points of view appear to derive from Montesquieu’s description of the two houses of the English Parliament, each of which represented the “separate views and interests” of the different classes of society, Charles Louis Secondat de Montesquieu, *Esprit des loix*, Société des Belles Lettres, Paris, 1950-1958, XI, 6.

they form a natural rampart about the lesser properties in all their graduations.¹⁸

14. Following Burke's principle that the best guardians of public order and public wealth were those who had some stake or share in both, Alamán further argued that "political society is no more that a conventional company, each individual should be represented in this association according to the capital that he has invested in it".¹⁹ And, as he stated in the *Reflexiones*, this meant that "those who make the laws, which are the safeguard of property, should be property-holders, [and] those who regulate the burden of taxation, should be those who bear this burden".²⁰
15. He believed that the United States offered the living proof of the truth of these ideas. In the words of the *Reflexiones*:
16. [T]he North Americans [sic] owe their institutions' survival, their domestic order and their prosperity to the fact that public offices have not slipped from property-holders' hands. In North America, the first social virtue is work, and its recompense is not only enjoyment, but also the option to [...] [fill] the Republic's first positions. American society is generally made up of property-holders and has been since its foundation, and for this reason it has been able to maintain itself and grow in stature.
17. Moreover, it was quite clear to Alamán that if the US had been governed "by those who do not possess anything", as he believed Mexico had been under the Federal Constitution, the neighbouring Republic would share Mexico's governmental problems and, consequently, would not be able to boast "neither morality, nor free institutions, nor riches".²¹
18. A close reading of both the *Reflexiones* and the *Examen imparcial* indicates that Alamán was under the impression that the US Constitution established

¹⁸ Edmund Burke, *Reflections*, *op. cit.*, pp. 74-75. The Spanish version of this passage is as follows: "Para que la representación de una nación sea completa y adecuada, es menester que represente tanto su ilustración como su propiedad. Pero como la ilustración es un principio activo y vigoroso, y la propiedad es de suyo [sic] tranquila inerte y tímida, no puede esta estar segura de los estravios á que puede inducir la ilustración sino es predominante en la representación. El carácter esencial de la propiedad, compuesto de los principios combinados de los medios de adquirirla y conservarla es el ser desigual. Los grandes propietarios pues, que son los que excitan la envidia, y tientan a la rapacidad deben ser puestos fuera de toda posibilidad de peligro, y entonces ellos mismos forman un muro que naturalmente protege á los propietarios menores en todas las graduaciones de la propiedad." Lucas Alamán, "*Examen imparcial*" *op. cit.*, pp. 264-265.

¹⁹ A statement which of course echoes Burke's famous discourse on civil rights and equality: "In this partnership [civil society] all men have equal rights; but not to equal things. He that has five shillings in the partnership has as good a right to it, as he that has five hundred pounds has to his larger proportion. But he has not a right to an equal dividend in the product of the joint stock; and as to the share of power, authority and direction which such an individual ought to have in the management of the state [...]" Edmund Burke, *Reflections*, *op. cit.*, p. 87.

²⁰ Lucas Alamán, *Reflexiones*, *op. cit.*, p. 17.

²¹ *Ibid.*, p. 17. Emphasis in the original.

property requirements for its Congressmen, although he did not mention the subject explicitly. He wrote in the *Reflexiones*, for example: “the United States’ [constitution] copied the two chambers from the [charter] William Penn gave to the Pennsylvanians; but we have organised them in our own way. We have only required senators to be thirty years of age and we have neglected [to include] even the essential exigency of property ownership”.²² This remark appears to suggest that Alamán was associating the qualifications placed on office-holding by the states in their constitutions with the US Constitution, which only established age and residency requirements for federal representatives. Pennsylvania’s first “Frame of Government” (1682), to which Alamán probably was referring here, established a provincial government composed of General Assembly, Provincial Council and a governor. It specified that only freeholder, defined as those who held a determined amount of land or paid “scot and lot” –a form of taxes– could vote or occupy seats in the assembly and the council.²³ A century later, the majority of the first US state constitutions also enforced property requisites for public office-holding, usually on a sliding scale from the lower house upwards. Many of these qualifications were scrapped in later nineteenth-century constitutions, although most were still in force by the time Alamán was writing in the 1830s.²⁴

19. As well as failing to moderate the popular democracy of the General Congress by reserving its seats for property-holders, Alamán also believed that Mexico’s constitution neglected to establish any clear division of functions between the two houses in the General Congress. In both texts he made much of the fact that both chambers were empowered to initiate and revise all types of bill, and, in the *Examen imparcial* he lamented that the General Congress was not subject the internal checks upon its actions that should characterise a bicameral legislative power.²⁵ As he pointed out, neither house could prevent the adoption of legislation to which it was completely opposed. If an initiative that had been approved in the first chamber was later rejected by the second, the measure could still be passed by Congress as a whole. A simple three-thirds majority in the favour of the returned bill in the chamber it originated in was enough to neutralise the objections of the second.²⁶ In his view, such an arrangement did not –as he wrote in the *Reflexiones*– “meet the objectives of a bicameral institution”; that is to say, they were unable “to balance power”.²⁷

²² *Ibid.*, p. 12.

