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## Power of the law or power of the sword: the conflictive relationship between the executive and the legislative in nineteenth-century Peru

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## Power of the law or power of the sword: the conflictive relationship between the executive and the legislative in nineteenth-century Peru

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### ABSTRACT

The Peruvian parliament was a central institution in the early republic, but so far very little has been written on its history. This is due to the fact that military leaders took control of power for most of the nineteenth century. This article reflects on three main questions: what was the role of the legislative in nineteenth-century Peru? What was its relationship with the executive power? And what part did conflict play in these relationships? Most initial congresses were tasked with writing up constitutions, because institutions had to be created, and there was a strong belief that having a written charter mattered. The strongmen who took power felt the need to obtain legitimacy from both constitutions, and elections, but often did not see eye to eye with congress. This led congress to be closed, particularly when legislators refused to bow down to presidential power.

### KEYWORDS

Peru; nineteenth century; parliamentary history; constitutional history

The first elected chamber of deputies in Peru met in 1822, convened by Liberator José de San Martín. He had established himself as a temporary Protector after declaring independence in July 1821. Backed in power by the troops that accompanied him from Chile and Buenos Aires, he encouraged discussion on the system of government in a patriotic society.<sup>1</sup> He supported a monarchical option, but was unsuccessful in having one implemented. Instead, a republican system was selected. Electing representatives was not an entirely new experience as a decade earlier deputies to the Cádiz Cortes had been chosen this way. Congress, once installed by San Martín as he left Peru for good, was tasked with writing the first constitution for the newly independent country.

The legislative therefore predated a functioning constitutional executive in the emerging republic. After initially installing a triumvirate, Peru adopted, like the rest of the region (except Brazil), a presidential system. Representatives to congress have been elected regularly in Peru since the 1810s; however, in spite of the important role parliament has continued to play in the political system, studies that trace its history are

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<sup>1</sup>V. Paniagua Corazao, *Los orígenes del gobierno representativo en el Perú. Las elecciones (1809–1826)* (Lima, 2003), has details of these debates, pp. 283–6.

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extremely rare. We know remarkably little about how the legislative functioned, how representatives were elected to their seats, who these representatives were or even how long sessions lasted.

The main sources for our understanding of this branch of government are the commemorative books produced by the legislative that contain lists of members who were elected. Only in 1860 did it become mandatory to publish congressional debates, so the only ones in print from before are those of the 1822 and 1833 constitutional conventions.<sup>2</sup> For the years where printed records do not exist, newspapers and pamphlets are a good way to gain an understanding of the main ideas discussed. However, the original manuscript records of the debates for the period predating 1860 can be found in the congressional archive, although they have seldom been used.<sup>3</sup> Jorge Basadre, the historian of the Peruvian nineteenth century par excellence, dedicated several sections of his monumental *History of the Republic* to discussing the development of congress.<sup>4</sup> Two other works on congressional history have been published both by parliament itself: the 1903 *Apuntes para la historia el parlamento peruano* by Ricardo Tizón y Bueno, and Pablo Macera's *Parlamento y Sociedad* – a study and selection of primary sources, published in 1998.<sup>5</sup>

In contrast to other parts of the continent, Peru did not develop strong political parties during the nineteenth century and its politics were not characterized by a long confrontation between liberals and conservatives. Instead, nineteenth-century Peru has been understood as being dominated by conflict between the military and civilians to capture power, as first proposed by Basadre in 1929. But history produced during the last decade or more has clearly shown that the forces driving politics during the first years of the republic were much more complex and certainly more nuanced than can be explained by a simple narrative of ephemeral governments and regular civil wars.<sup>6</sup> Recent studies have concentrated on how the first constitutions shaped the development of the Peruvian state.<sup>7</sup> This is important because institutional design was at the very heart of the way the country was shaped. Elections and how they provided legitimacy has also been considered.<sup>8</sup> But in spite of this interest in both constitutions and in elections, we still know very little of the composition of constitutional and regular congresses and how the representatives to the assemblies were chosen, as in some cases they were elected and in others just appointed.

Peruvian *caudillos* were obsessed with having constitutions to ascertain their right to govern. This is why they enacted them regularly; in the 1820s there were three: 1823, 1826 and 1828. A decade later two more followed: 1834 and 1839. There was no need

<sup>2</sup>For debates after 1860 see <http://www4.congreso.gob.pe/dgp/DiarioDebates/historia.htm>, accessed 23 May 2016.

<sup>3</sup>For my doctoral dissertation I reviewed most of the congressional debates between 1840 and 1860, see N. Sobrevilla Perea, 'Caudillismo in the Age of Guano: A Study in Political Culture of Mid-nineteenth Century Peru, 1840–1860' (unpublished PhD thesis, University of London, 2005).

<sup>4</sup>J. Basadre, *Historia de la República del Perú*, 12 vols (Lima, 1961).

<sup>5</sup>R. Tizón y Bueno, *Apuntes para la historia el parlamento peruano* (Lima, 1903); P. Macera, *Parlamento y Sociedad en el Perú. Bases Documentales Siglo XIX. Selección y estudio preliminar*, 4 vols (Lima, 1998).

<sup>6</sup>One of the first works that tackles this topic is C. Aljovín de Losada, *Caudillos y Constituciones* (Lima, 2000).

<sup>7</sup>Aljovín's *Caudillos y constituciones* covers this issue, as well as A. del Águila, *Ciudadanía Corporativa en el Perú* (Lima, 2013). Also on the topic is my essay 'Batallas por la legitimidad: constitucionalismo y conflicto político en el Perú del siglo diecinueve (1812–1860)', *Revista de Indias* 69, (2009), pp. 101–28.

