

***The 1824 Constitution of Mexico:
Roots Both Foreign & Domestic***

Clayton E. Cramer

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It is easy to examine the Mexican Constitution of 1824 and conclude that it was simply the U. S. Constitution of 1787, translated into Spanish, with a few concessions to the special status of the military and the Catholic Church. Indeed, one of the members of the committee charged with drafting the 1857 Mexican Constitution, Ponciano Arriaga, acknowledged that two principal sources were the inspiration for the 1824 Constitution: the French Revolution of 1789, "and for the political organization of the Republic... the Constitution of the United States."¹ Yet a careful reading of these two constitutions shows that in spite of very strong similarities, there are some very specifically Mexican components contained within the 1824 Constitution.

The structural similarities between the United States Constitution of 1787 and the Mexican Constitution of 1824 are immediately apparent on even the most casual reading of the two documents. Title III of the Mexican Constitution and Article I of the U. S. Constitution both define Congress' powers; Title IV and Article II of the respective documents both define the powers of the President; and Title V and Article III define the powers and structure of the federal judiciary of the two nations. Especially in the description of the respective Congresses, the sequence of clauses that enumerate the terms of office,² set the population ratios for members of the two houses of the Congress, national censuses to be taken,³ and specify the requirements for election to Congress, are nearly identical.⁴

¹ Wilfrid Hardy Callcott, *Church and State in Mexico: 1822-1857*, (Duke University Press: 1926), reprinted (New York, Octagon Books: 1971), 281-282.

² Mexico Const. (1824), art. 8; U. S. Const. I, 2, i-iii. The Mexican Constitution of 1824 text comes from Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming The United States of America*, (Washington, Government Printing Office: 1909), reprinted (Grosse Pointe, Mich., Scholarly Press: n.d.), 6:3475-3494.

³ Mexico Const. (1824), art. 10-12; U. S. Const. I, 2, iii.

⁴ Mexico Const. (1824), art. 19, 28-29; U. S. Const., I, 2, ii; I, 3, ii.

There are structural differences as well, however. The U. S. Constitution of 1787 is more clearly organized, with responsibilities of the President entirely contained with Article II, while the responsibilities and limitations of the President in the Mexican Constitution are scattered throughout. Another significant difference in structure highlights that Mexican federalism was imposed, and was not a result of atomic states voluntarily joining together. The Mexican Constitution specifies the structure of the state governments of Mexico very exactly, while the U. S. Constitution simply guarantees "a republican form of government" to every state, leaving the states otherwise free to organize themselves within this broad framework.

One interesting structural difference is with respect to a bill of rights. The U. S. Constitution of 1787 as originally adopted by the Philadelphia Convention lacked a comprehensive Bill of Rights; only a limited set of protections were originally included. Widespread concerns about this absence caused several states to ratify on the condition that a more complete Bill of Rights be rapidly added. Not surprisingly, because of its later date, the protections that appear in the Mexican Constitution of 1824 are completely integrated into the document, instead of being an addition.

Many of the limited guarantees that appear within the U. S. Constitution of 1787 are also in the Mexican Constitution of 1824. Both constitutions prohibited *ex post facto* laws.⁵ The Mexican Constitution prohibited punishments that "extend beyond the criminal that may have merited it according to the law," quite equivalent to the U. S. Constitution's "but no attainder of treason shall work corruption of blood..." Where the U. S. Constitution prohibited "forfeiture, except during the life of the person attainted," the Mexican Constitution prohibited "the penalty of confiscation of estates."⁶

Some of the protections added by the U. S. Bill of Rights were also included within the Mexican Constitution. Analogous to the Eighth Amendment's prohibition on "cruel and unusual punishments," article 149 prohibited "any species of torture, whatever may be the nature or state of

⁵ U. S. Const., I, §9, iii; Mexico Const. (1824), art. 148.

⁶ U. S. Const., III, §3, ii; Mexico Const. (1824), art. 146-147.

the prosecution." Using very similar language to the Fourth Amendment's protections against unreasonable search, article 152 prohibits any order:

for the search of any houses, papers, and other effects of the inhabitants of the Republic, except in the cases expressly provided for by law, and in the form which it designates.

