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### **Thematic dossier: *200 years after the Revolution (1820-2020)*, December 2021**

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## EDITORIAL

### 200 YEARS AFTER THE REVOLUTION (1820-2020)

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## EDITORIAL

### 200 YEARS AFTER THE REVOLUTION (1820-2020)<sup>1</sup>

**JOSÉ SUBTIL**

**CLÁUDIA ATALLAH**

**SARITA MOTA**

**RODRIGO DA COSTA DOMINGUEZ**

In 2020, we highlighted the 200 years of the Liberal Revolution, one of the essential historiographical landmarks in the History of Portugal and Brazil. We did this by organizing an inter-university webinar that was attended by researchers from both sides of the Atlantic.

In the words of German historian Sebastian Conrad, the organizers strove to create a broad and universal approach to this historic event, bypassing the pitfalls of Eurocentrism and biased interpretations with a perspective linked to the development of the «nation-states» of the 19<sup>th</sup> century. In this sense, the participation of different specialists in the various panels was essential, allowing the participants and, consequently, the readers of this thematic issue of the janus.net journal, to have a comparative, balanced and multilateral view. This view encompasses both issues directly related to the Portuguese context, immediately before and after the revolution, and aspects regarding its developments and impacts in different contexts, in different chronologies and in different parts of the Atlantic.

On the other hand, an important bias to be highlighted is the complex process of political paradigm shift from the mid-eighteenth century, where doctrines, practices and symbolism typical of the Ancien Régime Iberian began to shift towards a Liberal State. The text by **Patrícia Valim** (Universidade Federal de Ouro Preto) on the crime of lese-majesty and its application in the *Conjuração Baiana/Bahia's Conspiracy* (1798) highlights the process of transformation. The author sheds light on the transition from legal pluralism to the professionalization of the legal field, with an emphasis on national law and on the conception of legislative and penal rectitude. It pays attention to the interpretations and jurisprudence that emerged from the discussions around the process of judging those involved in the revolt, within a context of rationalization of the legal logic and the revisionism of the State's punitive action, less and less tied to the idea of "personal" justice of the monarch and closer to clear, detailed procedures carried out within properly delimited institutional contours and legal procedures under the auspices of Good Reason.

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<sup>1</sup> Editorial translated by Carolina Peralta.



In the author's words, the desecration of the hereditary divine right ended up generating a new political economy of the king's punitive power. In fact, the analysis of the inquest's records exposes the reach of the ideals of freedom and equality at the end of the Ancien Régime, especially the contradictions of magistrates involved in illicit practices, the intricacies of justice and monarchical power, as well as the political rearrangements in Salvador's society. Despite the negotiation between the crown and the local elites to repress the "projected revolution" and the "Bahia Republic", the punishment fell on four free men, poor, *pardos* and occupants of low-ranking military posts.

These sentenced figures, the "Beings of Liberty", are not treated as "martyrs"; on the contrary, the public ritual of torture attests the despotic absolutism of the time, the submission of subjects to the sumptuousness of the crown, the weight of social hierarchies supported by slavery, political control and the limits of republican ideals.

In the context of the Lei da Boa Razão/Law of Good Reason (1769), the article by **Cláudia Atallah** (Universidade Federal Fluminense) describes this same changing legal scenario by analysing the applicability of common law after the institution of the aforementioned law, which would clearly demarcate the political rationalism desired by the reforms of Sebastião José de Carvalho e Melo. The strengthening of the State should necessarily go through the specialization of the legal field and the professionalism of its agents. At first, the author makes a balance of the historiography on the so-called Pombal's ministry, problematizing the discussions about the rupture nature (or not) attributed to the period in question. Following her analysis, she presents us with a case study on the impacts of that law on the legal universe of Portuguese America, giving an opinion by D. Rodrigo José de Menezes e Castro, governor of the captaincy of Minas Gerais, sent to Martinho de Melo e Castro, Secretary of State for the Navy and Overseas of the Kingdom of Portugal (1783). In the document, Menezes e Castro describes the difficulties in enforcing the royal law and the peculiarities of governing the colonial hinterlands. The author also analyses the increase in requests for proof of common law that reached the Overseas Council in the thirty years after the Law of Good Reason.