<sup>8</sup>See Paniagüa Corazao, *Los orígenes*; C. Aljovín and S. López (eds), *Las elecciones en el Perú* (Lima, 2005) and G. Chiaramonte, *Ciudadanía y representación en el Perú (1808–1860). Los itinerarios de la soberanía* (Lima, 2005).

for one in the 1840s and only one was passed in each of the following decades: 1856 and 1860, altogether seven in little over 40 years. *Caudillos* also placed much importance on elections, because, just as constitutions, votes provided their regimes with an aura of respectability. It is also the case that the histories of constitutions and elections are intertwined with those of parliament, as representatives were elected in most cases to write constitutions. Electoral history, however, has been dominated by an interest in presidential elections, and electoral mechanics. As a result, we know practically nothing about how legislators were elected, what their programmes were, or even if they had them and how they behaved once they were elected. As far as I can tell, only Ulrick Muecke's article on elections to congress before the War of the Pacific (1879–83) and my article on patronage and the election to the seat of Quispicanchis in Cuzco in 1860 have attempted to understand parliamentary elections.<sup>9</sup>

This article is divided into three sections: the first provides some detail on the constitutional conventions, as they were specific types of legislatures which in some cases were especially created. The second looks at moments of confrontation between the legislative and the executive. And the final one reflects on what we can learn about the history of parliament by doing this, and what are the main areas that remain to be studied in the future.

## Constitutional conventions

The first independent Peruvian congress met on 22 September 1822 at the end of José de San Martín's sojourn in Peru. Of the 122 representatives, 12 were classified as foreigners: one from Chile, three from Buenos Aires and the rest from different regions in Colombia. Most were resident in Lima, even those who were elected for the provinces that were still under the control of the crown.<sup>10</sup>

The cities of Cuzco and Arequipa, ruled by Spanish forces, each had a similar number of inhabitants as Lima, and were also predominantly indigenous – so more than half of the population still lived under the crown. Seventy-nine deputies and thirty-eight alternates were elected amongst Lima residents from the occupied provinces of Cuzco, Puno and Arequipa – the first president of congress was the deputy of the latter, Francisco Xavier de Luna Pizarro, a well-known cleric and educator who had been present at the Cortes in Cádiz.<sup>11</sup> Most of those men went to have very long parliamentary careers, serving until the 1860s. The majority of liberals came from the south and were trained as lawyers and clerics. They dominated the first constitutional congress and the result of their efforts was the liberal 1823 constitution.<sup>12</sup>

Although liberals prevailed, some, like Hipólito Unanue, who had long worked in the service to the crown, played a pivotal role presenting the other side of the argument.<sup>13</sup>

<sup>9</sup>U. Muecke, 'El Congreso, las elecciones y la cultura política peruana antes de la guerra con Chile', in M. Irurozqui (ed.), *La mirada esquiva. Reflexiones históricas sobre la interacción del estado y la ciudadanía en los Andes (Bolivia, Ecuador y Perú) siglo XIX* (Madrid, 2005).

<sup>10</sup>*Representantes al Congreso Edición conmemorativa* (Lima, 1999).

<sup>11</sup>See C. Villanueva, *Francisco Javier de Luna Pizarro. Parlamentario y primer presidente del Congreso Peruano* (Lima, 2016).

<sup>12</sup>C. Aljovín, 'La Constitución de 1823', in S. O'Phelan (ed.), *De los Borbones a Bolívar* (Lima, 2001), pp. 351–78.

<sup>13</sup>A medic by training, Unanue had been one of the minds behind the enlightened journal *El Mercurio Peruano* and had been in charge of the 1791 census. For how his ideas developed see C. McEvoy, 'No una sino muchas repúblicas: una aproximación a las bases teóricas del republicanismo peruano, 1821–1834', *Revista de Indias* 71, (2011), pp. 759–91.

Unanue was designated President of Congress in the session of 20 December 1822, when he declared:

There is no patria without government, and there is no government if any splinter group within the people takes upon itself the ability to be in charge, an ability that all citizens have, and that they relinquish when they delegated to those who govern them and they accept the social pact.<sup>14</sup>

The wars of independence resulted in much turmoil that included the splintering of the independent government, the royalist retaking of the city of Lima, and the intervention of Simon Bolívar and his army from the newly established Republic of Colombia. After those defending the crown capitulated in 1824, a new constitution, more in tune with the ideas of the Colombian liberator, was required to govern the new republic. One of the representatives who took Bolívar's view was Unanue, who justified the need for a strong government because Peru was under threat. He also believed that some of the decisions required to create the new nation should not be taken by the 'plebes'. Unanue wrote that it was not possible to establish a government if there were no 'intelligent men' who had 'a degree of culture that would place them in the position to think for themselves and to speak the language of persuasion'.<sup>15</sup> He proposed a government led by the most intelligent. Bolívar agreed with this assessment and in this spirit wrote the 1826 constitution, initially for neighbouring Bolivia, that was also approved for Peru by the electoral colleges and officially enacted on 9 December 1826.

Bolívar had been forced to abandon Peru in September 1826 to deal with increased trouble in Colombia, and in his absence the constitution was abolished only 50 days after being passed. The immediate reaction was to call for elections to a constituent congress that would provide the republic with a new charter, and choose a president.<sup>16</sup> The 84 deputies were installed on 4 June 1827 and five days later they elected the president. This was the second time they had done so and Francisco Javier de Luna Pizarro once more led the process.<sup>17</sup> Unencumbered by a meddling executive, the Liberals wrote the 1828 constitution.<sup>18</sup> This was the first one that was really put into practice in all of Peru, and brought back many of the ideas present in 1823, especially the departmental juntas that aimed to balance the power of the centre and that of the provinces.

This congress extensively debated the possibility of creating a federation – Peru remains to this day the only country of its size in Latin America never to have attempted a federal structure. Although regional sentiment was particularly strong in the south, with Cuzco and Arequipa favouring a federal solution, there was no agreement on which of these two regions should have pre-eminence.<sup>19</sup> Fearing Peru would fracture into two different countries, legislators decided the risk was too high.<sup>20</sup> Inspired by the United States and

<sup>14</sup>H. Unanue, 'Soberanía del Pueblo', in *Colección Documental de la Independencia del Perú (CDIP)*, 88 vols (Lima, 1971–76), I: 8 (1974), p. 857.