The Fifth Amendment's guarantee against self-incrimination is similarly echoed in, "No inhabitant of the Republic shall be compelled to take an oath relative to his own acts in criminal affairs."⁷ But at the same time, the essentially conservative nature of the Mexican Revolution is revealed in article 154's protection of the *fueros* for "military and ecclesiastics..."

"Liberty of the Press" is one of several items which article 171 informs us is not subject to amendment, under any circumstances. This would appear to be a remarkably strong statement of the fundamental nature of such a right – yet as this protection appears in article 161, it only obligates the state governments:

to protect its inhabitants in the free use and liberty which they have to write, print, and publish their political ideas, without the necessity of license, revision, or approbation previous to publication, always taking care to observe the general laws on the subject.

The limitation of this protection to "their political ideas" and the warning with respect to "general laws" suggests a considerably more equivocal protection of the freedom of the press than the First Amendment of the U. S. Constitution. But unlike the U. S. Bill of Rights, that was originally intended only as a limitation on the national government, *these* guarantees are explicitly protections against the state and territorial governments, and are only implicitly restrictions on the national government of Mexico.

The protections of the U. S. Bill of Rights that were *not* included are also interesting. Nearly all of the other guarantees of the U. S. Bill of Rights were not included until the Mexican Constitution of 1857. Freedom of speech and freedom of assembly are not mentioned anywhere in the Mexican Constitution of 1824; articles 6 through 9 of the 1857 Constitution guaranteed freedom of speech, freedom of the press, a right to petition the government, and a right of "unarmed citizens to assemble for free discussion..."⁸

⁷ Mexico Const. (1824), art. 153.

⁸ Callcott, 286-287.

Article 10 of the 1857 Constitution, analogous to the Second Amendment, guaranteed the right of all men "to possess and carry arms for their security and self-defense..."⁹ A prohibition on quartering soldiers in private homes in peacetime (almost identical in wording to the U. S. Bill of Rights' Third Amendment) also waited until 1857, as did the guarantee of a right to face one's accusers in criminal trials, and a prohibition on double jeopardy.¹⁰

The language similarities between the documents are even stronger than the structural parallels. A comprehensive list of the similarities in phrasing could occupy many pages; two examples will suffice:

U. S. Constitution (1787)	Mexico Constitution (1824)
The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. ¹¹	The emoluments of the Representatives and Senators shall be determined by law, and paid from the general treasury of the Federation. ¹²
No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace... ¹³	Third, hold, at no time, a permanent troop nor vessels of war, without the consent of the general Congress. ¹⁴

The similarities are strong, but careful examination also shows some substantial differences between the two constitutions, and differences that show significant Mexican components. The most obvious Mexican element of the 1824 Constitution, and the one most often mentioned, is the position of the Catholic Church:

The Religion of the Mexican Nation is, and will be perpetually, the Roman Catholic Apostolic. The Nation will protect it by wise and just laws, and prohibit the exercise of any other whatever.¹⁵

At first glance, this appears to be a most dramatic departure from the U. S. Constitution; but the distinctly non-denominational nature of the federal government of the United States is more because of a diversity of Protestant denominations from state to state, than because of a fundamental philosophical disapproval of church-state ties. Six of the original thirteen states still

⁹ Callcott, 287.

¹⁰ Calcott, 288-289.

¹¹ U. S. Const., I, §6, i.

¹² Mexico Const. (1824), art. 45.

¹³ U. S. Const., Art. I, §10, iii.

¹⁴ Mexico Const. (1824), art. 162.

¹⁵ Mexico Const. (1824), art. 3.

had state establishments of religion in 1789,¹⁶ and the First Amendment's protection was originally intended only to block a *national* establishment of religion.

As one of the Federalist commentators who argued for adoption of the U. S. Constitution observed, "a singular concurrence of circumstances" (the wide diversity of religious beliefs) had made a national religious establishment "as a pillar of government... totally precluded..." in the United States.¹⁷ In the case of Mexico, this diversity of religious belief did not exist, and since the 1813 Declaration of Independence had recognized the Catholic Church as the "only lawful religion,"¹⁸ and the 1821 Plan of Iguala, backed by conservatives (fearful of the liberal Spanish Constitution of 1812), included "the preservation of the Roman Catholic religion and clerical privileges,"¹⁹ we should not be surprised by the Church's special status.