²³ “Frame of Government of Pennsylvania, 5 May 1682” at <http://www.yale.edu/lawweb/avalon/states/pa04.htm>, page consulted 28 February 2007.

²⁴ Donald S. Lutz, “*The Theory of Consent in the Early State Constitutions*”, *Publius: The Journal of Federalism*, vol. 9, no. 2, 1979, pp. 11-42.

²⁵ Lucas Alamán, “*Examen imparcial*”, *op. cit.*, p. 271.

²⁶ Lucas Alamán, *Reflexiones*, *op. cit.*, p. 10, and “*Examen imparcial*”, *op. cit.* pp. 269-270.

²⁷ Lucas Alamán, *Reflexiones*, *op. cit.*, pp. 9-13. The quotation can be found on page 10.

20. Alamán also objected to the manner in which the legislative could to participate in the judicial and executive areas of government.²⁸ Like the AntiFederalists before him, he concentrated his attacks on the Senate,²⁹ which he believed was the principal culprit in this respect. As well as its legislative powers, he alleged, the upper chamber also performed executive functions because it approved the presidential nominations for senior federal employees and military officers.³⁰ Moreover, he also considered that it could play the part of the judge, as it could establish itself into a Grand Jury to hear charges of impeachment against the members of the other powers, the deputies and the state governors.³¹ As he recorded in the *Reflexiones*, it was his belief that the tripartite faculties exercised by the General Congress went against “all the principles” that underpinned the doctrine of the division of powers. Seemingly unaware that the US Constitution awarded many of the same powers to its own Senate, he concluded his discussion by remarking that the Mexican General Congress was “an absolute [...] power” that knew no equal from Washington to Constantinople.³²

21. When he returned to this theme in the *Examen imparcial*, Alamán went on to describe the division of powers he believed had been established by the US constitution and how this, in his opinion, further impeded that legislative power become an absolute force in government. He identified two principal ways in which the constitutional settlement of the Mexican charter differed from its neighbours: “the greater power” that it awarded to the executive power, and “the organisation and functions of the Supreme Court of Justice”.³³ In terms of the executive power, he began by noting, quite correctly, that the President enjoyed greater freedom of action in the United States than in Mexico and was less dependent on the legislative power. He complained, for example, that the Mexican Head of State did not have the power to summarily dismiss federal employees, as his US counterpart did.

²⁸ *Ibid.*, p. 16.

²⁹ See the different criticisms of the AntiFederalists (in this case, “Brutus”, “The Federalist Farmer”, “Cincinnatus”, and the speech made to the ratifying Congress of New York in June 1788 by Gilbert Livingston and John Lansing on the organisation and powers of the Senate in the 1787 project at <http://anti-federalist.org/af62.htm>, <http://anti-federalist.org/af63.htm>, <http://anti-federalist.org/af64.htm> and <http://anti-federalist.org/af65.htm>, pages consulted 27 February 2007.

³⁰ Article 110, which outlines the Presidential attributions, states that the executive has the power “6. To appoint the heads of the Treasury’s General Offices, General Commissioners, diplomatic envoys and consuls, colonels and all other higher-ranking officers of the permanent army, the militia and the navy, only with the consent of the Senate, and during its recesses, with that of the Council of Government”; and, “7. To appoint all other employees of the permanent army, the navy and the civil militia as well as all other federal officers, in accordance with the law”. “*Constitución federal de los Estados Unidos Mexicanos sancionada por el Congreso general constituyente*,” in Gloria Villegas Moreno and Miguel Ángel Porrúa Venero (Coords.), *Leyes y documentos constitutivos de la nación mexicana. De la crisis del modelo borbónico al establecimiento de la República Federal*, Instituto de Investigaciones Legislativas/Cámara de Diputados, LXI Legislatura, Mexico City, 1998, vol. 1 (Enciclopedia Parlamentaria de México), p. 346.

³¹ Lucas Alamán, *Reflexiones*, p. 12.

³² *Ibid.*, p. 16.

³³ Lucas Alamán, “*Examen imparcial*”, *op. cit.*, p. 258.

According to the 1824 constitution, he could only suspend officer-holders for up to three months on half-pay.³⁴ Equally, he pointed out that the US President could “commute [a sentence] or pardon [any crime] except that of high treason”,³⁵ whereas, in Mexico, this could only be done by the General Congress.³⁶ Alamán also observed that while the US President and the British monarch had access to “advisors, called lawyers to the nation” to counsel him on points of law and other matters,³⁷ Mexico’s President usually found himself on his own in difficult situations. In his eyes, the Council of Government set up by the Constitution could not fill that role, as it was a body that only met during the recesses of General Congress. Worse still, he continued, the Council was in fact a mini Senate, since it was composed of one senator from each state. He did not believe that members of the legislative power, more often than not opposed to the President, could be relied on to give him trustworthy and independent advice. In his opinion, even the Constitution of Cádiz, that allowed the King to choose the members of his Council from lists supplied by the Cortes, was superior to Mexico’s charter in this respect.³⁸

