

**“CONSTITUTING” BRAZIL:
Authenticity, Imitation, Legitimacy in the Empire**

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SUMÁRIO

RESUMO	5
I. THE CONSTITUTION: IMITATION, REPRESENTATION, LEGITIMACY.....	8
II. THE ARCHIMEDEAN POINT: A PARTY GOVERNMENT WITHOUT PARTY POLITICS? ..	14
REFERENCES.....	33

RESUMO

A abordagem da “questão nacional” requer o reconhecimento de que a “nação” é um coletivo socialmente construído, constituído em torno de uma identidade política moldada por instituições formais e informais. Essas instituições podem ser extraídas do passado da sociedade, criadas *de novo*, ou construídas como imitações de algum modelo. A influência de ideias forâneas e de modelos importados de organização política tende a complicar a “questão nacional”, pois levanta o problema da autenticidade, que pode ser utilizado para contestar a legitimidade do regime por não ser de fato brasileiro ou não refletir a realidade brasileira. Assim, um traço característico de todas as tentativas de abordar a questão nacional refere-se à contestação básica da legitimidade das instituições que deram início ao processo de constituição da nação.

Este trabalho está organizado em duas seções que esboçam algumas características institucionais do Estado brasileiro no período Imperial, relacionando-as às questões da imitação, da legitimidade e dos valores liberais. A primeira consiste numa descrição da Constituição Imperial de 1824, discutindo os modelos externos e as influências que moldaram o texto, bem como sua recepção pela elite política – em resumo, suas reivindicações de legitimidade baseadas na representação da nação formalmente declarada. A segunda é constituída por uma discussão sobre o *poder moderador*, em termos de sua origem no modelo externo da monarquia liberal e as posteriores defesas e críticas vinculadas às diferentes concepções sobre quais instituições efetivamente representavam a nação em termos políticos. Finalmente, a conclusão procura resumir as ambiguidades e contradições do liberalismo no Brasil Imperial.

Palavras-chave: Nação; Império; Constituição; Liberalismo; Imitação; Legitimidade

ABSTRACT

Approaching the “national question” requires recognition that the “nation” is a socially constructed collective, constituted around a political identity shaped by formal and informal institutions. These institutions can be drawn from a society's past, created *de novo*, or made in imitation of some model. The influence of foreign ideas and imported models of political organization tends to complicate the “national question” because it raises the issue of authenticity that can be used to contest the legitimacy of the regime as not really Brazilian or reflective of Brazilian reality. Thus, a feature of all attempts to address the national question is the fundamental contestation of the legitimacy of the institutions that began the process of constituting the nation.

This paper is organized into two sections that lay out certain institutional features of the Brazilian state in the Imperial period and relate them to the issues of imitation, legitimacy, and liberal values. The first is an account of the Imperial Constitution of 1824 which discusses the foreign models and influences that shaped the written document as well as its reception by the political elite – in short, its claims of legitimacy based on representation of the declared nation. The second is a discussion of the *Poder Moderador* in terms of its origins in a foreign model of a liberal monarchy and later defenses and criticisms linked to differing conceptions of what institutions truly represented the nation in political terms. Finally, the conclusion attempts to sum up the ambiguities and contradictions of liberalism in Imperial Brazil.

Keywords: Nation; Empire; Constitution; Liberalism; Imitation; Legitimacy

It is evident that the “national question” is concerned with matters of identity. It also seems evident that because the “nation” is not a physical thing, but a shared social identity, ideas, as the very basis of social knowledge, must be significant in any attempt to grapple with the “national question.” What then is the proper place of ideas in the “national question”? An answer may be found in the move to “constructivism” in comparative political science.

Constructivism is an approach to politics, related to the “social construction of reality” and sociological institutionalism, which argues that human action takes place in a social context as well as a material world which is subject to human manipulation. Since the social interaction creates social context and the material world is manipulated through shared knowledge, it is the interactions and knowledge that are constitutive of the structures of human action. In order to understand human action, it is necessary to understand the meanings with which humans invest these structures because that is what motivates and makes possible action. In short, shared mental constructs (ideas, concepts, beliefs, norms, principles, etc.) shape how humans interact with each other in the social and material worlds, which they understand through these mental constructs. It is a form of “structural idealism” as one prominent advocate of the approach has put it (WENDT, 1999, p. 1).

Although the approach is found more commonly in International Relations than comparative politics, one of the earliest works to use this approach in contemporary political science was concerned with the development of government institutions. The key insight of this early work is that “political life is organized around the development of meaning through symbols, rituals, and ceremonies.” (MARCH; OLSEN, 1984; 1989)¹. It is from this point that the “place of ideas” in the “national question” can be addressed. The “nation” is a socially constructed collective, constituted around a political identity shaped by formal and informal institutions. These institutions can be drawn from a society's past, created *de novo*, or made in imitation of some model.² In 19th century Brazil, the institutions of the state were constituted in a series of political struggles sparked by the diffusion of ideas critical of the colonial regime and by the examples of the American and

¹ For an overview of constructivist literature in both IR and comparative politics at the beginning of the decade, see FINNEMORE; SIKKINK, 2001

² The issue of imitation as a strategy of development is discussed at greater length in CHISHOLM, 2009.

French Revolutions – claims of legitimacy for the new state were made in a universalistic language of rights claims that came from the North American and French experiences. Likewise, the nation was constituted, in part, through a language and examples that came from outside Brazil. The influence of foreign ideas and imported models of political organization tends to complicate the “national question” because it raises the issue of authenticity that can be used to contest the legitimacy of the regime as not really Brazilian or reflective of Brazilian reality. Thus a feature of all attempts to address the national question is the fundamental contestation of the legitimacy of the institutions that began the process of constituting the nation.

The issue is not, however, as simple as saying that institutions were “copies” of foreign examples that did not fit local “reality.” Throughout the nineteenth century the political rhetoric, ideas, and principles espoused by the Brazilians and embodied in the formal institutions of the state tended to be drawn from English, North American, and French liberalism and, to a lesser extent, republicanism. However, conditions in Brazil differed in many respects from those in these paradigmatic liberal states – at least in the bourgeois myth of liberal development. In fact, circumstances were similar to the American South, where these doctrines also took on peculiar features.³ As a result, the discourse of liberalism in Brazil adapted to the peculiarities of a hierarchical, clientelistic society dominated by a land- and slave-owning oligarchy, just as happened in the American South. European and North American models were adapted both consciously by the political thinkers and actors who sought to implement them and unconsciously as a consequence of their interaction with local conditions. In turn, the models had effects on local conditions, both conceptually, in terms of how these conditions were understood, and practically, in terms of local practices adapting to the functioning of new institutions and political conflicts generated by the friction of competing models. This allowed an ambivalence in the political discourse as, on one hand, the new political order could be contested as not being authentically Brazilian, while on the other it could be claimed that the new regime did not sufficiently embody the universalist principles that it claimed as its basis. Both were attacks on the legitimacy of the political order as representative of the nation, either in its particularity or membership in a transnational community of sharing norms and principles.

³ See, for instance, GENOVESE, 1994, chapter 2, “Political and Constitutional Principles.”

What follows are two sections that lay out certain institutional features of the Brazilian state in the Imperial period and relate them to the issues of imitation, legitimacy, and liberal values. The first is an account of the Imperial Constitution of 1824 which discusses the foreign models and influences that shaped the written document as well as its reception by the political elite – in short, its claims of legitimacy based on representation of the declared nation. The second is a discussion the *Poder Moderador* in terms of its origins in a foreign model of a liberal monarchy and later defenses and criticisms linked to differing conceptions of what institutions truly represented the nation in political terms. Finally, is a conclusion that attempts to sum up the ambiguities and contradictions of liberalism in Imperial Brazil.