The Mexican Constitution's qualifications for election to Congress and the Presidency also set extraordinarily high property qualifications for those not born in Mexico before the Revolution. In order for a person not born in Mexico to be eligible for election, he had to have 8000 pesos of real estate in Mexico, or "an occupation that produces them 1000 per year."²⁰ This was an effective strategy for excluding most *peninsulares* from elective office. There was no equivalent provision in the U. S. Constitution.

Another particularly Mexican characteristic of the 1824 Constitution is the emphasis on protecting national sovereignty. Congress alone was given the authority:

[t]o grant or deny the entrance of foreign troops in the Territory of the Federation. Twenty-first, permit or not, the station of squadrons of any other power, for more than one month, in the Mexican ports.²¹

Perhaps the most clearly Mexican component to the 1824 Constitution was the fear of caudilloism. Concerns about a President with ambitions of monarchy motivated much of the

¹⁶ Michael W. McConnell, "The Origins and Historical Understanding of Free Exercise of Religion", *Harvard Law Review*, 103:1437.

¹⁷ Noah Webster, *An Examination into the Leading Principles of the Federal Constitution*, 42-43, in Paul Ford, *Pamphlets On The Constitution of the United States*, (Brooklyn, NY: 1888), reprinted (New York, Da Capo Press: 1968), 55-56.

¹⁸ Callcott, 35.

¹⁹ Callcott, 38-39.

²⁰ Mexico Const. (1824), art. 20.

²¹ Mexico Const. (1824), art. 50.

opposition to ratification of the U. S. Constitution,²² and played a major role in promoting the demands for guarantees of jury trial and the right to keep and bear arms as a counterbalance. The concerns about caudilloism that appear in the Mexican Constitution are even stronger. Rather than trust the President with significant military authority while Congress was in recess, a "Council of Government" was established, consisting of one-half of the Senate.²³ Without the consent of the Congress (while in session) or the Council of Government at other times, the President was not allowed to take command of the military in person. If consent was given, the Vice President was to be given administration of the government while the President served as commander-in-chief.

Regardless of whether or not he was commanding the armed forces, the President was prohibited from holding any person under arrest for more than 48 hours without being brought before a court, and he could not seize any person's property without the consent of either the Congress or the Council of Government.²⁴ In a similar concern about abuses of executive power at the state level, the state constitutions were prohibited from allowing governors to hold their positions for any indefinite period, requiring regular elections.²⁵

Mexican federalism failed to achieve its goals because the states were purely creations of the federal government, and thus ineffective as a balance against the federal government. While the provisions aimed at preventing caudilloism were well-intentioned, paper guarantees and theoretical structures will not stop a determined tyrant – and this is the real problem of the 1824 Constitution. The problem was not the foreign borrowings of it, but that no form of representative government could be expected to survive in a culture that had both the caudillo as a cultural archetype, and where the principle of representative government had failed to extend beyond the city level.

²² See Patrick Henry's speech about the dangers of a President "of ambition and abilities," using a standing army to make himself king. Jonathan Elliot, *The Debates of the Several State Conventions on the Adoption of the Federal Constitution*, (New York, Burt Franklin: 1888), 3:59-60. Similarly, James Madison's response in *Federalist* 46, points to the existence of state governments as marshalling agents and the masses "with arms in their hands" as the popular defense against federal tyranny.

²³ Mexico Const. (1824), art. 113-115.

²⁴ Mexico Const. (1824), art. 112.

²⁵ Mexico Const. (1824), art. 159.

The U. S. was fortunate in that our first real military leader, and our first President, consciously modeled his actions on the Roman general Cincinnatus, and at every opportunity, forswore becoming a military dictator. If a less scrupulous man had assumed the executive position in our government, it is unlikely that armed freemen of the United States, and the state governments, jealous of their privileges, would have tolerated it. In Mexico, where the state governments were artificial, caudilloism was inevitable.

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