<sup>15</sup>H. Unanue, 'Instrucción pública', in *Nuevo día del Perú*, nos. 2, 5, 6, 11 (Trujillo, 1824); reprinted in *CDIP* I: 8, p. 847.

<sup>16</sup>On this period see N. Sobrevilla Perea, *The Caudillo of the Andes: Andrés de Santa Cruz* (Cambridge, 2011).

<sup>17</sup>Basadre, *Historia*, vol. I, p. 254.

<sup>18</sup>[http://www.leyes.congreso.gob.pe/Documentos/constituciones\\_ordenado/CONSTIT\\_1828/Cons1828\\_TEXTO.pdf](http://www.leyes.congreso.gob.pe/Documentos/constituciones_ordenado/CONSTIT_1828/Cons1828_TEXTO.pdf), accessed 12 June 2016.

<sup>19</sup>These tensions can be seen in the work of P. Gootenberg, 'North and South: Trade Policy, Regionalism and *Caudillismo* in Post-Independence Peru', *Journal of Latin American Studies* 23, (1991), pp. 273–308 and N. Sobrevilla Perea, 'Conflicto regional, guano y poder', in P. Drinot and L. Garofalo (eds), *Mas allá de la dominación y la dependencia* (Lima, 2005), pp. 181–213.

<sup>20</sup>Sobrevilla Perea, 'Conflicto'.

hoping for more balanced representation, the constitution introduced a bicameral parliament that would meet annually. Deputies were to be elected to the lower chamber proportionally to the population, for periods of four years, with half of the representatives being elected every two years. The upper chamber had three senators for each province with elections every two years for a third of the members.<sup>21</sup>

The 1828 constitution established state structures in the period dominated by the presidency of Agustín Gamarra (1829–33). He had to contend with a series of regional insurrections, fuelled by the growth of provincial disenchantment with the departmental juntas, as many wanted still more regional autonomy. The most salient element of the 1828 charter was, however, that reform was embedded in its very core. In five years a newly elected national convention was to decide if the constitution was well adjusted to the needs of the country.<sup>22</sup> Gamarra called for elections in 1833, and 89 representatives were elected following the procedures set out in 1828. But as only some provinces managed to hold elections, the others returned the deputies who had previously been elected.<sup>23</sup> In 1834 after much debate small changes were made to the constitution, but it was nevertheless considered to be a new charter.<sup>24</sup>

After passing the constitution in April 1834, congress elected liberal General Luis José de Orbegoso as the new president. Gamarra rejected the validity of the election and civil war between the liberals and the military ensued. This conflict had an important regional component, which is no surprise considering that one of the main topics of discussion in every congress thus far was the balance between centre and the provinces and a possible federal option.<sup>25</sup> The civil war of 1834 was the most intense in the initial years of the republic. This instability resulted in the eventual creation of the Peru–Bolivia Confederation between 1836 and 1839. As had been the prevailing fear in 1823 and 1828, the country split between into two republics, a Northern Peruvian state and a Southern Peruvian state, each with its own flag and administrative structures. These two were joined with Bolivia in a federation. But it was not a congress that legitimized this, but three separate assemblies, one for each of the republics.<sup>26</sup>

The confederate experiment was short-lived and after it was destroyed following two interventions from Chile, supported by Peruvian émigrés, Gamarra considered it necessary to pass a new constitution, as he did not want to return to the one promulgated in 1834. A constituent congress was called to meet in the small Andean city of Huancayo in November 1839, because of fears that the Chilean troops still stationed in Lima would otherwise interfere. At Lima, 68 deputies enacted a new charter inspired by the Chilean 1833 conservative constitution.<sup>27</sup> This marked the end of the first liberal experiments and established a centralized state structure, which was a reaction to the division of Peru into two separate states during the Confederation. The departmental juntas, so

<sup>21</sup>Basadre, *Historia*, vol. I, p. 259.

<sup>22</sup>[http://www.leyes.congreso.gob.pe/Documentos/constituciones\\_ordenado/CONSTIT\\_1828/Cons1828\\_TEXTO.pdf](http://www.leyes.congreso.gob.pe/Documentos/constituciones_ordenado/CONSTIT_1828/Cons1828_TEXTO.pdf), accessed 12 June 2016.

<sup>23</sup>Basadre, *Historia*, vol. II, p. 63.

<sup>24</sup>[http://www.leyes.congreso.gob.pe/Documentos/constituciones\\_ordenado/CONSTIT\\_1834/Cons1834\\_TEXTO.pdf](http://www.leyes.congreso.gob.pe/Documentos/constituciones_ordenado/CONSTIT_1834/Cons1834_TEXTO.pdf), accessed 12 June 2016.

<sup>25</sup>These tensions are seen in Gootenberg, 'North and South' and Sobrevilla, 'Conflicto'.

<sup>26</sup>See Sobrevilla Perea, *Caudillo*, ch. 3.

<sup>27</sup>[http://www.leyes.congreso.gob.pe/Documentos/constituciones\\_ordenado/CONSTIT\\_1839/Cons1839\\_TEXTO.pdf](http://www.leyes.congreso.gob.pe/Documentos/constituciones_ordenado/CONSTIT_1839/Cons1839_TEXTO.pdf), accessed 12 June 2016.



emblematic of the first years of the republic and modelled on the Bourbon *itendencias*, were finally abolished.