22. Alamán then moved on to observe that the 1824 Constitution only allowed the President to exercise a suspended veto on bills emanating from the General Congress. This veto could be disregarded if the rejected initiative was able to gather the support of three thirds of the representatives in both houses. Despite the fact that this arrangement exactly mimicked the terms of the presidential veto in the United States,³⁹ Alamán claimed that such a “overbearing and independent” influence was denied the legislative power in the neighbouring republic. Instead, he asserted that “the French Constituent Assembly [of 1791] was the first to establish the independence of the legislative power from the executive veto”.⁴⁰ These commentaries suggest that Alamán considered that the President possessed an absolute veto of the kind Montesquieu and Blackstone attributed to the King within the idealised “balanced constitution” that they gave to Great Britain.⁴¹

³⁴ Article 110, section 20, Gloria Villegas Moreno and Miguel Ángel Porrúa Venero (Coords.), *Leyes y documentos constitutivos*, *op. cit.*, p. 346.

³⁵ Article 2, section 2: “[...] and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment”. “*Constitution of the United States*”, at <http://www.law.emory.edu/cms/site/index.php?id=3080>, page consulted 17 February 2007.

³⁶ Article 50, section 25 states that it is the General Congress’s exclusive prerogative “[t]o grant amnesties or pardons for crimes which have been [previously] judged in the Federation’s Tribunals [...]”, in “*Constitución Federal*”, Gloria Villegas Moreno and Miguel Ángel Porrúa Venero (Coords.), *Leyes y documentos constitutivos*, *op. cit.*, p. 341.

³⁷ He appears to be referring to the attorney generals.

³⁸ Lucas Alamán, “*Examen imparcial*”, *op. cit.*, pp. 253-254.

³⁹ Article 1, section 7, “*Constitution of the United States*”.

⁴⁰ Lucas Alamán, “*Examen imparcial*”, *op. cit.*, p. 271.

⁴¹ Despite the fact that, in reality, at the time they produced their works (*Esprit des loix* was first published in 1748; and *Commentaries on the Laws of England* appeared between 1765 and 1769), the working veto of the British monarch had fallen into disuse. It was last used by Queen Anne in 1707.

23. Moreover, Alamán appeared to believe that the members of the US Supreme Court were chosen exclusively by the President. He does not appear to be aware that the doctrine of checks and balances adopted in 1787 required all presidential nominations to obtain Senate approval before their appointment. He argued that the members of the Philadelphia convention had not felt it necessary to ensure that an independent authority name the judges, as was the case in Mexico, where the Supreme Court was appointed by the state legislatures.⁴² Rather he contended that they believed that the perpetual nature of the judges' position would be a sufficient guarantee of their independence from the executive power.⁴³
24. In Alamán's eyes, the Supreme Court was an important balancing factor within the US constitutional settlement, since it had powers to check the actions of both the legislative and executive branches. He wrote admiringly in the *Examen imparcial* of its faculty of judicial review; that is to say, the right to annul legislation that it considered unconstitutional. Reflecting on the different laws of expulsion of expropriation passed by Mexico's General Congress during the Federal Republic, he wondered if such unconstitutional acts could have been prevented "if this practice had existed" in Mexico. At the same time, he claimed that the US Supreme Court was also empowered to hear impeachment cases against members of the executive power.⁴⁴ All in all, he appeared to regard the Supreme Court as some sort of constitutional guardian or referee, whose principal function was to ensure that neither one of the other powers should behave unconstitutionally.
25. In conclusion, Alamán's criticism of the 1824 Federal Constitution probably did not have derived from its exact comparison with its US counterpart. It seems more likely that he was more inspired by the ideas the English balanced constitution, which he mistakenly assumed to have been exactly followed by the US Founding Fathers in 1787. Although it goes without saying that the writings of Burke heavily influenced him, it is unlikely that they were the source of his understanding of the principles of the balanced constitution, since the Irish parliamentarian did not describe the English system in great detail in his work. Instead, Alamán was also probably familiar, as were many of his contemporaries in Mexico, with Montesquieu and De Lolme, and perhaps, given his ability to read English, possibly Blackstone as well. Unfortunately, it is difficult to be certain, as, in keeping with the common practise of the time, he made few acknowledgements of his intellectual debts in his texts.
26. The sources of his misunderstanding of the US constitution are even more difficult to pinpoint. One possibility, however, could be John Adams' *Defence*

⁴² Article 127, "*Constitución Federal*", in Gloria Villegas Moreno and Miguel Ángel Porrúa Venero (Coords.), *Leyes y documentos constitutivos*, *op. cit.*, p. 349.

⁴³ Lucas Alamán, "*Examen imparcial*", *op. cit.*, pp. 258-259.