I. THE CONSTITUTION: IMITATION, REPRESENTATION, LEGITIMACY

The Constitution of the Imperial state played a central role in the creation of an independent Brazil – both as a state and as a nation – by performing the vital function of establishing the formal institutions of government and legitimizing the new regime that claimed to represent the people of Portuguese America. The institutions of the new state were central to holding together a vast territory and a society that was characterized by a prominent member of the Brazilian elite as anarchic (ANDRADA E SILVA, 1973a). The problem at the foundation of the new regime was to establish institutions that were acceptable to the political elite and that portion of urban population that was politically mobilized, but whose operation would bind together the disparate parts. Again, the question was how to constitute an identity that would transcend particular loyalties and centrifugal tendencies. The universalist principles of liberalism offered a solution if they could be embodied in rules that encouraged norms of obedience and loyalty to the central government.⁴ This required a Constitutional formula that linked central authority to the idea of representation of the nation through institutions that were both amenable to centralization and were widely legitimate – again, the embodiment of liberal principles.

The great political confrontation in nineteenth century Brazil revolved around the regime's legitimacy and basis of authority. This involved not merely conflicts over the particular institutions of the state, but the basic relationship of the state and the nation. This relationship was problematic because the Brazilian state antedated the consolidation of the colonial population into a nation. Independence had not been a

⁴ The centrality of norms and rules in constructivist analysis of politics is laid out by BURCH, 2002.

national struggle against a colonial administration intent on preserving royal authority, but a matter of severing the colonial administration under the Portuguese Crown Prince from the Cortes in Lisbon, while keeping the institutions intact. Brazil's pattern of development, the mercantile economy, and the historic weakness of the vice-regal authority had all conspired to prevent the development of the sense of a Brazilian nationhood prior to independence. The dominant object of popular (and even elite) political affection was the *patria*, the locality, the province.

The absence of a sense of nationhood is expressed in its starkest form by Frei Caneca in his argument that Brazil's provinces all achieved their own independence with the proclamation of September 7, 1822:

Brazil, simply by the fact of its separation from Portugal and proclamation of its independence, became *independent* in fact, not only as a whole but each one of its parts or provinces; and these independent of one another.

Brazil became *sovereign*, not only as a whole, but each one of its parts or provinces.

(CANECA, 1976, p. 100)⁵

In this view, there was no Brazilian nation, merely a voluntary union of the provinces of Brazil. This vision of the primacy of the *patria* over the nation remained a problem for the Empire into the Second Reign as the cycle of provincial rebellions from 1824 to 1848 attests.

For the Empire's defenders, the imperial state represented a bulwark against the anarchic and centrifugal forces of regional society that threatened to tear Brazil apart as the Spanish colonies had been. In this interpretation, the establishment of state authority in the person of the Emperor was necessary given the unintegrated nature of Brazil's social development. The legitimacy of the state was founded on its defence of national unity. This was the position taken by José Bonifácio in his works. His instructions to the São Paulo delegates to the Lisbon Cortes and his notes on the political future of Brazil both emphasize the importance of a unified national government to ensure the territorial integrity of Brazil, while the first also condemns the intention of the Cortes to divide the unified administration of the Kingdom of Brazil as a grave threat to the kingdom's security (ANDRADA E SILVA, 1973b; 1965). The role of the Prince Regent, the head of the colonial government, was all the more important as his presence meant that there existed

⁵ Denis Bernardes has gently, but firmly, attempted to set me straight on Frei Caneca's nationalism and his criticism of the Imperial Constitution. I defer to his knowledge, but hope my point still has some validity as an example of a much looser sense of nationhood than that embodied in the Constitution.

a more unified colonial authority than there had been prior to 1808, which helped to prevent a fragmentation of Brazil along the lines of the *patrias*, as happened in Spanish America. In essence, from this point of view, the state made possible the development of the Brazilian nation by maintaining the unity of the old colonial territory. Yet the success of this venture laid the ground for later conflict as the leading role of the colonial apparatus in securing independence tended to give the state primacy over society in the discourse of politics to the extent that the state did not arise out of society as in the liberal account of the rise of government, but existed apart from it.⁶

The gap between state and society threatened to compromise the legitimacy of the Empire at its very origin, for the proclamation of the Empire was intended to unite conflicting claims to legitimacy: dynastic and democratic. Dynastic legitimacy was to come from the rule of the Portuguese Crown Prince, democratic legitimacy from the popular acclamation of an emperor rather than the coronation of a king and from a constitution to be written by an elected Constituent Assembly. However, the Emperor's dissolution of the Assembly and his promulgation of a constitution drafted by the Council of State meant that the Constitution, though liberal in its provisions, was not the product of the elected representatives of the people, but of the will of a sovereign who simultaneously established himself as the central authority of the regime and voluntarily constrained his will with his pronouncement.⁷ Although this inaugurated constitutional government in Brazil, it was not established or even approved by the society's representatives.

The Imperial Constitution of 1824, although composed by the Emperor and his Council of State after the dissolution of the Assembly, was not an illiberal document. Indeed, it is doubtful that it could have provided any legitimacy to the new regime, so strong was the influence of liberalism on the politics of the Brazilian elite, had it not borne strong traces of the liberalism of the early stages of the French Revolution and the Restoration, in particular, *The Declaration of the Rights of Man and Citizen* of 1789, the

⁶ Wanderley Guilherme dos Santos deals with these issues very succinctly (SANTOS, 1978, esp. pp. 78-9).

⁷ Principal responsibility for the Constitution of 1824 is generally ascribed to José Joaquim Carneiro de Campos, later Marquesa de Caravelas, though Dom Pedro is often given some credit in its composition (see CARNEIRO DA CUNHA, 1985, p. 253). Francisco Iglésias credits both Carneiro de Campos and Dom Pedro with significant roles in the writing of the Constitution, citing evidence from notes in Pedro's own hand found in his archives (IGLÉSIAS, 1993, p. 137).

Charter of 1814, and the ideas of the French liberal Benjamin Constant de Rebecques.⁸ Like the Charter of 1814, the Constitution was promulgated not by a popular assembly, but by a reigning monarch; however, the authority of the government in the Imperial Constitution was owed to a “delegation” of powers by the nation (Article 12). This formulation is interesting, as the idea of the nation delegating all the powers of government seems an attempt to chart a middle course between the Rousseauian conception of indivisible and unassignable sovereignty possessed by the people and the renewed absolutism of the Restoration, as expressed in Louis XVIII’s claim that “complete authority in France is vested in the person of the king” who is then in a position to “grant, concede and bestow upon our subjects” a constitutional charter.⁹ Both the General Assembly and the Emperor are representatives of the Brazilian nation and neither is described as sovereign anywhere in the constitution. In this, the author (or authors) of the Constitution appears to follow the lead of Restoration liberals, such as Constant and Hegel, for whom sovereignty is possessed by the people or the state as a whole, but could be exercised only by institutions to whom power was delegated in constitutional form.¹⁰

The government itself was organized according to the doctrine of the separation of powers, subject to a variety of internal checks, and subordinated to the rule of law. The Emperor’s powers, both “moderating” and executive, were outlined in the Constitution (Articles 98, 101, 102), as were the powers of the Assembly (Articles 13-70). Ministers and councilors of state were explicitly subjected to the Constitution and the law in the exercise of their offices and were, therefore, “responsible” (Articles 133, 135, 141, 143). There is, however, the basis for serious conflict over the responsibility of ministers as it is found in the Constitution. While both ministers and councilors of state are explicitly described as being “responsible,” this responsibility is criminal, not electoral.¹¹ Nowhere

⁸ Elías José Palti makes an important point respecting the triumph of liberalism in political discourse “from the moment that the constitution of the kingdom had become a matter of public debate.” (PALTI, 2009, p. 609). Though he is discussing Spanish America in this article, the same is true of Brazil.

⁹ See ROUSSEAU, 1987. For Louis XVIII’s vision of authority, see the Preamble to the Charter in COLLINS, 1970, p. 10.

¹⁰ A statement on the “delegation” of sovereignty can be found in the work of CONSTANT, 1988, Chapter 1 – “On the Sovereignty of the People”. In: FONTANA, 1988, p. 176. On Hegel’s opposition to both popular sovereignty and legitimist absolutism in *Philosophy of Right*, see Remarks to §258, Remarks to §273, Remarks to §279 and footnote on Haller in Remarks to §258, Addition to §279, Addition to §280, Addition to §281 (HEGEL, 1965). See also the discussion in AVINERI, 1972, pp. 281-9.