The Huancayo constitution had severe problems of legitimacy. Some wondered if the charter could ever be considered legal, as it had been passed while foreign troops occupied the capital. Political and military conflict was recurrent, lasting until the mid 1840s. Surprisingly, in spite of many challenges to the constitution in this period, it remained in place. This was to a large extent because the liberals had become weary of constitutional experiments and now tried to implement reform from within using their position in congress, as opposed to attempting to pass a completely new charter.<sup>28</sup> The *caudillos* that dominated this subsequent period, Ramón Castilla and Manuel Ignacio de Vivanco, did not indulge, at least initially, in constitution writing to legitimize their power.

A new generation of liberals came to age at mid century. Most were born around the years of independence and grew up in the extremely fractious early years of the republic. Inspired by a resurgence of liberalism that drew strength from the 1848 revolutions, they attempted to gain control of the presidency through the 1850 elections.<sup>29</sup> They built a platform around the newspaper *El Progreso* and campaigned putting forward many ideas for institutional change from within this periodical. The elections were deeply contested and allegations of fraud mired the process.<sup>30</sup> Upon defeat, their immense frustration and their conviction they would never gain power through electoral means led them to rise up in a revolution in 1854.<sup>31</sup>

They succeeded after Castilla joined their cause and they received support from the south. As change was one of the main motors of this uprising, elections for a congressional convention followed in 1855. General Miguel de San Román, who represented the army, presided over it for the most part, and liberal intellectual José Gálvez did for the rest of the time. The constitutional commission included a wide variety of deputies, from moderate liberals such as Juan Gualberto Valdivia, a cleric from Arequipa who had been close to the confederate project, to more radical liberals such as Pedro Gálvez, who had been Castilla's secretary during the revolution and who wrote the decree for the abolition of slavery.

After some months of debate a new constitution was passed in 1856.<sup>32</sup> It inaugurated a second cycle of liberalism that introduced many of the ideas this new generation of thinkers had been campaigning for since the 1840s. The main changes included the abolition of the death penalty, the military and ecclesiastic courts or *fueros*, the lifelong tenure of jobs and corporal punishment. Elections were open to all men, and were popular and direct.

The 1856 constitution brought many progressive changes, but ignited a strong reaction. A two-year uprising in the city of Arequipa followed, as many were unhappy with some of the innovations introduced and the lack of consideration for their desire for regional

<sup>28</sup>For more on this see Peloso, 'Liberals, Electoral Reform and the Popular Vote in Mid-Nineteenth-Century Peru', in V. C. Peloso and B. A. Tenenbaum (eds.), *Liberals, Politics & Power. State Formation in Nineteenth-Century Latin America* (Athens, 1996), pp. 186–211.

<sup>29</sup>For this see N. Sobrevilla Perea, 'The Influence of the 1848 Revolutions in Perú', in G. Thomson (ed.), *The 1848 European Revolution in the Americas* (London, 2002), pp. 191–216.

<sup>30</sup>J. Ragas, 'Cultura política, Representación y Modernidad en el Perú: La campaña electoral de 1850', (unpublished licenciatura thesis, Pontifical Catholic University of Peru, 2004).

<sup>31</sup>N. Sobrevilla Perea, 'El proyecto Liberal, la Revolución de 1854 y la Convención de 1855', in C. McEvoy (ed.), *La Experiencia Burguesa Peruana* (Madrid and Frankfurt, 2004), pp. 223–43.

<sup>32</sup>Sobrevilla Perea, 'Batallas'; [http://www.leyes.congreso.gob.pe/Documentos/constituciones\\_ordenado/CONSTIT\\_1855/Cons1855\\_TEXTO.pdf](http://www.leyes.congreso.gob.pe/Documentos/constituciones_ordenado/CONSTIT_1855/Cons1855_TEXTO.pdf), accessed 12 June 2016.



governance.<sup>33</sup> This resulted in strong confrontation between the executive and the legislative which eventually led, after at least a couple of attempts, to the meeting of congress in 1860, which finally passed a new charter. More moderate than the one of 1856, it retained some of its most salient changes, such as the abolition of slavery, Indian tribute, *fueros* and the lifelong tenure of jobs, but allowed more say to the regions. This became the most enduring constitution in the period, lasting until 1920.

In sum, throughout the nineteenth century, in at least seven opportunities conventions were called and congress was given the specific aim of drafting or approving new constituent arrangements. Often, its ability to legislate, and in some cases even its very existence, depended on the relationship congress had with the executive. *Caudillos* in Peru sought legitimacy in constitutions. Even if they reached power through revolution they remained convinced that congresses and constituent conventions with elected representatives were the bodies that should be in charge of passing charters. Liberals, mainly liberal clerics and lawyers, saw constitution writing as the place from which to influence politics. This resulted in a strained relationship between the legislative and the executive power in most of the nineteenth century. These constitutional conventions took on several occasions the responsibility to pass ordinary legislation as well as to write a new charter. By the same token, some ordinary legislatures were tasked with drafting constitutions. In this period therefore there was no clear division between regular and constitutional parliaments.

### Confrontation between the legislative and the executive

Even though it was not uncommon for sitting or aspiring presidents or their henchmen to close congress, congressional elections took place with certain regularity. As elsewhere, parliaments, however, were not in session permanently, as the laws stipulating how often and for how long changed, and congress was often called for specific legislative purposes. It could be to pass new laws or, as seen in the previous section, new constitutions. During elections, parliaments acted as the main electoral court, vetting the processes carried out around the country where there were disputes over procedure, or when more than one candidate claimed a seat. Moreover, the legislative was the centre of political debate, even if its effective power was limited. In some cases congress became an active opposition and even the place from where to try to limit the power of the executive.

Congresses were either in the hands of the men of the regime, whom Basadre called *válidos*, or the ones in opposition, whom he described as the *censores*.<sup>34</sup> Legislators, as suggested above, were lawyers, priests, members of the military and occasionally landowners. This section concentrates on some of the most salient cases of confrontation between the executive and the legislative, which coincided with two liberal cycles. A first one includes the congresses of 1822 and 1834, when most attention was centred on institutional design. The second cycle includes the radical convention of 1855, the liberal 1858 congress and the more moderate one of 1860 where social changes were sought.