⁴⁴ *Ibid.*, p. 258.

of the *Constitutions of the United States* (1787),⁴⁵ in which Adams mounted a response to criticism made by Anne Robert Jacques Turgot on the division of powers adopted by the states' first constitutions. In this text, Adams defended the establishment of an independent executive and a bicameral legislative power by the majority of the states and argued that the states' constitutions represented a continuance of the principles of balanced government established in the British monarchy. Although Adams did assert that the states did not copy exactly the British constitution on more than one occasion –he lamented in his letter on the subject of England, for example, that none had equipped the executive with an absolute veto–⁴⁶ in other parts of the work, he was not quite so clear.⁴⁷ In fact, in the following section, dedicated to “Ancient Republics and Opinions of Philosophers”, he could easily be misinterpreted as suggesting that the state constitutions had adopted a constitutional arrangement in which the incumbent of the executive power had a complete “negative on the legislature”.⁴⁸

27. Moreover, Adams took great pains to defend the bicameral nature of the state constitutions' legislative power in his work. Here he drew upon the arguments of James Harrington and the theories of mixed government dominant in the English classical republican tradition, which was in many ways a precursor to the idea of the balanced constitution.⁴⁹ He emphasised the need to balance the legislative branch by creating a house to represent the common people and another to represent what he terms the “natural aristocracy”. The latter should be composed of those whose special attributes: great wealth, whether hereditary or earned, superior education or talent, separated them from the common man,⁵⁰ who Adams had earlier observed, was remarkable in America for being generally a small property-owner.⁵¹ In this letter he also quoted Harrington's judgement that this second house, or senate, should not legislate but simply be “councillors of the people” who should debate matters submitted to them. He concluded by affirming that “the people of most of the United States agreed upon the division of the legislative power into two houses” based upon the ideas of Harrington and the English republicans.⁵² Again, it would not be difficult to interpret this, quite erroneously, as meaning that the second chambers or

⁴⁵ Again there are many editions of this work. I have consulted the following: John Adams, *A Defence of the Constitutions of the United States of America Against the Attack of M. Turgot in his Letter to Dr. Price Dated the Twenty-Second Day of March, 1778*, Printed for John Stockdale, Piccadilly, London, 1794, 3 vols.

⁴⁶ Letter XX in *ibid.*, vol. 1, pp. 70-71.

⁴⁷ For example in letters XXIV and XXV in *ibid.*, vol. 1, pp. 97-141.

⁴⁸ Letter XXV, in *ibid.*, vol. 1, p. 117.

⁴⁹ See J. G. A. Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*, Princeton University Press, Princeton and London, 1975.

⁵⁰ Although it must be pointed out that Adams's central idea here was not to moderate the actions of the “common people” but rather to prevent the “natural aristocracy” from dominating the legislature. Letter XV in John Adams, *A Defence*, *op. cit.*, vol. 1, pp. 110-117.

⁵¹ Letter XX, in *ibid.*, p. 71

⁵² Letter XV, in *ibid.*, p. 138.

senates established by the different US states were similarly instances for debate and not for the initiation of legislation.⁵³

28. Bearing this in mind, it is worth asking, therefore, if Alamán's misunderstanding of the US Federal Constitution did not derive from accepting Adams's thesis that the US constitutions were modelled upon the ideas of balanced government, while, at the same time, confusing those state constitutions with the 1787 Federal Constitution. This connection to Adams also might help identify one of the sources of inspiration for the proposals for constitutional reform that Alamán set forth in an extended essay published in the newspaper the *Registro Oficial* in 1830 and republished in 1835 in the *Reflexiones*. As we shall see in the next section, this text set forth a strategy for transforming the 1824 Constitution into a model of balanced government in which political power was reserved for the property-holding, hard-working professional.

IV. ALAMÁN'S PROPOSALS FOR REFORMING THE 1824 CONSTITUTION

29. As might be imagined, the reforms Alamán suggested should be made to the 1824 Constitution were designed to correct what he had identified as its principal weaknesses. It should, therefore, come as no real surprise that despite his criticisms of the federal system, he did not propose any concrete changes in the Republic's form of government. If Mexico's first mistake as an independent nation had been to destroy the governmental system that had been in place for the previous three hundred years, now was not the time to repeat that error now once federalism had begun to take root. Moreover, he argued, federalism had been established because of regional pressure and responded to local interests; and, as a result, this guaranteed its support amongst the population and made it worthy of preservation. So, in the *Reflexiones*, he began his discussion of the Federal Constitution with the following remarks:

30. That the federal regime suits the Mexican Republic in its current state is no longer an issue for those who have applied themselves to studying the creation of this system and the local needs which prompted its establishment. Six years' practice have necessarily produced changes in circumstances [...] and [...] have necessarily won supporters even amongst those who were originally opposed to it, because many of these people have been convinced by the logic of self-interest [...] In fact, it is this motivation [self-interest] [...] that works and will always work in [favour of] the adoption of all political systems and [in favour of] their preservation. By numbering the interests that are affected by each regime, we can calculate

⁵³ There is a collection of the first US state constitutions provided by Yale Law School's "Avalon Project", at <http://www.yale.edu/lawweb/avalon/states/stateco.htm>, page consulted 27 February 2007.

the elements [that guarantee] its perpetuity. Local and personal interests, allied with the interest of all sensible men to avoid dangerous changes, are what give our federal institutions the kind of endorsement that equals that of time.⁵⁴