¹¹ Constant discusses the “responsibility of ministers” entirely in terms of their accountability for criminal acts undertaken in the course of official business, even though he later mentions the importance of ministers having a majority in the legislature. See *Principles of Politics* in CONSTANT, 1988, ch. 9, esp. pp. 227, 231-2, 236-7, 239, 240-2). On the importance of legislative majorities, see ch. 10, pp. 242-4. Hegel

is it specified that the ministers of state must be drawn from the Assembly, much less be endorsed by the majority in it. Nor is there any statement of the accountability of the executive power to the Assembly in matters other than the “investigation of the past administration upon the death of the emperor or a vacancy in the throne” (articles 15 and 37) and the impeachment and trial of ministers and councilors (Articles 38 and 47). The issue of ministerial responsibility would become a contentious one as conflict developed between the legislature and Dom Pedro.

The statement of the rights of Brazilian citizens, in thirty-five clauses, drawn heavily from *The Declaration*, guaranteed representation, equality before the law, security of person and property, freedom from arbitrary arrest, and freedom of speech and the press (Article 179).¹² Despite the maintenance of slavery, citizenship was conferred upon all Brazilians who were born free or manumitted (Article 6). The rights of Brazilian citizens, native born or naturalized, were formally guaranteed without regard to race or previous status as slaves (Article 179). In fact, even voting rights were not denied on the basis of race or prior slave status, in contrast to the situation in the United States at the same time.¹³

This is not to say that the Constitution was a democratic document. Rather, there were limitations on both suffrage and office-holding, in keeping with the practice of the liberal world of the time. The Imperial Constitution linked political rights to competence, identified with position and wealth, rather than simple citizenship. Citizens were divided into active and inactive, the latter being excluded from the right to vote. The exclusion of

discusses the “answerability” of the ministers to the monarch who chooses them and may dismiss them if they fail to perform their duties (HEGEL, 1965, § 283-284, 294, and 295). The French Charter of 1814 states that “ministers shall be responsible,” but says nothing more. See “The Charter” §13 in COLLINS, 1970, p. 12.

¹² Viotti da Costa notes the adoption of the language of 1789 *Declaration of the Rights of Man and Citizen*, as well as the importance of the divergences from that text, in Dom Pedro’s Constitution (VIOTTI DA COSTA, 1985, pp. 59-60). However, her assertion that Article 179 reproduces *The Declaration* “almost word by word” goes too far, there are numerous alterations and additions. One of the three omissions which she claims expressed “the anti-democratic tendencies of the Brazilian elites” is not omitted, but appears altered form in articles 11 and 12 proclaiming the Emperor and General Assembly representatives of the Brazilian nation and their powers “delegations of the Nation.” For the text of *The Declaration* of August 26, 1789, see HUNT, 1996, pp. 77-79.

¹³ The Imperial Constitution spelled out the right of suffrage and gave the provinces no say in it, thereby establishing a uniform and liberal standard, preempting legal discrimination at the provincial level, even though there was substantial abuse in practice. The American Constitution, by leaving suffrage to be defined by the state governments, allowed the progressive disfranchisement of Blacks and others by the states in the decades between the Revolution and the Civil War. See, for instance, WILLIAMSON, 1960, p. 278. Not until 1870, with the 15th Amendment, was the right to vote formally guaranteed regardless of “race, color, or previous condition of servitude.”

adult males living at their parents' home, personal servants, cloistered clergy, and the poorest elements of society from voting rights grew out of the view that a man dependent on another was incapable of exercising political rights freely and responsibly.¹⁴ In Brazil, this issue was especially salient later in the century when it became clear that the tenants of the great landholders could meet the income requirements without actually being autonomous agents given the clientelistic nature of Brazilian society.¹⁵ Furthermore, the right to vote was limited by indirect elections to both the national Assembly and the provincial general councils (art. 90). Active citizens voted in parochial assemblies for the electors who then voted for the representatives to sit in the Chamber of Deputies, the Senate, and the provincial General Council. Electors had to meet the basic qualifications for voting, a higher income requirement, and be free-born (art. 94). Likewise, eligibility to sit in the Chamber, Senate, and provincial councils was determined by income requirements beyond those for active citizenship. There were also further exclusions based on national origin and religion for all offices above that of elector.

To be sure, there were explicitly illiberal provisions in the charter as well, among them those which denied the right to be electors to manumitted slaves and the right to be a deputy or senator to non-Catholics (Articles 94, 95), but similar measures could still be found even in English and American law in the early 19th century.¹⁶ Other provisions concerning religion were also less than liberal, proclaiming Catholicism the state religion and restricting the right of non-Catholics to practice their faith publicly (Article 5). Nonetheless, the Constitution was a remarkably liberal document and, in its exclusions, limitations, and centralization of power, it was not very different from the 18th century liberalism from which it grew, nor was it very different from the liberalism found in Restoration Europe. Apart from its origin in the unilateral act of the monarch rather than a constituent assembly, the key problem was that constitutional discourse sat uncomfortably with the social structure of Brazil and with the powers of the Emperor as articulated in the document and as exercised in practice.

¹⁴ This argument is advanced explicitly by BUENO [1857] (1978), Titulo IV, capitulo 1, §2, 3, 4. See also Silvestre Pinheiro Ferreira, "Manual do Cidadão em um Governo Representativo", part 6 "Do Poder Eleitoral" (1834), in FERREIRA, 1976.

¹⁵ Tavares Bastos makes this argument forcefully in "Reforma eleitoral e parlamentar e constituição da magistratura," (TAVARES BASTOS, 1976).

¹⁶ Rhode Island, for instance, denied Jews the vote until 1842. Non-protestants were barred from public office in half a dozen states in the last decade of 18th century. In the United Kingdom, Catholics were barred from public office and subject to penal laws until the Catholic Emancipation of 1829.

The ambiguity of the legitimacy bequeathed by Pedro's constitution, especially its focus on the person of the Emperor as the key to authority, proved troublesome for defenders of the Empire. Although Pedro could claim legitimacy for his rule in monarchical terms this marked Brazil as an anomaly in a continent of republics and suggested something less than wholehearted commitment to the tide of progress.¹⁷ In an effort to meet the demands of Enlightenment principles that now underlay political discourse,¹⁸ the constitution enshrined both the emperor and the elected Assembly as representatives of the Brazilian nation, whose powers were delegated to them by the nation (Articles 11 and 12), a curious compromise between monarchic authority and popular sovereignty loomed over the state's authority and legitimacy for the better part of a century, becoming one of the axes of political conflict in Imperial Brazil with implications long after the fall of the Empire itself. The unsettled legitimacy of state authority, the political institutions established by the Constitution, and the conditions of Brazilian society generated conflict over several related issues – executive responsibility, representation and suffrage, the question of centralism vs federalism, and, ultimately, slavery – and tended to focus critical attention on *Poder Moderador* which, as the personal power of the Emperor, took control of the political system out of the hands of society. This is a case where the constitution of the political regime, influenced by transnational principles and norms, took on highly localized features and provided an ambivalent solution to the problem of authority that would allow a critique to emerge through the use of that same discourse of principles and norms.

II. THE ARCHIMEDEAN POINT: A PARTY GOVERNMENT WITHOUT PARTY POLITICS?

Although the Imperial Constitution made use of the language of national sovereignty, its authors clearly did not trust the populace, whether understood in an expansive or restrictive sense, to exercise that sovereignty even through the elected Assembly without limits. Again, this is not atypical of liberal thought in the early 19th century. An important question for liberalism was how to create institutions that limited

¹⁷ MILLINGTON (1996) argues that the Empire's very existence as a monarchy was an implicit challenge to the republican virtues of the Spanish American states which forced a choice between overcoming the conservatism inherent in the monarchical state or a compromise vitiating the promise of republicanism.