The text by **Maria do Socorro Ferraz** (Universidade Federal de Pernambuco) analyses the political-administrative disputes in Pernambuco regarding the handling of the captaincy, considering its relations with two important centres of power, Rio de Janeiro and Lisbon. Both cities were going through moments of great political and social tension, with the Pernambuco Insurrection of 1817 and the creation of the *Sinédrio* (Sanhedrin) in Portugal in 1818. Her paper also describes the impact of the presence of the Portuguese Court and the decisions taken on political and economic issues that concerned Pernambuco, clarifying the positions between "monarchist" liberals and "republican" liberals. Among the factors that triggered the Pernambuco Revolution was the discontent of the landowning class with the Portuguese governor Caetano Pinto de Miranda Montenegro's treasury administration, the excess of taxation and the transfer of colonial income. Also symptomatic is the circulation of a new political vocabulary influenced by liberal American and French literature: terms such as "royal tyranny", "manifesting injustice", "oppression", "nation", "brave patriots", "social rights" and "organic laws", used by the revolutionaries to rally popular support. The movement was responsible for strong political repression and numerous arrests of liberals from Pernambuco: the leaders were sentenced to the death penalty; others were sent to exile in Africa and incarcerated in several prisons in Brazil, while others were sent to Lisbon on charges of being supporters of independence.

The work of **Telma Ruas** (Universidade Autónoma de Lisboa) focuses on the analysis of the "*subsídio literário*" (literary subsidy) tax, a tax created by Pombal's reform to support the teaching strategy and which prevailed after the liberal revolution, despite the heated debates for the its extinction. The defence of the tax, in view of the difficulties of the State's finances, was based on the promotion of primary education and based its intention on the fulfilment of fiscal duties. The subsistence of this tax was decisive for the education system and underlined the financial importance of the contribution which,



as the author says, “founded the demands for the creation of elementary schools and secondary education courses, calling for compliance with the norms related to tax contribution”, both through individual and collective petitions that reached the *Cortes*. The *subsídio literário* tax ended up allowing municipalities to use their contributions in elementary education and the acquisition of technical skills to leverage development and economic growth in line with the essential values of the ideas of freedom, equality and justice. With this work, one more field of continuity between the Ancien Régime and Liberalism was evidenced in one of the fundamental areas for the constitutional monarchy.

The article by **Ana Cristina Araújo** (University of Coimbra) focuses on three associations that, at the end of the 18th century and beginning of the 19th century, contributed to the construction of networks of public social organizations, providing, therefore, the debate of ideas about the philosophical modernity of the Enlightenment: the *Mancebos Patriotas* society based in Coimbra (1780), the *Montepio Literário* (1813) and the *Sociedade Patriótica Literária de Lisboa* (1822). These philanthropic associations stood out, above all, in the dissemination and political and social communication within a public atmosphere emerging from the transformations that were, in the words of the author, taking place “in the spaces, agents and mechanisms of literary, cultural, scientific and sociability politics in Portuguese society. All this under the influence of the Enlightenment, marked by new perceptions of encyclopaedist culture and philosophy, and taking into account the well-known channels of access to foreign printed production through the clandestine circulation of books, periodicals, literary and theatre novelties”. This civic participation grew in leisure spaces and in literary gatherings fed by cultural elites who also ended up operating changes in the way knowledge was shared, and in the use of social interactions to improve debate and political and social criticism. These new forms of sociability have therefore become central to the reinforcement of modernity and as a support for liberal ideas.

The work of **Luís Tomé** (Universidade Autónoma de Lisboa) focuses on the various international orders limited in time and space which, arising from liberal revolutions, inspired new doctrines and ideologies that would mark the emergence of para-democratic, liberal regimes, the Nation-State, multilateralism and institutionalism. In the author's words, this “would mark several and distinct worldviews on the “international order” that emerged in Europe and spread as a result of the colonial domination and expansion of the European powers”. The matrix of this liberal international order, which does not mean “world order”, is dominated by the American model and reflects the values and interests of its culture. However, the contradictions and paradoxes of the liberal order led to its deconstruction, especially given the “economic hyper globalization” that legitimized certain autocracies and favoured the growth of world power in China. This country, together with Russia, export authoritarianism and the doctrine of “non-interference in internal affairs”, which ended up subverting the principles of coexistence of nations in respect for international rules. We are, therefore, facing a work that invites us to reflect on the externalization of liberal revolutions, which is quite evident in the case of the liberal revolution in Portugal.