31. As a result, he believed that any attempt to abolish federalism, would be a terrible error, since it would only run counter to the vested interests of the Mexican population and could only provoke their bitter opposition and, probably, a civil war. For him, therefore, “the preservation of the federal system” was of the utmost necessity.⁵⁵
32. In Alamán’s eyes, the inadequacies of the Federal Constitution dangerously weakened the federal system. In order to promote its better conservation, he believed it was necessary to modify it in a similar fashion to the manner in which the Federalists in the United States had reformed that nation’s original constitution. However, he made no mention of the move from confederalism to federalism implied by the drawing up of the 1787 Constitution in the neighbouring republic. Although his declared aim was to “further strengthen the general government”, it appears his intention was to achieve this by introducing the central principals that he considered to be behind the division of powers established in Philadelphia into the 1824 Constitution.⁵⁶
33. Consequently, the reforms he proposed were designed to alter radically the structure of the division of powers that underpinned the Mexican Republic’s government. To begin with, he rejected outright the proposals a number of state legislatures had made in favour of stabilising the presidency by transforming it into a triumvirate power. Proponents of this idea suggested that a three-person council would put an end to party rivalry over the presidential office, as it would allow all to be represented in the executive council.⁵⁷ In the *Reflexiones*, Alamán reasoned, entirely consistently his partiality for a balanced constitution, that the “essence” of the executive should be “unity of action”.⁵⁸ If this power was in the hands of a committee, he continued, it would be too easy “to introduce discord” amongst its

⁵⁴ Alamán, *Reflexiones*, p. 1.

⁵⁵ *Ibid.*, pp. 1-2.

⁵⁶ *Ibid.*, p. 7.

⁵⁷ See for example, “*Observaciones de la legislatura de Michoacán sobre reformas de la Constitución general, que se sujetan a la deliberación del congreso*” (1830), in Manuel Dublán and José María Lozano, *Legislación mexicana o colección completa de las disposiciones expedidas desde la independencia de la República*, Imprenta del Comercio, a cargo de Dublán y Lozano, hijos, calle de Cordobanes, número 8, Mexico City, 1876, vol. 2, pp. 303-307.

⁵⁸ Similar terms are employed by Jean Louis De Lolme in *The Constitution of England or an Account of the English Government: in Which it is Compared with the Republican Form of Government and the Other Monarchies in Europe*, Printed by Henry G. Bohn, York Street Covent Garden, London, 1853, book 2, pp. 141-156; and by Adams, *Defence*, *op. cit.*, vol. 1, p. 379. Of course, the US Federalists were of a similar opinion; see Alexander Hamilton’s reasoning in the Federalist 70, in *The Federalist Papers*, with an introduction by Garry Wills, Bantam Classics, New York, 2003, pp. 426-434.

members, which would render it completely ineffective. In his opinion, a divided executive would not be able to restrain the legislative power or protect civil liberties, as the example of the Directory established by French constitution of 1793 amply demonstrated. Would the 18 Brumario have been possible, he wondered, if the executive power had not been divided amongst five consuls? Moreover, he believed that the only way unity was achieved in a committee, was through “the majority’s servile submission to one person’s opinion, influence, skill [...] and dominating personality”. What advantages could possibly be gained, therefore, from having a three, or even five person, executive power?⁵⁹ Finally, Alamán also argued that the different factions would merely squabble more over the new positions and would constantly be pushing for new elections. As a result, a triumvirate would soon fall victim to “the agitations” which always accompanied such confrontations. Such scrabbles for employment, he concluded, had been the biggest obstacles to the consolidation of the state.⁶⁰

34. According to Alamán, the best way to establish a stable and secure executive power was by strengthening its attributions and limiting its subordination to the legislative. His principal suggestion was to permit the president more freedom in appointing Federal employees and military officers. As we commented in the previous section, he regarded it as a monstrous attack on the idea of the separation of the powers that the legislature should have to confirm most presidential nominations. Equally, he believed the presidential position was severely weakened by his inability to sack military officers and functionaries if they disobeyed him. Consequently, in the *Reflexiones*, he suggested that the executive’s attributions should be modified to permit him to freely transfer these officials to different positions in such cases. It is true that he preferred to retain the need for Senate’s approval for the original appointments, although as we shall see shortly, he wanted this institution to transform into a body whose organisation and structure were more in keeping with the principles of the balanced constitution.⁶¹

35. Above all, Alamán wanted to ensure that, during a rebellion against him, the president had sufficient power to protect his position and defend his government. In the *Reflexiones*, he proposed that one of executive’s attributions should be the power “to remove those employees who do not inspire his trust” quite freely during any “insurrection [...] and armed disobedience”.⁶² From his discussion on the subject in the *Examen imparcial*, it is clear he also would have favoured the institutionalisation of the executive’s recourse to more complete powers of emergency in such situations. For example, he lauded the provisions of English law that allowed

⁵⁹ Lucas Alamán, *Reflexiones*, *op. cit.*, pp. 25-26.

⁶⁰ *Ibid.*, pp. 23-30.

⁶¹ *Ibid.*, p. 43.