¹⁸ Evidence of the spread of Enlightenment ideas and liberalism as a doctrine can be found in a variety of sources. For a particularly thorough effort, see BURNS, 1975.

the involvement of the populace if the nation was sovereign and constrained the exercise of power delegated to a representative. This involved institutional engineering that combined apparently contradictory ideas of sovereignty and restraint.¹⁹ In newly independent states, establishing the legitimacy of government complicated this still further. The Imperial constitution attempted to blend the assumptions of traditional legitimacy claims provided by Dom Pedro's status as dynastic heir, which would appeal to some factions of the elite, with institutions that reflected the new liberal claims. The dynastic claim also provided a link to a ready-made political institution that could plausibly claimed as a basis for the new liberal regime, an office outside the hurly-burly of political competition: the *Poder Moderador*, which existed as a fulcrum for the balance of the executive and legislative powers. This was further buttressed by an intellectual pedigree from the preferred model of Brazilian reformers: France, where the Restoration monarchy was defended by liberal luminaries such as Benjamin Constant.

The *Poder Moderador* was one of four "Political Powers" "recognized" by the Imperial Constitution, the others being the immediately recognizable legislative, executive, and judicial (Article 10). Springing from early nineteenth century liberal suspicion of democracy, the *Poder Moderador* (Moderating or Regulating Power) was declared by the Constitution itself to be "the key to the entire political organization" and was "delegated exclusively to the Emperor as the Supreme Chief of the Nation and its First Representative so that he constantly can watch over the maintenance of the independence, equilibrium, and harmony of the other Political Powers" (Article 98). The Emperor, who exercised the *Poder Moderador* as a personal prerogative, was declared inviolable and "not subject to any responsibility" (Article 99), making this fourth power unaccountable. While the constitution declared all the powers of the government "delegations of the Nation" (Article 12), the "key" power of the regime was explicitly separated from any notion of popular or elective control. This status as the key to the constitutional regime without accountability made the *Poder Moderador* a most peculiar feature of the Constitution. Although Brazilian thinkers were quick to claim a European pedigree for the moderating power as a means of legitimating it within the value scheme of early 19th century liberalism, it had uniquely Brazilian characteristics and functions,

¹⁹ *The Federalist Papers*, in their discussion of limiting power by separating branches of government, weakening the power of factionalism through competition among many factions, and guaranteeing rights, provide an interesting example of the efforts to reach a balance in this matter.

which allows an examination of how institutions are constructed by the interplay of transnational and local ideas, especially through local practices.

It is generally held that the Moderating Power was drawn from the political writings of Benjamin Constant, though there is dispute over exactly who was responsible for incorporating it into the Constitution of 1824.²⁰ In Constant's scheme, the Royal Power, to use his terminology, was a "neutral" power which would limit or moderate the actions of those powers subject to the passions of the populace by establishing "a fixed, unassailable point which passions cannot reach." (CONSTANT, 1988, p. 190). The Royal Power prevents both deadlock and conflict among the other powers by possessing the ability to intervene in their disputes through the dismissal of the executive or the dissolution of the legislature. However, the Royal Power must be incapable of initiating action and must be distinct from the executive. The distinction between the Royal Power and the executive is necessary, according to Constant, because the Royal Power must be unaccountable and inviolate, while the executive is to be responsible. Only a clear distinction will allow the monarch to avoid being held responsible for the acts of his ministers. The argument for the royal power, and for constitutional monarchy in general, is that only the existence of an inviolate, unaccountable power can prevent one of the three traditional powers from usurping or encroaching on the other powers. The royal power is essential to the balance which the separation of powers requires to function.²¹

The purpose of the Royal Power in Constant's theory was to establish an authority within the state that was not subject to the tumult of political competition; a power capable of intervening to settle conflicts between the branches of government without partiality or arbitrariness; an uncontested office, which could be arbiter of the rules of constitutional power (CONSTANT, 1988, pp. 185-6). The monarch's presumed dynastic loyalty was essential to Constant's scheme as it put the Royal Power beyond the

²⁰ Almost any history of Brazil chosen at random, by Brazilians or foreigners, will credit the inspiration for the *Poder Moderador* to Constant. Paulino José Soares de Sousa, Visconde de Uruguai, approvingly cites Senator Alves Branco's claim that Dom Pedro himself created this Moderating Power and wrote it into the Imperial Constitution, inspired by Constant's idea of *pouvoir royale*. URUGUAI [1862], 1960, ch. 28, pp. 254-5. Iglésias notes Pedro's familiarity with Constant's writings and claims that the Moderating Power was inspired by them (IGLÉSIAS, 1993, pp. 137-8 and 139). Roderick Barman credits Carneiro de Campos as the key figure in the incorporation of the "regulating" power on the grounds that he was familiar with Constant's work and had advocated the "regulating" power in the Constituent Assembly (BARMAN, 1994, pp. 125 and 278, n. 127).

²¹ See CONSTANT, 1988, ch. 2, "The nature of royal power in a constitutional monarchy."

immediate interests of political factions. Hence, the monarch's unaccountability together with his inability to initiate action defined the Royal Power.

It is easy to see similarities between the Constitution of 1824 and the ideas of Constant, yet there was considerable adaptation of his ideas. Indeed, the Visconde de Uruguai makes the argument that Constant "did nothing more than develop the idea" he found in the writings of Clermont Tonnerre, while it was Dom Pedro "who presented it, who delineated it, who really created it...first in art. 98 of our Constitution, then in art. 71 of the Constitutional Charter of the Portuguese Monarchy." (URUGUAI, 1960, ch. 28, p. 255; CARNEIRO DA CUNHA, 1985, pp. 257-62). In Constant's vision the royal power exists in "an inviolable sphere of security, majesty, impartiality," apart from and above the other powers, including the executive power, which rests with the king's ministers (CONSTANT, 1988, p. 187). In Dom Pedro's vision too, the Moderating Power was to be above politics, resting in the person of the Emperor, distinct from his role as the chief of the Executive, presumably to concern itself with the good of the nation as a whole, apart from particular interests. The Moderating Power involved the naming of members of the upper chamber, approving laws of the Assembly, dissolving the legislature, naming and dismissing ministers, and issuing pardons (Article 101), all in keeping with Constant's understanding of the royal power.²² But while Constant insisted on a sharp distinction between the monarch and the executive, the better to maintain the absence of responsibility for the royal power, the Brazilian Emperor was not only the holder of the Moderating Power, but also "the Chief of the Executive Power" (Article 102). In fact, the situation was further confused by the role of the Emperor in the Legislative Power, which was "delegated to the General Assembly *with the sanction of the Emperor*" [emphasis added] (art. 13). Thus, although the *Poder Moderador* was supposedly based on Constant's plan, the Imperial Constitution considerably expanded the Royal Power by uniting it with executive power in the person of the Emperor, the nation's "first representative."

Like the Royal Power, the identification of the *Poder Moderador* with the person of the Emperor ensured that some office of the state remained out of the hands of the political class. Unlike Constant's monarch, however, the Emperor's role as chief of the executive power vastly strengthened the monarch's power within the constitutional system and appears to have been intended to ensure that the executive itself remained

²² On the prerogatives of the royal power, see CONSTANT, 1988, pp. 191-3.

independent of the legislature, in apparent contradiction of Constant's intention – though this is somewhat ambiguous. Furthermore, the union of *Poder Moderador* and the executive aggravated disagreement over the accountability of ministers to the legislature. Neither Constant nor the Imperial Constitution discusses the necessity of ministers having the support of the legislature, but where Constant assumes this is the case, Dom Pedro's refusal to accept this became the political issue that brought about his abdication (CONSTANT, 1988, pp. 242-3). The confusion of roles and the identification of the Emperor with his ministers created just the situation warned against by Constant, in which opposition to the ministry became opposition to the monarch himself. This deviation is curious, but in a society perceived by the national elite as hierarchical, regional, poorly integrated, and clientelistic, this may have been intended to prevent the provincial oligarchies from dominating the executive and thus to prevent local power from controlling all of Brazilian life. An overcompensation, perhaps, which reveals a lack of faith in the efficacy of the passive, neutral, reactive nature of the "Royal Power" in Constant's scheme.