The study by **António Pedro Manique** (Instituto Politécnico de Santarém) addresses the right to dissolve the elective chambers of parliaments which, in Portugal, according to the Constitution of 1826, belonged to the so-called “fourth power”, the moderating power that coexisted with the traditional legislative, executive and judicial powers. This power, in addition to the tripartite division, belonged exclusively to the monarch, in addition to the executive power, of which he was the head. In this sense, one of the royal powers within the scope of this moderating power was the dissolution of the Chamber of Deputies when the reasons for the “salvation of the State” required it, therefore, only in exceptional situations. The author points out that this royal prerogative became trivialized, “becoming a political instrument used by governments to obtain parliamentary majorities through the use of fraudulent elections”. Thus, António Pedro Manique



demonstrates that political practice has distorted constitutional principles to become a central mechanism of the liberal regime. He analyses the ten dissolutions of the Chamber of Deputies decreed between 1834 and 1865, highlighting the “enormous interval that separates the *formal constitution* from the *real constitution* that results from the political practices of the agents of power and the institutions themselves”. The author draws our attention to the difficulties and distortions caused by the formal interpretations of constitutional documents if we do not take into account the dimension of political practices.

**José Subtil** (Universidade Autónoma de Lisboa) chose to address the central problem of liberals in the debate on the justice regime, that is, the choice between judges of law and popular judges. The author drew four main conclusions. The first concerns the fact that this debate has provided the marking of the boundary between the group of more radical liberals, the moderates and the conservative/traditionalists. The second conclusion is that the defence of popular judges was, above all, ideological and had two political presuppositions: the violent criticism of the royal magistracy of the Ancien Régime and the defence of a justice that was movable by vote and transitory during the exercise period. The third conclusion reveals that the constitutional models and the laws of organization of justice never had a practical manifestation until the Newest Reform (1841). And, finally, that liberalism would end up adopting a model based on judges of law, moving away from populism, although it accepted a mitigated version of popular judges, the so-called judges *de facto* (jurors). Therefore, this work outlines the general framework of the debate on justice for liberals and also a comparison with the model in force in the Ancien Régime, focusing, for both periods, on the model of election of popular judges.

Finally, the text by **Luís Valença Pinto** (Universidade Autónoma de Lisboa) draws our attention to the understanding that the war contributed to the evolution of the concept of security influenced by ideas related to liberalism and democracy (national security, collective security, cooperative security), attentive to the human dimension. Two circumstances together define the matrix of this relationship. On the one hand, the increasingly liberal nature of the political and strategic context and, on the other hand, the growing correlation and subordination of security to this context.

The editorial team of this thematic issue is pleased to offer readers this issue commemorating the liberal revolution of 1820, which reflects an interdisciplinary effort to problematize plural knowledge, anchored in the dialogue between the areas of History, Law, Culture and International Relations.

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## **THE CRIME OF HIGH TREASON LESE-MAJESTY (*PRIMEIRA CABEÇA*) IN CONJURAÇÃO BAIANA (BAHIA'S CONSPIRACY) OF 1798: CONTINUITY IN LEGAL MODERNITY**

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### **Abstract**

From the analysis of the information contained in the Records of the *Devassas da Conjuração Baiana* (judicial proceeding filed by the Portuguese crown) of 1798, in the punitive logic of local power and metropolitan authorities, it is clear that the circumscription of the social bases of the event resulted from a social cleavage intended to maintain the order in Portugal and overseas at the end of the 18th century. On the one hand, four free men, poor and *pardos*, were exemplarily punished, reinforcing the strength and intrinsic superiority of Portuguese absolutism when questioned. On the other hand, to continue governing, the Portuguese crown needed to negotiate with broad sectors of that society, recognizing the legitimacy of the political exercise and the struggle for the rights of those men. However, the transition from legal pluralism to legal modernity in the Portuguese Ancien Régime was only possible because the hierarchy inherent to slavery was not questioned.