⁶² *Ibid.*, pp. 43-44.

the principle of *habeas corpus* to be suspended at times of emergency.⁶³ He pointed out that many of the first Federal Republic's governments had petitioned the General Congress during moments of crisis to be allowed to move without consulting the legislative. As no such provision existed in the 1824 Constitution, he lamented, Congress would then discuss the matter at length, deciding only to award them once the government had been fatally weakened and their effect was more or less useless.⁶⁴

36. Bearing in mind the events of 1828, when the supporters of Vicente Guerrero's presidential bid rebelled against the results that favoured his rival Manuel Gómez Pedraza and succeeded in imposing their candidate as the winner, Alamán also counselled reforming the manner in which the executive was elected. According to the 1824 Constitution, the presidency was chosen by the state legislatures. They held their ballot in August and September of an election year and sent their results to the General Congress. Congress scrutinised the results and declared the winner in the following January. The newly elected magistrate took up office on 1 April. It had been during this prolonged transitional period that the rebellion in favour of Guerrero had taken place, and, consequently Alamán wanted to reduce it to the absolute minimum necessary. He recommended that the General Congress publish the results as soon as possible after the state elections. Likewise, he was of the opinion that the president-elect should take up his appointment "immediately after" Congress had announced the results. Alamán believed that the new president would better manage to consolidate his position if he could take up the reins of government at once, rather than being dependent on the outgoing leader for support for an extended period. As he pointed out, the incumbent could well be opposed, or simply indifferent to, his successor.⁶⁵

37. In keeping with Alamán's preference for the balanced constitution, the bulk of his reforms were designed to radically alter the makeup of the General Congress to bring it more in line with the principles he assumed were behind the US and British systems. To begin with he recommended two changes to the manner in which the Chamber of Deputies was elected. He suggested that any deputy should be required to have an annual general income of at least 1000 pesos or be the owner of a property worth 6000 pesos or more; and, he proposed that the house by should not be renewed completely every two years, but by half.⁶⁶ In this way, the deputies would serve for a four-year period, rather than for two years, as was currently the case. If we bear in mind our previous discussion, it is clear that the first proposal was

⁶³ Lucas Alamán, "*Examen imparcial*", *op. cit.*, pp. 255-256.

⁶⁴ *Ibid.*, p. 256.

⁶⁵ Lucas Alamán, *Reflexiones*, *op. cit.*, pp. 29-30 and 42.

⁶⁶ *Ibid.*, p. 39. It is clear in both the texts that Alamán also favoured making suffrage conditional on some kind of income requirements. However, he did not make any suggestions about the amount that should be imposed. He merely recommended that the General Congress should fix the requisites for citizenship at a national level and deprive the states their power to define it.

made with Burke and the United States in mind. For its part, the second obeyed his belief that the Chamber of Deputies had been unable to deal with all its business in two-year terms. He hoped that by extending the life span of each parliament, the members would be better able to fulfil their obligations.⁶⁷

38. Secondly, Alamán wished to modify the processes by which legislation was made in the General Congress. The existing regulations specified that most business could be begun indiscriminately in either house through a direct proposal made by a congressman. Only bills pertaining to taxation must have their first reading in the Chamber of Deputies. It was the President's prerogative to present his projects to the lower house, while the state legislatures were allowed to submit their initiatives to the Senate. All treaties that the government negotiated with foreign powers had to be approved by both chambers. Alamán suggested that senators should be deprived of their power to propose legislation and recommended that the deputies' should also lose the ability to make direct proposals to the Chamber. He wanted all initiatives to be presented in writing to the house by a "Great Commission": a committee of deputies elected for this purpose by their fellow representatives. The President should have the right to propose legislation in both chambers, while the states should be restricted to initiating bills in the Senate. This house should also be entrusted with the sole responsibility for ratifying foreign treaties.⁶⁸

39. In this way, Alamán aimed to insert new elements of balance into the legislative process. He wanted to provide an internal check on the behaviour of the Chamber of Deputies by creating the special committee charged with proposing legislation. At the same time, he tried to transform the Senate into an institution of revision, whose principal legislative function would be to scrutinise the projects of the other parts of government, and not to make its own proposals. It is possible that he might also have been seeking to strengthen the position of the executive power in the direction of foreign policy. The need for both chambers of Congress to debate treaties had made it extremely difficult for them to be successfully ratified. Confining discussion to one house was probably designed to speed up the process.⁶⁹

40. Without a doubt, Alamán's most ambitious plans were for the Senate. He envisaged transforming that body into an institution quite separate to the Chamber of Deputies in both its composition and organisation. According to the *Reflexiones*, elections for the new Senate should take place every six

⁶⁷ For similar reasons, Alamán also suggested that the General Congress dedicate a month of extraordinary sessions at the end of each year's legislative period in order to debate all matters concerning the Federal District and the territories, none of which had their own legislature, but were directly governed by the national government in Mexico City. He had previously noted that Congress never had any time to deal with these matters. *Ibid.*, p. 42.

⁶⁸ *Ibid.*, p. 41.