An alternative explanation for the differences between the Imperial Constitution and Constant's model of constitutional monarchy is that the attribution of the model to Constant is mistaken or, at least, only partially correct. This possibility suggests itself if the Imperial Constitution is compared not to Constant's *Principles of Politics*, but to the *Charter* promulgated by Louis XVIII on June 4, 1814.²³ Louis' *Charter* incorporates various ideas and phrases from the "Declaration of the Rights of Man and Citizen," many of which are the same as those found in the Brazilian Constitution. The *Charter* declares the king "the supreme head of state" (Article 14), "inviolable and sacred," while his ministers are "responsible" (Article 13), though it is not clear to whom as this is not stated. The ambiguity of the minister's responsibility is echoed in the constitution of the Brazilian Empire. The *Charter* also lays out the powers of the king, including executive power which belongs to him alone (Article 13), appointment "to all positions in the public administration" (Article 14), legislative power "exercised collectively" by the king and the chambers (Article 15), initiation of legislation (Article 16), sanction and promulgation of laws (Article 22), appointment of peers (Article 27), veto of amendments to bills (Article 46), prorogation of the chambers and dissolution of the Chamber of Deputies (Article 51),

²³ IGLÉSIAS notes this connection in passing (1993, p. 139).

and the appointment of judges (Article 57).²⁴ Like the Brazilian Constitution, this document bears some resemblance to Constant's ideas, but reserves considerably more power to the monarch than is embodied in Constant's concept of the Royal Power as a *pouvoir neutre*.

It was this conception of the monarchy that the Restoration liberal François Guizot attempted to defend in his works and public life, not out of any love for monarchy, but out of a pragmatic acceptance of constitutional monarchy as a stable basis for a liberal regime, one in which institutional arrangements kept power apart from the pressure of public opinion (JOHNSON, 1976, especially pp. 43-51). Guizot, associated with the liberal "doctrinaires" in parliament, feared democracy because he thought the majority incapable of exercising reason. Counterposing the "sovereignty of reason" to that of the people, Guizot sought to insulate the government and the legislature from popular pressure in order to resist the danger of majoritarian democracy. His aim was to encourage among liberals an acceptance rather than suspicion of political power, but he understood its control to require institutions that would limit the participation of the masses. The proper organization of political institutions and the exercise of power depended on the conditions of the society to be governed. Ultimately, his position rested on the argument that power was necessary component of politics and that the exercise of state power in a properly limited fashion was essential to the securing of individual liberty.²⁵ The apparent solution to the problem of both limiting and enabling political power was the establishment of a constitutional system that contained an apolitical arbiter of political questions. Thus, there was a conceptual scheme of constitutional monarchy that limited democratic impulses and legitimated a concentration of power in liberal terms to which the liberals of early Imperial Brazil could appeal for normative legitimacy.

The anti-democratic character of early 19th century liberalism has long been recognized and the constitutional monarchies of England and France both reflected this aspect of it. The particular characteristics of the *Poder Moderador* can be explained within this particular framework of norms and beliefs. In essence, the idea of a "neutral power" serving as an arbiter of the constitutional system is symptomatic of the search for

²⁴ A slightly abridged translation of the *Charter* can be found in COLLINS, 1970, pp. 10-15.

²⁵ These arguments appear quite explicitly in URUGUAI, 1960, esp. "Preâmbulo" and ch. XXX and XXXI. On Guizot's views, see MANENT; BALINSKI, 1994, ch. 10; CRAIUTU, 1998; 2003a.

an Archimedean point outside the political realm on which to rest the political order. If there is some point outside, above, or beyond politics, then politics can be made safe, free from the threats of disorder and tyranny, even when cloaked in the guise of democracy – the fear of which lies behind Constant’s political thought as a result of the Terror and Napoleon. A similar desire to establish a disinterested arbiter of the rules of the constitutional system can be seen in the ideas of José Bonifácio de Andrada e Silva. In two documents written around 1821 José Bonifácio outlined his vision of political institutions for Brazil. In both documents there are complicated arrangements for choosing officials distinct from the representative legislature, who will be responsible for overseeing the actions of the legislature. In his instructions to the São Paulo deputies to the Cortes, José Bonifácio suggests an elected Body of Censors which would oversee the legislative, executive, and judicial branches of the Kingdom to prevent “any from encroaching on the territory of another,” judge the constitutionality of acts by the other powers by creating yet another tribunal to serve as a constitutional court, and have the power to suspend ministers of the executive and magistrates of the judicial branch (ANDRADA E SILVA, 1973b).²⁶ Likewise, José Bonifácio’s notes on “The Political Organization of Brazil, whether as a kingdom united with Portugal or an independent state” proposed an elected representative assembly, a life-tenure senate, a collective executive, and a “consultative body” which was to choose the executive and oversee lower offices.²⁷ The indirect manner of selection, suggestions for life tenure in certain positions, staggered replacement of officials, and the proliferation of branches of government all suggest a wish to limit or balance the power of representative institutions with less “political” organs. In Imperial Brazil, this desire found form in the person of the Emperor as a dynastic ruler, in the institution of the Moderating Power, in the Council of State, and in the life-term Senate.

This argument was taken up and developed at the apogee of the Empire in Uruguai’s *Ensaio sobre o Direito Administrativo*, which made the case that the monarch, as

²⁶ Similar ideas can be found in Símon Bolívar’s plan for a Bolivian government which rested on a life-term President and Senate, indirect elections, limited suffrage, and a “Body of Censors” to oversee the whole machinery. See LECUNA and BIERCK, Jr., 1951. On Bolívar’s thought, including his elaborate attempts to limit popular power, see BRADING, 1991, ch. 27.

²⁷ ANDRADA E SILVA, 1965. “A Organização Política do Brasil, Quer como reino unido a Portugal quer como estado independente,” in NOGUEIRA, 1973a???. *Obra Política de José Bonifácio*, vol. 2, pp. 9-13. AGUARDAR RESPOSTA DE CHISHOLM. At times this document appears ludicrously unreal, as in its prescription of a uniform national dress, but it seems to have been the basis of the instructions to the deputies to the Cortes, and it offers some insight into the views of the father of Brazilian Independence.

the sovereign representative of the nation, was necessary as a stable point for the consolidation of a national state. In the absence of a super-political power to oversee the partisan conflicts of the local oligarchies, Brazil would suffer the fate of Spanish America and fragment into regional states, as it nearly did under the decentralized administration of the Regency. Uruguai's essay is a sustained defence of the imperial state – its centralized authority, its limitations on popular representation, and its Moderating Power set above the representative institutions – against its Liberal critics.²⁸ Uruguai's defense of the Empire is couched in terms of what features of government are appropriate to Brazil in light of general principles *and* Brazil's particular circumstances, for "if liberty is essential for the happiness of a Nation, no less are good administrative institutions appropriate to its circumstances and properly developed."²⁹ Uruguai was concerned with creating a strong national state through a centralized government in keeping with the initial justification for the Empire. To transform a state which was symbolically centered on the person of the Emperor into a national state, Uruguai looked to political centralization to limit the power of the rural elite. The irony in this is that the key to developing a *national state* is the power of the sovereign monarch exercised as the *Poder Moderador*.

The basic contrast for Uruguai was between the state, national and general in its interests, and a society composed of particular interests in competition with the general interest, if not actually inimical to it. The purpose of the state was to create the conditions for liberty, to allow local administration within political centralization precisely so that the state could perform a tutelary function, encouraging the development of general rather than particular consciousness.³⁰ The issue was one of controlling the centrifugal and localist tendencies that had revealed themselves during the Regency.

²⁸ Uruguai insists on the non-partisan, super-political nature of the *Poder Moderador* throughout chapter 28, where he seeks to answer two questions: "What is the Moderating Power, Royal or Neutral?" and "Where ought the Moderating Power rest?"

²⁹ URUGUAI, 1960, "Preâmbulo," pp. 5-6. Compare this with Guizot's insistence on the importance of history and national character. Craiutu points to *Des moyens de gouvernement et d'opposition dans l'état actuel de la France* (1821) as Guizot's most important work. See CRAIUTU, 2003b. Gabriela Nunes Ferreira, notes the importance of mores or norms as used by de Tocqueville in the arguments of both Uruguai and Tavares Bastos. See FERREIRA, 1999, esp. pp. 67-76 and 179-94.