The first constitution was debated just after the defeat of the first Peruvian campaign for independence to the southern ports in January 1823. Fearing a possible royalist reaction,

<sup>33</sup>Sobrevilla Perea, 'Conflicto'.

<sup>34</sup>J. Basadre, 'Los hombres de traje negro', *Letras* (Lima, 1929), pp. 29–59.

the army organized a coup against the governing triumvirate and designated José de la Riva Agüero as the first president of Peru.<sup>35</sup> Congress asked for the man who led the three, José de la Mar, to be freed, in return for agreeing to the army's demand to name Riva Agüero as president. Out of the 60 representatives, 39 votes were cast in favour. But months later, during the second campaign to the southern ports, the royalists retook Lima in June 1823. Some members of congress defected to the other side and Riva Agüero relocated his government to the port of Callao. This meant that the first congress met in Lima from 20 September 1822 until 15 June 1823, while fewer representatives met in Callao between 19 to 26 June 1823.

In protest at Riva Agüero's move, clergyman Luna Pizarro chose exile and congress was divided between those who supported the president and those who did not. Some legislators sought Bolívar's help to take charge of Peru, so Riva Agüero selected the 10 most loyal to him and they all took a boat to Trujillo, relocating his government once again. The rest returned to Lima as soon as the royalists abandoned it. There they designated Bernardo de Tagle, Marquis of Torre Tagle, as the new president, who then waited for Bolívar to arrive. Congress met between 6 August 1823 and 10 February 1824, and in its final session declared Bolívar as dictator.<sup>36</sup> Exactly a year later congress was restored, but only 56 of the deputies who had served in 1822 were returned and no foreigners were included.<sup>37</sup>

War continued until the Battle of Ayacucho on 9 December 1824, after which the royalists capitulated.<sup>38</sup> Once independence was achieved in all of Peru, Bolívar protested that 'legislators cannot confer me with the authority the people have given them only to represent their sovereignty'.<sup>39</sup> He relented after some parliamentarians begged him to stay, promising to call for a new constituent congress. A month after starting their sessions, on 10 March 1826, parliament decided to close, relinquishing all authority to Bolívar. In May 1825 the dictator called for the meeting of a new congress in February of the following year. Eighty-six deputies and fifty-six alternates were elected by the provincial electoral colleges, made up by the electors selected in the parishes.

The supreme court was tasked with vetting those elected to ensure they were loyal to Bolívar.<sup>40</sup> In spite of these checks, many prominent liberals were confirmed in their seats.<sup>41</sup> During the preparatory juntas that met to agree on the procedures for the new congress, these liberals, who were mainly from Arequipa, questioned Bolívar's power. They were against calling congress constitutional instead of constituent. Bolívar complained bitterly about the representatives from Arequipa and was adamant new ones had to be sent.

The situation became so strained that on 21 April 1826, 51 deputies decided to present a petition to the government, asking for election to a new congress. The reason provided was that the number of representatives elected for each province was very different. The legislators argued that elections should only take place after a detailed census had been carried

<sup>35</sup>Sobrevilla Perea, *Caudillo*.

<sup>36</sup>Basadre, *Historia*, vol. I, p. 142.

<sup>37</sup>*Representantes*.

<sup>38</sup>N. Sobrevilla Perea, 'From Europe to the Americas and Back: Becoming *Los Ayacuchos*', *European History Quarterly* 41, (2011), pp. 472–88.

<sup>39</sup>Basadre, *Historia*, vol. I, p. 143.

<sup>40</sup>Unanue called for the elected deputies to meet in March 1826 with this decree, <http://www.leyes.congreso.gob.pe/Documentos/LeyesXIX/1826004.pdf>, accessed 12 June 2016.

<sup>41</sup>Basadre, *Historia*, vol. I, p. 149.

out.<sup>42</sup> Congress was therefore never properly installed and only met between 29 March and 1 May 1826 in preparatory juntas.<sup>43</sup> In the absence of a legislative, the electoral colleges were asked to approve the lifelong constitution Bolívar had written for Bolivia, which was proclaimed on 30 November 1826 by the council of government.<sup>44</sup>

But the constitution was short-lived, lasting only six months, so fresh elections were called for a constituent congress. Presided by Francisco Xavier de Luna Pizarro, it opened its sessions on 4 June 1827 and five days later legislators elected José de La Mar as president, with 58 votes in favour and 29 against. After debating and passing the new constitution, it closed its sessions on 16 June 1828. The plan was to elect representatives for an ordinary congress and electoral legislation was passed for it to meet in September that year. With only the permanent commission still in operation, the elections to congress were interrupted by military pronouncements surrounding the first skirmishes in the war against Colombia and against Bolivia.

La Mar was ousted from the presidency and a provisional government was established. The first extraordinary congress was installed in August 1829 with the members of the permanent commission and the senate, which had already been confirmed. The constitution mandated that the president of the senate should lead the country, but as the temporary holder of this office refused, congress elected Gamarra as provisional president. The electoral colleges later confirmed him in his post.<sup>45</sup>

In the period that followed, between 1829 and 1830, congress oscillated from meeting in an ordinary or in an extraordinary capacity. This had to do with not enough new legislators having been elected.<sup>46</sup> Congress reconvened in 1831 and, following all the constitutional provisions, it was installed. Amongst the 89 representatives who met in the 1833 constitutional convention, were some of the most experienced liberals who had been members of congress for over a decade; this illustrates how, in spite of great instability, there was also a surprising degree of continuity.<sup>47</sup> This congress was noteworthy for how it confronted the president, eventually calling for the election of his replacement when his term ended in 1834. What is interesting here is not just that congress sought to establish a balance by opposing the *caudillo*, Gamarra, but that at least initially, the latter accepted his power to be limited by congress.