⁶⁹ *Ibid.*, pp. 41-42.

years, in which one third of the senators would be replaced. The first Senate would be directly chosen by the state legislatures just as the 1824 Constitution instructed; however, in subsequent elections, the states would only have the right to present a list of candidates to the outgoing Senate. This house would make the final selection of name to fill its vacancies. With this reform, Alamán wanted to give the Senate more stability. The Federal Constitution stipulated that the upper house be renewed by half every two years, which meant that each senator served for a four year term. In the new Senate, a member would sit for eighteen years. At the same time, he suggested that the Senate should not enter into recess like the Chamber of Deputies, but should sit in permanent session.⁷⁰

41. Clearly, Alamán's motive here was also the idea of correcting the imbalance he had noted in the Federal Constitution. He wanted to make sure that the Senate did not derive from the same electoral source as the Chamber of Deputies. If the lower house was to be democracy's representative; the upper chamber should represent the interests and opinions of a different group of people. According to the ideas of the balanced constitution, this should be the aristocracy, the elites of society. In Alamán's plan, this was not to be achieved by assigning seats to the biggest landowners or property-holders. In fact, he recommended that would-be senators met the same property and income requirements that he proposed for deputies. The aristocracy Alamán wished to represent in the Senate was that of the professional classes. As a result, he stipulated in his reforms that senatorial seats should be only available to those who 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.⁷¹

42. Separated in this way from the Chamber of Deputies, Alamán was prepared to allow his Senate all of the same attributes that the 1824 Constitution had ascribed it to check the executive's action. It would no longer constitute a terrible breach of the proper division of powers if the senators' approval still needed to be sought in order to confirm presidential appointments, for example, because the members of the reformed Senate were unable to propose legislation and, therefore, did not properly belong to the legislative power.⁷² Equally, since it was to be in constant session, it could also perform the diverse functions of the existing Council of Government, which, according to the provisions the 1824 Constitution, only met during the recesses of the General Congress and exercised most of its usual faculties,

⁷⁰ *Ibid.*, pp. 40-42.

⁷¹ *Ibid.*, p. 40.

⁷² He suggested including an additional clause to the constitution that made it clear that these attributes "do not belong to the General Congress's legislative faculties". *Ibid.*, p. 42.

including that which empowered it to name a provisional executive power in case of necessity.⁷³ In the *Reflexiones*, he stated that he particularly wanted the Senate to take on the Council's first attribution: "watch over the preservation of the constitution" ("velar sobre el mantenimiento de la constitución") on a permanent basis; although, he did not specify how this should be achieved.⁷⁴

43. The new Senate, however, would not be an advisory body or council for the President, in the manner of the Spanish Council of Government established in the Constitution of Cádiz; nor would it act like the attorney-generals in the British and US systems. He recommended that such a council could be established as part of the executive power and named by the president from a list of candidates presented by the Senate.⁷⁵ It seems that, in search of a more perfectly balanced government, Alamán wanted his Senate to be entirely separate to *both* the Chamber of Deputies and the President. This is clearly evidenced in the reforms he proposed to the provisions of impeachment. As we noted in the first section, he particularly hated the fact that either house of the General Congress was able to hear impeachment charges against members of the other powers of government as well as its own congressmen. In the *Reflexiones* he recommended that the Chamber of Deputies be deprived of its right to hear impeachment cases against members of the executive power. He stated that this power should only be awarded to the reformed Senate. Its members should be impeached in the Supreme Court of Justice, whose ministers, in turn, should only be tried in the Chamber of Deputies.⁷⁶ In this way, no one institution could hold the others to ransom; each could only check the behaviour of one of the others.
44. Unquestionably, Alamán's proposals for redesigning the Senate suggest that he had been influenced by French constitutional thought, especially the ideas of Emmanuel Sièyes and Benjamin Constant. The power of revision in all legislative matters could be considered to echo Sièyes's plans for the

⁷³ Article 116 specified the following attributes for the Council of Government: "To watch over the preservation of the constitution, the constitutive act and the laws in general, drawing up an expedient over any incident relating to this; 2. To make the observations it considers pertinent to ensure the better observance of the constitution and the laws of the Union; 3. To agree, on its own behalf, or at the president's request, to convoke the General Congress for extraordinary sessions [...]; 4. To give consent to the use of the local militia [by the President] [...]; 5. To approve the appointment of those employees designated in section 6 of article 110 [see note 30 above]; 6. To give consent in the case of article 112, section 1 [presidential requests to personally lead the armed forces]; 7. To appoint those individuals who should provisionally exercise the executive power in conjugation with the President of the Supreme Court of Justice [...]; 8. To hear the oath sworn by the members of the executive power specified in article 101 [upon taking up office] in those cases specified by the constitution; 9. To give its opinion ["dictamen"] regarding those matters upon which the President should consult it [...]." "*Constitution Federal*" in Gloria Villegas Moreno and Miguel Ángel Porrúa Venero (Coords.), *Leyes y documentos constitutivos*, *op. cit.*, p. 348.

⁷⁴ Lucas Alamán, *Reflexiones*, *op. cit.*, p. 15.

⁷⁵ Lucas Alamán, "*Examen imparcial*", *op. cit.*, p. 254.

⁷⁶ Lucas Alamán, *Reflexiones*, *op. cit.*, p. 15.