³⁰ See URUGUAI, 1960, ch. 30 and 31. For a defense of Uruguai as a liberal thinker heavily influenced by the French "Doctrinaires", see MACEDO, 1979.

Uruguai's emphasis on the centralized state arose because, in spite of the large administrative apparatus bequeathed to the new state by the colonial government, central authority over the country was challenged by the potential autonomy of local power. In such circumstances, the state was the guarantee of freedom, as it had been in the thought of José Bonifácio.³¹ Rather than establishing order over equal and radically individual men in a state of nature as was the intent of Hobbes' Leviathan, the Brazilian state was to establish order over the local elites, made up of the powerful landed households of rural Brazil which were bound together by ties of hierarchy and clientelism. To create the proper conditions for self-government, including public spirit and a national consciousness, the state would have to be sufficiently powerful to prevent local powers from establishing an unchallenged dominance which interfered with the creation of a national state.³²

Uruguai argued that the decentralization sought by the authors of the *Ato Adicional* were, perhaps, noble and desirable as ends, but had not been achieved by the reformers of the Regency precisely because the *Ato* failed to reform either the administrative or legal systems to fit Brazilian realities, much less to reform Brazil's social conditions. Instead the *Ato* concerned itself with election to offices. In the absence of social reform or adaptation of the administrative system, such electoral reform and decentralization of power led to a weakening of the state and its capture by local interests.³³ Furthermore, the abolition of the Council of State by the *Ato* was intended to weaken the Moderating Power by making its exercise depend on the advice of the ministers who were subject to it, thus subordinating the entire state to the oligarchy.³⁴

³¹ See Bonifácio's representations to the Constituent Assembly on the abolition of slavery and the civilization of the Indians. Both documents argue that the state must guarantee freedom and "civilization" in Brazil because history shows that left to themselves, the property owners will oppress the weak. NOGUEIRA, 1973a, vol. 1.

³² URUGUAI, 1960, ch. 31, esp. 385ff. and 418. This argument was taken up enthusiastically by Francisco José de Oliveira Vianna, who emphasized the importance of power and coercion in the establishment of institutions, laws, and practices which would control the power of local elites. See OLIVEIRA VIANNA (2 vols. 1949; 3rd ed.: 1974), vol. 2.

³³ URUGUAI, 1960, pp. 411-2. One central reform of the *Ato*, which ostensibly limited arbitrary power, the jury system, actually encouraged the consolidation of local power for, as one commentator on Brazilian law drily notes, while the *Juízes Municipais* were appointees of the central government, jurors "usually supported the local powers they had to live with" rather than "a visiting Imperial agent." SHIRLEY, 1987, p. 5. See also FLORY, 1981.

³⁴ URUGUAI, 1960, pp. 160-4. Tavares Bastos offered a defense of just this feature of the *Ato* on the grounds that eliminating the autonomy of the central government was desirable as a feature of a properly liberal, modern constitution. TAVARES BASTOS, 1870, Part 1, esp. ch. II and III. For an extended discussion of Uruguai's work and Tavares Bastos' criticism of it, see FERREIRA, 1999.

Although Uruguai does not state outright that the purpose of centralization is to limit the power of the rural elites in Brazil, one can see this in his argument. The contrast Uruguai draws is between the order of the centralized state and the disorder of the decentralized regime, manifested historically in the collapse of the Roman Empire into the “anarchy of the Middle Ages.” The fragmentation of the feudal system prevented any awareness of the general interest or energetic progress toward any social ends. Only the growth of the modern state made it possible to overcome the disorder and social misery of the era and to begin “the development of modern civilization, whose essential quality is unity and centralization.” The development of centralized power overcame the reality of the petty tyrannies of the feudal barons, who were virtually independent of their nominal overlords (URUGUAI, 1960, p. 344-5). The implication is clear, centralization in Brazil will establish order and make possible the protection of the general interest. The *Poder Moderador* is the key element in this scheme because it will forestall the rise of independent local power and prevent particular interests from dominating the national government in their own interests.

The *Poder Moderador* is a means of preventing the state from falling into the hands of the local oligarchies precisely because it remains above the political contest and apart from the vicissitudes of representation. As long as the *Poder Moderador* was kept separate from the executive and legislature, an essential part of the state could be kept out of the hands of particular interests, thereby guaranteeing the impartial (*i.e.*, royal) pursuit of the national interest (Idem, *ibidem*, ch. 28 and 29). Furthermore, Uruguai urges that executive and legislative power be clearly separated to ensure that the Empire not degenerate into a symbolic monarchy, in which legislative majorities governed. In fact, Uruguai’s defence of the *Poder Moderador* revolves around its role in preventing the predominance of the Chamber in government. He explicitly warns against “government of majorities,” which he identifies with government of “political chiefs,” and cites no less an authority than the former regent Feijò, a leader of the liberal faction during the Regency, as arguing that majority government is contrary to the Constitution (Idem, *ibidem*, pp. 333-4, 335, 339).

As for the apparent confusion of Constant’s executive and royal power in the Imperial Constitution of 1824, Uruguai argues that this is a non-issue. According to Uruguai, Constant separates the royal power from the executive by making the former a

personal attribute of the monarch and the latter a collective power exercised by the monarch through his ministers. The significance of this is that the monarch plays a role in the executive, not because the ministry is chosen by him, but because he takes part in the Council of Ministers and “accompanies, discussing, making observations, yielding to a certain point, the movement that the majorities which hold sway in the Chambers impress on affairs” in accord with the “representative system.” The Emperor, as Chief of the Executive, “supervises, observes, directs the Council.” But he can *do* nothing, only the ministers, who must maintain the support of the government in the Assembly, are able to act on behalf of the executive power and are held responsible for it (Idem, *ibidem*, 1960, pp. 267-8). This introduces some ambiguity into Uruguai’s scheme, however, as the power to whom the ministry is responsible is not entirely clear. Although Uruguai accepts that the ministry must “maintain itself, following the conditions of the representative system,” he argues that even during the parliamentarism of the regency it was agreed that “the Chamber of Deputies has no established right to declare that the Ministry does not have national confidence” leaving the question of responsibility of executive power far from settled (Idem, *ibidem*, pp. 268, 335).

On the other hand, the *Poder Moderador* clearly belongs to the Emperor alone as his prerogative.³⁵ This power is exercised personally and directly by the Emperor in a manner that is utterly distinct from the executive power. Unlike the exercise of executive power, which occurs through the Emperor’s ministers, the Moderating Power is exercised personally by the Emperor when

the movement that the Ministers or the majority in the Chamber of Deputies want to impress on affairs goes beyond the limits of justice; ...it is going to cause serious ills that will be difficult to remedy later; ...it does not conform with public opinion; ...there is discord between the Chambers and the Ministry; ...the responsible Ministers no longer have the power necessary to administer affairs to public advantage.... (Idem, *ibidem*, p. 268)

The Moderating Power is, thus, not concerned with the determination or execution of policies by the ministry or with maintaining majorities in the chambers, but ensures that such policies do not disrupt the functioning of the political system and “reestablishes order and harmony.” For Uruguai, the fact that the monarch has a role in the executive

³⁵ In this matter, Uruguai explicitly cites Blackstone on the prerogatives of the English crown: ...[I]n the exercise of his legitimate prerogative, the King is and ought to be absolute, that is, there is no authority that can block him or resist him. ...save if the Constitution has expressly, by evident consequence, established some exception or limit; declaring that the prerogative will go only to a certain point and no farther. URUGUAI, 1960, p. 258.

appears to be less a confusion of Constant's scheme than a necessary feature of it, providing the Emperor with a sense of the relations between the executive and the legislative powers, which he needs in order to act as the Moderating Power. Yet the Emperor's role as Chief of the Executive remains entirely passive. There is no confusion, as Uruguai explains the constitution, because the Emperor's inability to *act* as Chief of the Executive means that there is still nothing for which the Emperor can be responsible. He is a symbolic chief executive, but possesses an essential role as the Moderating Power because, unlike the Ministry, he need not concern himself with the support of the legislature and, thus, may concern himself with the national interest rather than particular interests.³⁶ Thus, the Moderating Power, owing its origin in the constitutional theories of Benjamin Constant, becomes the vital center of the regime in Uruguai's account of the Imperial regime and, it should be pointed out, in the practical operation of that regime in Second Reign.