### **Keywords**

*Boa Razão* (Good Reason) Law, Criminal Legal Culture, Lese-Majesty, Bahia's Conspiracy

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## **THE CRIME OF HIGH TREASON LESE-MAJESTY (*PRIMEIRA CABEÇA*) IN *CONJURAÇÃO BAIANA* (BAHIA'S CONSPIRACY) OF 1798: CONTINUITY IN LEGAL MODERNITY<sup>1</sup>**

**PATRÍCIA VALIM**

In an article on the political role of the high magistracy of the Court of Appeal of Bahia in the second half of the 18th century, published in Journal *Tempo* in 2018, I demonstrated the changes and continuity in the criminal legal culture triggered by Pombal's reforms in the legal system of the Portuguese Empire. One of the main changes is the ethical-religious reference that dominated criminal law over the internal and external forums of the subjects of the Portuguese crown, replaced by the prevalence of rights, secularism and reason, utility and proportion, order, certainty and guarantees, inspiring secularization and the legality of offenses and sentences. From the so-called *Lei da Boa Razão*, the new guidelines established by the "modern natural law" (Valim, 2018) were the culmination of the process of affirmation of secular political authorities. At the end of the 18th century, several jurists separated the ideas of offense, penalty and crime of lese-majesty, in order to make them operational within a more rational and systematized legal system, differentiating them from the notions of sin and vice that guided law until then.

This occurred because from the second half of the 18th century onwards, one of the pillars of the Ancien Régime and of Hereditary Divine Law was questioned: the essential link between justice and monarchic power, so that the king's power was identified with his will to punish. Thus, in the process of transition from legal pluralism to legal modernity, what was at stake for jurists about the need, or not, of a Penal Code was the establishment of a new political economy of punitive power, eliminating punishment as an act of the king's revenge. This represents the creation of the normative and disciplinary modern State in which the act of punishing is now considered as something technical, detailed, effective, pedagogical and carried out within specific institutions (Foucault, 2013; Valim, 2015).

For Wolkmer (2004), subjectivity is the centre of the process of constitution of legal modernity. By expressing values such as freedom and equality, it establishes the parameters that enable the ideal origin of all political formation, thus basing the link between the subjective rights originated in the individual and the possibility of political legitimacy based on their implementation and protection. In this sense, legal subjectivity

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<sup>1</sup> Article translated by Carolina Peralta.





would be the recognition of natural rights, understood as powers or freedoms that express conditions for the full development of each one and the whole of society.

However, although the legal literature of the late eighteenth century proposed the systematization, rationalization of the legal order and judicial impartiality, pointing to a rational and ordering intervention on the social reality of crimes, the analysis of the allegations of malpractice of the judges responsible for the proceedings of the 1798 Bahia's Conspiracy demonstrated the contradiction between the premises of modern natural law and the permanence of royal intervention in the transition from legal pluralism to legal modernity. This becomes more evident when analysing the event itself, its agents, its requirements, the investigation, the witnesses, the defence and the final ruling that qualified it as a crime of High Treason Lese Majesty Crime (Valim, 2018).

According to one of the leading experts on the subject, Mario Sbriccoli, the crime of lese-majesty defined in Book V of the Philippine Ordinances foresaw "treason against the King or his Royal State, which is such a serious and abominable crime. The ancient experts found it so strange that they compared it to the leprosy that fills the whole body, without ever being able to cure itself" (Sbriccoli, 1974: 250). This crime was divided into divine lese-majesty and human lese-majesty: the first dealt with affronts related to faith or religion, crimes of sacrilege, blasphemy, and heresy, for example. The human lese-majesty dealt with offenses directly linked to the physical person of the king or the Royal State, in the form of political crime and expressed in revolts, revolutions, riots, betrayals, insurrections, seditions and conspiracies.

Mario Sbriccoli is not the only specialist in lese-majesty crime, but he was the first to demonstrate the scope for political discretion in distinguishing human lese-majesty crimes between first-degree or *primeira cabeça* ("prima caput") and second-degree crimes or *segunda cabeça* ("secunda caput"). For the author, the hierarchy of crimes strengthened the interpretation of magistrates, who could concentrate all possible political crimes in the definition of "first-degree" while allocating other crimes to the category of "second-degree", opening up multiple interpretative possibilities and political opportunities to the States (Sbriccoli, 1974; Pinillos, 2020; Dalri Junior, 2005). This is precisely the subject of this article: the construction of the so-called Bahia's Conspiracy of 1798 as a crime of first-degree lese-majesty by the magistrates involved in unlawful situations and activities. This was either due to the relations between the power and the notables, or to the deviation of behaviour in the daily life of a society ruled by slavery and by a State whose positions were divided for the benefit of a group that guaranteed social cohesion in the face of conflicts inherent to the colonizing process (Valim, 2018).