The most noteworthy incident was when the vice-president of the chamber, Francisco de Paula Gonzalez Vigil, raised his voice in the house protesting that Gamarra was acting against the constitution. His celebrated phrase of the session of 7 November 1832, 'I must accuse, therefore I accuse', has become a reference for when civilians have opposed the military in more recent times.<sup>48</sup> The press dedicated much attention to the difficult relationship between the executive and the legislative. In spite of the acute turmoil, much of it regional seen in nearly 14 uprisings, the Gamarra presidency was characterized by a desire to have a functioning congress validating the decisions made by the executive. Indeed, it was one of the reasons why efforts were made to follow the 1828 constitution.

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<sup>42</sup><http://www.leyes.congreso.gob.pe/Documentos/LeyesXIX/1826011.pdf>, accessed 12 June 2016.

<sup>43</sup>Basadre, *Historia*, vol. I, p. 151.

<sup>44</sup>[http://www.leyes.congreso.gob.pe/Documentos/constituciones\\_ordenado/CONSTIT\\_1826/Cons1826\\_TEXTO.pdf](http://www.leyes.congreso.gob.pe/Documentos/constituciones_ordenado/CONSTIT_1826/Cons1826_TEXTO.pdf), accessed 12 June 2016.

<sup>45</sup>Basadre, *Historia*, vol. I, p. 299.

<sup>46</sup>Tizón y Bueno, *Apuntes*, p. 40.

<sup>47</sup>*Representantes*.

<sup>48</sup>For details of the incident see Basadre, *Historia*, vol. II, p. 49 and J.G. Leguía, *Hombres e Ideas en el Perú* (Santiago, 1941).

Congress confronted Gamarra with several motions that showed there was much discomfort with how he governed. The most extreme expression of dissent, however, was when congress decided to elect a new president. Gamarra's term was due to end in 1834, and, according to the constitution, he could not extend his period or be re-elected.<sup>49</sup>

After congress elected a new president, the situation escalated and civil war ensued. The weak presidency of Luis José de Orbegoso and the constant plotting of Gamarra and Santa Cruz, as well as the unresolved regional issues, led to the creation of the Peru–Bolivia Confederation in 1836. The rest of the 1830s was not a good time for parliament, which remained inactive until 1839. This signalled the end of the first liberal cycle that coincided with the passing of a new centralizing constitution. The new decade began with more instability after the killing of Gamarra in 1841, but as the country descended into anarchy things began to slowly stabilize during the presidency of Ramón Castilla, which started in 1842.<sup>50</sup>

In spite of the questions over the legitimacy of the Huancayo 1839 constitution, Castilla did not attempt to have a new one passed to legitimize his regime. At the same time, liberals tried to reform instead of aiming to write a new charter. Much of the debate revolved on the importance of the sovereignty of the people as opposed to that of the most intelligent. Initially, discussions were held at church and in schools, but eventually by 1849 the debate reached congress, where the liberals and their idea of popular sovereignty prevailed.<sup>51</sup> Vincent Peloso has shown how they succeeded in ensuring that voting remained open to a large proportion of men.<sup>52</sup> Emboldened by their legislative success, liberals had high hopes they would reach the presidency through elections, but after the defeat of their candidate in 1850, they launched a revolution in 1854.<sup>53</sup> The most radical and liberally minded wanted society to change substantially. They considered the regime to be particularly corrupt and started what they called the revolution of 'honesty'.

The uprising was eventually co-opted by the military, allowing former president Castilla the chance to return to power. In spite of this, liberals achieved some of their aims for social change, including the abolition of slavery and indigenous tribute and thus began the second liberal cycle. The changes introduced by the 1856 constitution were not, however, universally accepted. A conservative rebellion broke out in Arequipa. General Manuel Ignacio de Vivanco, who had briefly been president in 1842, as well as a presidential candidate in 1850 and who had supported Castilla in 1854, led this uprising, which sought to end with the new 1856 constitution. Arequipeño publicist Hipólito Sánchez, stated in a 1857 publication:

Remember the terrible way we were treated and how our services during the campaign were paid, the ingratitude with which we were abandoned to misery after victory, the cold indifference with which the orphans of our brothers have been regarded ... and above everything

<sup>49</sup>These issues were vigorously debated in the press, mainly in the newspaper edited by González Vigil, *El Constitucional*, in 1833.

<sup>50</sup>N. Sobrevilla Perea, 'La Repatriación del Generalísimo: Agustín Gamarra y la construcción del imaginario nacional en Perú', in C. McEvoy (ed.), *Funerales Republicanos en América del Sur: Tradición, ritual y nación, 1832–1896* (Santiago, 2006), pp. 57–80.

<sup>51</sup>Sobrevilla Perea, 'Influence', pp. 196–9.

<sup>52</sup>Peloso, 'Liberals', pp. 192–3.

<sup>53</sup>On the links between the election and the revolution see N. Sobrevilla Perea, 'The Contested Peruvian Election of 1850 and the 1854 Revolution', in A. Robertson and E. Posada Carbó (eds), *Oxford Handbook of Revolutionary Elections in the Americas* (Oxford, forthcoming).

else the abandonment and outrage with which Arequipa, bedrock of the revolution, has been treated considering that because of their sacrifices our enemy owed us his power and wealth.<sup>54</sup>

For nine months, between June 1857 and March 1858, Arequipa was under siege and Castilla was absent from the capital. Meanwhile, the convention continued to legislate, even after producing the constitution. Its members considered they had the right to remain in session until an ordinary congress replaced it. Their enemies declared that the convention was both 'liberal, and submissive', and considered that it had begun 'pregnant with promises [but] it did not take long to lose their prestige due to a lack of unity, a lack of philosophy, a lack of justice and an excess of passion'.<sup>55</sup>

Opposition to the constitution grew, as did the resentment towards the convention amongst the supporters of the president, many of whom thought it was taking attributions it did not have. This was to a great extent because the legislative had called for dialogue between the rebels and the president. Colonel Pablo Arguedas took the matter into his own hands and closed the convention on 2 November 1857 with some armed men. He later explained to the president he did it because in the previous day's congress, 'only aim was to lower the salaries of civil and military employees while the members of the convention increased their salaries'.<sup>56</sup> According to Arguedas, the assembly sought to exile both Castilla and Vivanco and create a governing junta that could negotiate peace with the rebels in Arequipa.