Uruguai's position was starkly opposed by his Liberal contemporaries, for whom the point was precisely to subordinate the monarchy and the executive to legislative control by rendering the *Poder Moderador* symbolic and turning real power over to the provincial governments. The Liberal opposition to the *Poder Moderador* was effectively articulated by Zacarias Góes e Vasconcellos, who served as chief minister from 1864 until 1868, when his cabinet was dismissed by the Emperor exercising a prerogative of his role as the Moderating Power.³⁷ Góes e Vasconcellos argued in favor of strictly limiting the power and prerogative of the Emperor by insisting that the ministers counter-sign not only acts of the Emperor as chief of the executive power, but also the acts of the *Poder Moderador*, rendering the exercise of this power subject to the very persons over whom it was to be exercised. In fact, Góes e Vasconcellos praised the *Ato Adicional* of 1834 for obliging the monarch (actually the regents) to act only on the advice of ministers supported by the Chamber of Deputies as, he claimed, was the case in England of the time, his preferred example of a modern constitutional state. This interpretation of the *Ato*

³⁶ Quoting Senator Paula Souza in the Senate, July 12, 1841: "[I]t was necessary that there be an authority *superior to all*, that would be able to harmonize these powers in the interest of the country. It is this that the Constitution determined creating a hereditary monarchy. The proper interests of this hereditary monarch, and of his family, are identified with the national interests." Uruguai, 1960, p. 276.

³⁷ GÓES E VASCONCELLOS, 1978. The first edition was published anonymously, the second under Góes e Vasconcellos' name. I will not deal with the criticism of Uruguai's emphasis on centralization by Tavares Bastos here, but will refer readers to FERREIRA, G. N., 1999, which treats the matter in much more detail and with far greater skill than I can.

tends to support, in backhanded fashion, Uruguai's argument that the *Ato* was intended to subordinate the state to the oligarchy, since it was the landed classes who dominated both the Brazilian Chamber of Deputies and the English House of Commons at the time. This was, of course, precisely Góes e Vasconcellos' point: "parliamentary government is government of the country by the country." In the context of the time, "the country" meant those who counted, those possessing political rights by virtue of their wealth and standing, the so-called *pays légal*, as the French liberal Guizot called it.³⁸

The subordination of the executive to the legislature was, for Góes e Vasconcellos, a basic issue for a country which pretended to be have a constitutional and representative government. Citing the Constitution, without giving specific clauses, Góes e Vasconcellos insisted that the Assembly, especially the elected chamber, was given "the right to refuse [to ministers] the means of existing" and thus, established legislative control of the Ministry (GÓES E VASCONCELLOS, 1978, p. 195). Following John Stuart Mill, and quoting him, Góes e Vasconcellos insisted that parliamentary government demands freedom from arbitrary power, such as that implied by the existence of an unaccountable power like the *Poder Moderador* (Idem, ibidem , p. 199). In a constitutional government it is imperative that the Emperor either be responsible for his acts as chief of state, as were both Napoleon III and the American president in their respective constitutions, or that he have neither function nor prerogative (Idem, ibidem, pp. 63–4).³⁹

Thus we come to a major ambiguity in the legitimation formula for the Brazilian state in the 19th century. The key to the regime was the Emperor, serving as the capstone of the social and political hierarchy, chief delegate of the nation, fulcrum of the balance of powers, and guarantor of the Constitution. The Emperor stood at the top of the political and social hierarchy, beyond the reach of political or social pressure, defending the national interest against particular interests. By putting the summit of political authority beyond partisan competition, the Constitution limited the intensity and extent of that competition to some extent. This accorded with the norms of hierarchy and favor in Brazilian society, and provided a focal point for the legitimacy of the state that could be, at least in theory, uncontested politically. It also helped give shape to Brazilian

³⁸ Compare this with Disraeli's contemptuous criticism of those who criticized the role of Peers in government in the name of the people as represented by the House of Commons: "Do they believe that the 300,000 electors of the House of Commons are the whole people?"

³⁹ Despite Góes e Vasconcellos' claim, it is difficult to see how Napoleon III was responsible for his acts in any fashion other than his forced abdication.

identity by creating a contrast with the “anarchic” republicanism that characterized the Spanish American states.⁴⁰ However, two features of this arrangement proved troublesome for continued legitimacy. First, the Emperor's role as chief of the executive ultimately undercut the suprapolitical nature of the office. The ambiguities of ministerial responsibility made the Emperor responsible for his government in the popular mind, if not in law. Second, the *Poder Moderador*, the singular feature of the Brazilian regime and that power intended to provide stability to the political system, became the most controversial feature of the political system precisely because it was the focal point, allowing an unelected monarch to dominate the representative institutions of government and undermining the competitive party system, which further weakened the political responsibility of the government and the representative institutions. As a result, neither of the delegates of the nation could be held responsible in a practical fashion, in violation of the norms of liberal political discourse.

This then is a paradox of the “constitution” of the Imperial system. The Emperor was originally the keystone of the imperial system in the Constitution and though this position might be contested as undemocratic, the nature of the social hierarchy worked to maintain it as popular sovereignty might offend the dignity of the great, making respect for elections from below problematic, but it was not necessarily a disgrace for a prominent individual to be dismissed from power by the Emperor, who was above mere faction.⁴¹ Granted, the system originally failed under stress as Pedro I was driven to abdicate by the conflict between Brazilians and Portuguese, but the parliamentary and party systems which grew out of the Regency ultimately required a stable center of power to oversee the competition for office lest the political class destroy the system as one of the two dominant factions reduce the other to permanent minority status, while the pyramid of society required an apex to which deference was owed even by the landowning oligarchy. Re-establishing the *Poder Moderador* in the Second Reign as an independent and unaccountable power took the highest point of the government out of factional competition and separated national power from the regional elites who were able to control of the legislature. By separating the final authority in matters of patronage

⁴⁰ Again, see MILLINGTON, 1996, on this contrast, though this is highly critical of the Brazilian example.

⁴¹ Graham makes the point that the Emperor provided a point of stability in the system by serving as the “supreme arbiter whose decisions could be accepted without loss of face or status.” GRAHAM, 1990, pp. 56, 79, 269.

from electoral competition the system prevented one faction from gaining hegemony and perpetuating its dominance by capturing that authority.⁴² The *Poder Moderador* ensured the alternation of parties in power, allowing the party system to integrate different elements of the elite into the regime by giving them a share in power and wealth. Without the *Poder Moderador* the competition for control of patronage could well have become a zero-sum game in which some elements of the elite were in danger of being locked out of power by the element that captured the fount of patronage and power, as eventually happened in the republic which succeeded the Empire. However, the structure of social power in Brazil and the degree of control over provincial officials possessed by the national government worked against the development of a *genuinely* competitive party system. In the system as it existed, it was far too easy for the ministry in power to apply the force of the state against its opponents and establish a dominant position in the National Assembly, the Provincial offices, and the municipalities, but this rested ultimately on the favor of the Emperor, undermining any claim of democratic legitimacy.⁴³

III. IMPERIAL LIBERALISM

It should be no surprise that after independence Brazilians drew on Europe for ideas, models, and institutions of politics. From liberal doctrine of the eighteenth and early nineteenth centuries, and the Enlightenment more generally, the Brazilians derived many of the ideas and institutions that underlay their new regime. Liberalism gave inhabitants of the colony a language of rights and liberty that justified independence in the name of natural law and self-government. Economic liberalism provided the justification for the reforms begun under Dom João of Portugal during his exile and helped spur the reaction against the attempt of the Portuguese liberals to reassert colonial control over Brazil following the Constitutionalist Revolt. Liberal models of the division of power and representation influenced the institutions of government established by the Imperial constitution of 1824. Liberal parliamentarism attracted the support of the propertied classes as a means of advancing their control of the executive power by restraining Dom Pedro as Emperor and later influenced the practices of Empire

⁴² Although Constant does not speak of patronage politics, this can be seen as an illustration of his argument concerning the advantage of putting the Royal or Neutral Power into the hands of a hereditary monarch rather than an elected official, whose judgment would be partial to one of the competing factions.