Senate in the constitution of 1799 (*l'an VII*), for example.⁷⁷ Moreover, he does appear to support the establishment of four separate powers of government, one of which should work to guarantee the others respect the provisions of the constitution, as recommended by Constant. Even so, these influences were probably also mediated through his knowledge of other Latin American constitutions of the period and the political ideas already in circulation in Mexico. In the *Reflexiones*, for example, he speaks admiringly of the constitution Simón Bolívar drew up for Bolivia in 1826. This charter – itself clearly influenced by Sièyes's ideas– 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, as Alamán envisaged for his Senate. Institutions with similar attributions to those that Alamán had outlined had also been proposed in Mexico. Juan Wenceslao Barquera advocated the creation of a Conservative Tribunal for the Empire in 1822, whose faculties would include advising the Emperor on the nomination of officials and deciding whether the constitution had been impinged. The first republican constitutional project presented to the General Congress in 1823 also recommended awarding the Senate similar powers, as well as the power to hear impeachment accusations against all members of the Federal government.⁷⁸

45. Despite this, the comparison Alamán drew between the provisions of the Mexican constitution and what he believed to be those of the US charter, as well as his disdain for “the misplaced metaphysics” of French constitutional thought, suggests that he was not primarily thinking of Constant or even Bolívar, when he put forward his reforms for the Senate. If we look at the reform package as a whole, it becomes obvious that he was seeking to transform the structure that regulated the 1824 Constitution's division of powers so that it better matched the idea of a balanced constitution. He imagined creating a power structure in which the pernicious French and Spanish influences had been removed and replaced with the principles that had made the US Constitution so successful. He was suggesting that Mexico adopted a republican version of the British system in which the Chamber of Deputies, the Senate and the President had similar powers to those that Adams, De Lolme, Blackstone and Montesquieu had assigned to the King, Lords and Commons. He might have wished to see the Senate charged with safeguarding the constitution, but his preference for the division of the responsibility for hearing charges of impeachment between the four institutions of government, rather than awarding it fully to the

⁷⁷ See articles 15 to 24 in “*La constitution du 22 frimiere an VIII (13 decembre 1799)*” at <http://www.conseil-constitutionnel.fr/textes/constitution/c1799.htm>, page consulted 1 March 2007.

⁷⁸ David Pantoja Moran, *El Supremo Poder Conservador. El diseño institucional en las primeras constituciones mexicanas*, México, El Colegio de México/El Colegio de Michoacán, 2005, pp. 305-307.

Senate as the project of 1823 counselled, reveals his inclination for the ideas of balance.

46. Given Alamán's later monarchism and conservatism, it must be stressed at this point that there is nothing in his reforms to imply that he favoured a creating a monarchy or restoring a hereditary aristocracy. There is no evidence to suggest that he wished to reserve political positions only for the wealthiest and most privileged of society. As we noted above, his proposals seemed inclined to promote the professional classes: the priests, doctors, lawyers and military officers, the so-called *hombres de bien*, who already dominated the Mexican political scene. His reforms were designed to ensure that Mexico followed the teaching of Burke and the example of the United States, and reserved governmental positions were those for some kind of financial stake in society. Equally, he made no attempt to destroy the principals of representative government. He wanted to change the manner in which Senate was elected, but made no changes to the representative nature of the Chamber of Deputies. In the 1830s Alamán remained a republican, albeit of the more classical variety. His interest lay in achieving a better balance of power between the branches of government, rather than changing its form.

47. As we noted in the introduction, Alamán was far from alone in this respect. During the first five years of the 1830s many different projects for constitutional reform were presented and discussed. Most of them were principally concerned with making changes to the division of powers established by the 1824 Constitution. The end result of these discussions was, of course, the new constitutional charter of 1836 that inaugurated a radically different governmental structure for the Mexican republic. The *Siete Leyes*, as they were called, founded a fourth branch of government: the Supreme Conservative Power, whose principal function was to mediate between the other three and prevent any one of them from overstepping their attributes. It was also charged with maintaining constitutional order and government in times of rebellion. This body was chosen by the other powers and its members all had to have experience in one or more branches of government. Equally, this new constitution created a Council of Government, composed of 13 lifelong members, including two priests and two military officers. This council formed part of the executive power and was chosen by the president from a list drawn up by the Senate. Its job was to advise the President in the exercise of his powers, but its assent was not needed for executive nominations. The Senate continued to hold this function.⁷⁹

⁷⁹ See the second, third and fourth laws in "Leyes Constitucionales de 1836", http://www.cervantesvirtual.com/servlet/SirveObras/01361697524573725088802/p0000001.htm#l_11_, page consulted 1 March 2007.

48. Many historians have assumed that Alamán was the guiding influence of the congressional committee that drew up the final text of the *Siete Leyes* in 1836.⁸⁰ This paper appears to suggest that this was probably not the case. Aside from the fact Alamán was not a member of the commission and, despite having a seat in Congress, did not attend many sessions in 1835 and 1836, it is clear that the theories that held sway in 1836 derived from French constitutional thinking,⁸¹ rather than its anglophile cousin. As a result, we must conclude that, while there can be no doubt that Alamán played an important part in the constitutional debates of the 1830s, it is unlikely that his was the dominant voice in 1836. In order to understand fully the antecedents to the *Siete Leyes* it is necessary to examine the other plans for reform that circulated in the 1830s.

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⁸⁰ For example, Alfonso Noriega, *El pensamiento conservador*, op. cit., vol. 1, p. 220.

⁸¹ The work of Pantoja Morán cited in note 78 above demonstrates this in great detail.

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