Castilla rejected the closure because he believed that the best way to achieve change was the gradual reform of the constitution. He wrote to Arguedas, 'as a republican at heart I will never approve of these reprehensible actions'.<sup>57</sup> But the president knew he had no option but to accept the closure as a *fait accompli*:

[The closure of the Convention] has been a terrible blow for me and I would have wanted to prevent it at all costs. But given it is an act that has been consummated and the Convention will not be able to meet again, without putting public order at risk, because it would be dedicated to throwing attacks against the government and the army. It is indispensable to accept that we need to work to take advantage of the situation. It is our luck that popular vote supports Commander Arguedas' madness. To a large degree this is because of lack of sympathy in which the Convention is seen has led many to see its destruction with indifference and in some cases even with pleasure.<sup>58</sup>

Those who opposed the convention believed the representatives had betrayed the people's trust. They considered that 'the author of the piece had the right to destroy it, the people were tricked into creating the convention. If the people destroy it; it is rightly destroyed'.<sup>59</sup> Public outpouring of support for change was seen in the writing of popular manifestos, known as *Actas*, that called for a new election and a new constitution. This led Castilla to write to his minister,

<sup>54</sup>H. Sánchez, *Vencer o morir* (Arequipa, 1857), p. 7.

<sup>55</sup>Salva, *El Despertador del proyecto de Rehabilitación de los Jefes y Oficiales vencidos en la Palma presentado a la H. Convención por el S. Consejo de Ministros el 7 de Abril de 1857* (Lima, 1857), p. 5, attributed to M. Mendiburu by R. Moreno.

<sup>56</sup>Letter from P. Arguedas to R. Castilla, Callao, 13 November 1857, *Archivo Castilla*, vol. III, p. 252.

<sup>57</sup>Letter from R. Castilla to P. Arguedas, Sacacha, 17 November 1857, *Archivo Castilla*, vol. III, p. 251.

<sup>58</sup>Letter from R. Castilla to M. Ortiz de Zevallos, Sachaca, 20 November 1857, *Archivo Castilla*, vol. VI, p. 129.

<sup>59</sup>M.N. Corpancho and J.H. del Campo, *Siga la Disolución de la Convención porque ella es justa, firmada por patriotas de corazón* (Lima, 1857).

it would be convenient to listen to popular will that called for the Convention to take a break, we have listened to this public vote, and it is not possible to retreat from it. It will not be difficult to ensure that these public manifestations become generalized in the north and south of the republic.<sup>60</sup>

On 30 April 1858, two months after Arequipa was retaken by the central government, elections for president, vice-president and congress took place. They were carried out under the electoral law of 20 February 1857: elections were direct and all adult men could vote.<sup>61</sup> The main aim was to replace the constitution with a more moderate charter. Government minister Manuel Morales declared that with the newly elected legislative, ‘some have thought that they should act as if the Constitution did not exist and that the current Congress was called to reconstitute the country’.<sup>62</sup> He noted that the new parliament had been called to ‘strengthen public order, to solidify the constitutional regime, and to repair the ills the rebellion had caused the Republic’.<sup>63</sup> The Castilla administration also sought constitutional change:

the Council [of Ministers], submitting to Congress a deliberation of whether, the reform of the Constitution was convenient, in the part that is judged necessary. It awaits the legislator’s high discernment and wisdom, so that it is constitutionally executed. The aim is provide it with more authority.<sup>64</sup>

The 1858 congress, however, was much more liberal than the government had anticipated, which, considering how representatives were elected, in direct elections with universal male suffrage, should have not come as a surprise. On 12 November 1858 the legislative voted rejecting the closure of the 1855–56 convention; that same day they took away the rank and political rights of Colonel Arguedas.<sup>65</sup> The executive did not accept that the legislative had a right to take these decisions. This led to a serious confrontation between the branches of government, which resulted in the legislator’s proposal in April 1859 to declare the country in peril and the presidency vacant. Castilla was able to remain in his post, but could not prevent the declaration of the country as being in peril. This victory was short-lived. Facing internal opposition and afraid of stirring potentially dangerous divisions at the time of possible war with Ecuador and Bolivia, congress finally accepted to close its sessions as an extraordinary congress, so that an ordinary one could be called in July.

The opposition accused congress of prostituting itself by allowing its own closure.<sup>66</sup> Revolution broke out in Cuzco under the command of Colonel Mariano Herencia Zevallos, who declared Peru to be a federation.<sup>67</sup> The reason he gave to rise against the president was that Castilla had ‘systematically violated the political Constitution of the State, enthroning on the Law affronted a DICTATORSHIP that cannot be

<sup>60</sup>Letter from Castilla to Ortiz de Zevallos, Sacacha, 2 December 1857, *Archivo Castilla*, vol. VI, p. 131.

<sup>61</sup>M. Monsalve, ‘Del sufragio a la sociedad civil’, in Drinot and Garofalo (eds), *Mas alla*, pp. 214–245.

<sup>62</sup>M. Morales, *Memoria que presenta al Congreso Extraordinario el Ministro de Gobierno, culto y obras públicas* (Lima, 1858), p. 11.

<sup>63</sup>M. San Román, M. Ortiz de Zevallos, M. Morales and L. María Cano, ‘Mensaje del Consejo de Ministros al Congreso Extraordinario de 1858’, in *Mensajes de los Presidentes del Perú* (Lima, 1941), p. 321.