⁴³ GRAHAM, 1990 and BARMAN, 1994; both deal extensively with this feature of Brazilian electoral politics.

under Dom Pedro II. Perhaps most importantly, in terms of the assimilation of ideas, liberalism provided the vocabulary of the political conflicts of the nineteenth century: Liberal ideas and rhetoric underlay the struggle for independence, the centralist Constitution of 1824, Frei Caneca's provincialist vision, and the federalism of the Regency.

But liberalism was fitted to with Brazilian reality in a relatively stable fashion only during the reign of Dom Pedro II (1840-89). The development of the Imperial system under Pedro II exemplifies the process of assimilation that both transformed liberalism in Brazil and reproduced Brazilian realities. In the second half of the nineteenth century a liberal constitutional system seemed to function in Brazil on the basis of party competition, parliamentary government, and popular suffrage. In fact, while institutions and practices rooted in liberal ideas dominated the politics of the Second Reign, their substantive content reflected the realities of a society characterized by hierarchy, clientelism, and favor.

Faced with problems of nation-building, representation, regionalism, economic development, and social integration, as were European states of the nineteenth century, Brazilian politics embodied the contradictions and ambiguities of European experience. Just as liberalism in Europe contained different strains and conveyed different meanings in different circumstances, so it did in Brazil. In this respect, the vast inequalities of Brazilian society, the comparative backwardness of the economy, and the heavily rural and patrimonial nature of Brazilian society gave Brazilian liberalism its peculiar coloration. The new regime's legitimacy rested on liberal claims, but the social order was founded upon features utterly inimical to such claims: slavery, hierarchy, autarky, patronage, and favor. The result was a mixture of liberal principles and formal institutions with social practices and personalist relations which contradicted the universalism of the former. Nonetheless, while one can question the degree of liberalism of the Empire, the theorists of the period felt compelled to discuss Imperial institutions in liberal terms and liberalism exerted a powerful influence on the development of Brazil throughout the 19th century.

The language of liberalism and the meaning communicated by its terms had to be fitted to the social reality of Brazil or simply fail as a doctrine of government for the Brazilian elite. If liberalism did not make sense to Brazilians by acknowledging the particular social circumstances of the country, its usefulness as a means of legitimation or

a guide to the constitution of political institutions would be limited.⁴⁴ This imitation and adaptation of liberalism is striking, not because it occurred, but because of the tenacity with which the Brazilian elite held fast to the idea of liberalism as a model for political development. This persistence did not lead simply to a disjuncture between liberal rhetoric and Brazilian reality (as Oliveira Vianna and Schwarz would have it) but to the assimilation of liberalism, that is, its absorption and appropriation by Brazilian society, such that illiberal social institutions and practices conformed to the mold of liberalism, institutional or conceptual, in order to strengthen and reproduce themselves. Although Brazilian society emulated European ideas and manners, it was not simply imitative, Brazilians absorbed and transformed what was borrowed from Europe to create a social system which functioned according to its own logic.⁴⁵

Within the Imperial system, liberalism had numerous functions. First, it provided the model of constitutional and parliamentary government that prevailed in the Empire. Second, it was emblematic of Brazil's "civilization" and its ties to Europe. Third, it provided a justification of the regime and society in terms of rights, such as property rights, the association of political rights with competence, and civil rights. Fourth, it provided a vocabulary for political discussion for everything from the initial claims of independence through the construction of the national state to the restriction of the franchise. Finally, the liberal institutions of government and the electoral forms which supported them ratified and reinforced the social hierarchy based on landed wealth because of the way in which the Empire's comparatively broad suffrage integrated a substantial portion of the adult male population into the "theater of elections," in which were played out roles of social dominance and subordination.⁴⁶

A major characteristic of Brazilian liberalism was that it never combined political representation with social reform, except in a highly paternalistic manner. Almost from independence, the prospects of profound change were limited both by the need of the political elite to adjust to social realities and by the circumscribed views of this same elite. Even staunch liberals like Hipólito José da Costa, publisher of the dissident *Correio*

⁴⁴ José Elías Palti discusses the the difference between the meaning of a statement and the significance of an utterance in a given context, as well as the necessity of moving from the "history of ideas" to the study of discourse, in PALTÍ, 2006.

⁴⁵ This idea of assimilation is a recapitulation of Oswaldo de Andrade's cultural cannibalism. See ANDRADE, 1972.

⁴⁶ The "theater of elections" is discussed extensively in GRAHAM, 1990, ch. 4, *passim*.

Braziliense (published in a London exile from June 1808 to December 1822) and long-time critic of the *ancien regime*, and Silvestre Pinheiro Ferreira, proponent of “representative monarchy” and the rule of law, were moderates who did not advocate large-scale social reform or political democracy for the populace at large.⁴⁷ While the personal views of Dom Pedro and his circle show the influence of European ideas on politics, the economy, and moral issues of the day like slavery, they compromised with Brazilian realities as they understood them to achieve their ends. The question arises as to how much the compromises subverted their ends and how much their liberalism limited their ability to achieve their ends by disconnecting liberal political institutions from social reform that would reinforce these institutions. It is here that the role of ideas as constitutive of the social reality of Brazil begins to bite. A circumscribed, exclusive liberalism limited the range of action available to those who occupied the higher realms of the political system.

The liberalism of the Brazilians who created the Empire was not popular but aristocratic or, less charitably, oligarchic liberalism. Freedom was for the proper classes, not the masses. This oligarchic liberalism, which began in opposition to a centralized colonial administration and in fear of popular sovereignty, was easily adapted to an agrarian, slave-society in which most social integration took place in the private realm of the patriarchal *fazenda*, utilizing the public activity of elections to reinforce and symbolically legitimize the power relations of this reality. Although the political upheavals of the three decades from the Portuguese Court’s transfer to the accession of Pedro II to the throne have often been characterized as a struggle of democrats against reactionaries, the dominant stream of liberalism in the Empire was elite-oriented and limited to liberty for the privileged. This was especially true after the suppression of the few popular conspiracies of the late colonial period. The most significant rebellions of the first two decades of the Empire were localist movements in opposition to the centralizing tendencies of the new regime, not democratic outbursts. Although they proclaimed the rights of “the people,” these risings, including even that of Frei Caneca, limited this

⁴⁷ Barman describes Hipólito José da Costa as “no more and no less than an English Whig, believing in a balanced constitution, a strong legislature, freedom of religion and the press, and liberty – respect for the rights of the individual.” He also notes that while *O Correio* condemned slavery it was not in favor of its immediate abolition because of the disruption this would cause to property and the social system. BARMAN, 1994, p. 51 and 53. See also HERRICK, 1950. For Pinheiro Ferreira’s views, see the works collected in FERREIRA, Silvestre P., 1976.

category to certain classes of people. The real dispute was whether the central government or the provincial oligarchies would hold power and the focus of this dispute was the *Poder Moderador*.

Ultimately, the effect of trying to base the regime's legitimacy on a suprapolitical authority was perverse insofar as the *Poder Moderador* was brought into the political competition and generated serious political conflicts throughout the Imperial era. Thus, there was a curious dialectic at work: the *Poder Moderador* was essential to the functioning of the Imperial system, even as it was a locus conflict within it; furthermore, the system in which the *Poder Moderador* was a key element relied on the power of the state to suppress the centrifugal effects of particular, local interests, yet relied on these local interests to integrate the populace into the system. These tensions eventually helped topple the Empire, but the conflicting institutions did give Brazil nearly 50 years of comparative stability in a continent that seemed constantly embroiled in civil wars.

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