<sup>64</sup>San Román et al., ‘Mensaje’, p. 323.

<sup>65</sup>For more details on this congress see Basadre, *Historia de la República*, vol. III, pp. 1153–63.

<sup>66</sup>*La Zamacueca Política*, no. 26, Lima, 20 April 1859.

<sup>67</sup>J. Rufino, Echenique wrote in his memoirs that even though Zevallos had led the opposition against him in Cuzco in 1854, by 1859 he wrote to him asking if he could be part of the uprising. *Memorias* (Lima, 1951), vol. II, p. 241. Zevallos had also helped Diez Canseco end with a revolution in Ayacucho in 1857 – see *El Registro Oficial*, Cuzco, 11 February 1857, p. 20.



qualified'.<sup>68</sup> The rebels declared the presidency vacant and called for the creation of a departmental junta.<sup>69</sup> To maintain at least a veneer of legitimacy, the only legal possibility the government found was to call for elections to a new congress backed once again by popular manifestos. These were produced in several parts of the republic to show support for the president, who thought that:

Once the adhesion was verified, the forced consequence is to call an extraordinary Congress that would re-establish legality and end the crisis. The same Congress could review the Constitution, suppressing the extemporaneous innovations that rejected the good national sense, following on the indications the people make in the electoral manifestos.<sup>70</sup>

Thanks to this new congress, Castilla was able to obtain the constitutional legitimacy he had lost with the illegal closure of the convention. It also allowed for the discussion of a new constitution. Castilla welcomed this, as he had never supported the 1856 charter and considered it had dragged the country into a civil war. The writers of the satirical newspaper that took its name from the popular dance *La Zamacueca* opined:

Why have the Congress of 58 and the Convention of 55 been completely extinguished with no prestige? Because both were just as weak, humbly suffering the Executive's advances, legitimizing its illegal acts to the point of allowing the most absurd infractions to the law. ... As long as General Castilla remains in power any real Congress is impossible.<sup>71</sup>

The 1860 congress brought an end to this strife and marked the end of the second liberal cycle. From this point onwards the relationship between the executive and the legislative became less strained and parliament met more frequently. One final moment of confrontation was in 1867 when the radicals and liberals attempted to return to the 1856 constitution. But this was an exception in the period characterized by a growing stability. By this point the structures of the state were established and the tension between the centre and the regions to a large degree resolved. The point in debate now was that smaller provinces wanted to break out from larger ones and gain status as departments. Intense confrontation between the branches of government and conflict over what the best constitutional arrangement had been at the centre of the process from the very first parliamentary experience.

## Conclusion

The legislative power played an important part in nineteenth-century Peru. To a large degree this was due to its role in writing constitutions and therefore designing how the new state should be organized. Throughout the century parliaments had found creative solutions to the difficult legal position the country was left in after wars and confrontations between factions and regions. On several occasions the legislative was also in charge of electing the president or confirming a *caudillo* in this position. With time, congress became the place from where to fight elections, as it was the preparatory juntas that confirmed legislators when there was more than one candidate claiming to have a seat. Therefore this branch of government was not in charge solely of passing legislation, it often had the responsibility to pass constitutions, elect presidents and confirm legislators in their posts.

<sup>68</sup>*La Opinión en Triunfo, periódico político y popular*, no. 2, Cuzco, 9 July 1859.

<sup>69</sup>Letter from J.A. de Abribe to R. Castilla, Arequipa, 6 June 1859, *Archivo Castilla*, vol. VIII, p. 112.

<sup>70</sup>Letter from R. Castilla to M. Ortiz de Zevallos, Sacacha, 2 December 1857, *Archivo Castilla*, vol. VI, p. 131.

<sup>71</sup>*La Zamacueca Política*, no. 37, Lima, 1 June 1859.



The relationship it had with the executive power was often strained, particularly when parliamentarians chose to exercise their power to confront presidents. As can be seen from this exploration between independence and roughly 1860, conflict played a very important role in the relationship between the executive and the legislative. A point that should be stressed is that those who held the presidency, all members of the military in this period, considered that different branches of power should make up government and that the legislative was of extreme importance in their attempts to construct legitimacy around their regimes. This point has to be considered when evaluating how the republics of early Latin America developed. Although perhaps not the most democratic, it is nevertheless noteworthy that so much attention was paid to having a legislative branch of government.

Much remains to be studied to have a real understanding of parliamentary history in nineteenth-century Peru. A basic area that needs to be further explored is who the members of congress were. There has been some work done on the main liberals of the period. But this is not the case with the majority of legislators. Those who did not leave published work or epistolary collections that can be studied, have not been considered at all. To have a better understanding of the legislative, an effort must be made to reconstruct the careers of parliamentarians, their participation in politics and what their relationship was with their constituencies. Elections to parliament, and how and when they were carried out, need to be studied as this will be the only way to ascertain what kind of representation existed in the period and how it changed throughout the century. The question of regional representation was present throughout the first 50 years of the republic, so more should be done to understand the way in which these deputies from the regions were elected, who supported them and to what extent they legislated with the interest of their localities in mind.

One of the most salient issues about parliament in Peru is that it sought to establish a balance of power with the executive. This is why this conflict is a good place to start an investigation on the legislative. Several important points emerge. First, that congress was seen as necessary by those in the executive to achieve legitimacy. Second, that the writing of constitutions was considered to be the responsibility of the legislative and charters underpinned legitimacy. Third, that elections were at the basis of the legislative power; even though we do not know how the representatives to all congresses were appointed, we do know that in most cases this was through elections. All this shows that even if all the presidents of Peru until 1871 were members of the military, the system of government had at least the aspiration to be to a certain degree grounded on the principles of representation and of the division of powers, and to be therefore democratic. In spite of the enormous difficulties Peru encountered in consolidating its democratic institutions, they were a fundamental part of the process of building a state after independence from Spain.

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