In her master degree's thesis on the legal system procedures in the captaincy of Bahia at the end of the 18th century, Pinillos (2020) analysed the crime of resistance to justice Lieutenant Antônio Manuel da Mata was accused of in 1783, also considered a First Degree Lese-Majesty crime<sup>2</sup>. The author demonstrates the multiplication of verifiable possibilities of the crime of lese-majesty in the daily practice of justice. This was a result of the paradox of the criminal legal culture shaped by the Portuguese Catholic matrix which, in the end, strengthened even more the power of the king: despite the Law of

<sup>2</sup> For the Brazilian colonial period, the two episodes that took place in Bahia and the *Inconfidência Mineira* (Minas' Conspiracy) of 1789 were the only cases of crimes of lese-majesty that have been reported.



Good Reason's intent to bring about the end of legal pluralism and the casuistry of legislation as the will of the monarch, there was a resurgence of penal legislation in the period, especially when the king and his representatives were targets.

The growth of the variables that defined the crime of high political treason and the expansion in the number of conducts and punishable behaviours resulted in a kind of "operative hierarchy" reflected in the seriousness of the crime: "attempting on the life of the king and attacking the life of a bailiff, even though both personified power with different qualities and intensities, were not on the same level" (Pinillos, 2020: 120). This debate is not of little relevance since some Portuguese authors tend to consider legal pluralism as the absence of royal control of the justice system. Accordingly, they analyse the struggles for political independence in Brazil as a consequence of the "late centralization" of Portuguese absolutism overseas by increasing the use of capital punishment for political purposes (Monteiro, 2006: 124).

This article points to another direction: the arbitration of justice for the crime of first degree lese-majesty worked as an effective mechanism for political rearrangement of the Portuguese crown with broad sectors of Salvador's society in the conflicting transition from the 18th to the 19th century, despite one of the last death events of the Portuguese Ancien Régime in Brazil: the torture of hanging followed by the dismemberment of the bodies of four poor and *pardo* free men considered the heads of the 1798 Bahia' Conspiracy.

This paper aims to analyse the judicial proceeding and punishment of a political movement/lese-majesty crime as redefinitions of exclusion procedures and an unavoidable part of the construction of the subject of law, modern subjectivity and Law itself as an agent and normalization vector.

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During 1797-1798, several denunciations, mostly apocryphal, were sent to the Kingdom reporting the excesses committed by the judges of the Court of Appeal of Bahia. the Portuguese crown was not investigating the denunciations. Of the various reasons that explain this attitude, the most obvious is that there was no body in the colony higher than the Court of Appeal of Bahia and Rio de Janeiro, whose judges were the nobles of the colonial administration, the most respected and privileged among the royal civil servants.

In a seminal work on the subject, Stuart Schwarz demonstrates that the Portuguese crown saw the Court of Appeal as the main guardian of its interests because it occupied a central position within a contradictory bureaucratic system, with jurisdictional overlaps and multiple objectives. Precisely for this reason, in cases of conflicts of jurisdiction, conflicts between judges or denunciations of wrongdoing, such situations were eventually referred to the Overseas Council so that the crown could give its final opinion. This was not the case at the end of the century in Bahia, as, according to Schwartz's thesis (1979: 287), the malpractice of magistrates was compensated for by the political functions they



ended up performing. In fact, this happened with the magistrates who conducted the investigations of the 1798 Bahia Conspiracy.

The Bahia Conspiracy of 1798 was a protest movement triggered in the streets of Salvador on the morning of 12 August through handwritten bulletins posted in public buildings. Their content had extremely delicate points for governance on both sides of the Atlantic. Examples include: "The Republican People from Bahia order, and want its most dignified Revolution to be carried out in this city". This was followed by the call to the population to participate in the uprising organised by the Freedom Party, a heterogeneous group that called itself Anonymous Republicans, which made public the objective of the "Bahia Republic": "Cheer up, people from Bahia, the happy time of freedom is coming. The time when we will all be Brothers and equal".

In another bulletin, the *Entes da Liberdade* (Freedom Supporters) directly attacked Prince Regent John VI: "People who live plagued with the full power of the crowned Unworthy [...]". They had been questioning the legitimacy of the Prince's regency since 1792, when the senility of his mother Queen Maria I was diagnosed. They also took sides in the alliance between Castile and France, choosing revolutionary France for free trade with the future "Bahia's Republic".

In addition to the opening of the port of Salvador, the group also demanded the increase in militia pay to 200 *réis* a day, the end of taxes and fees charged by the Portuguese Crown, the liberation of the trade in sugar, tobacco, brazilwood and all other business types, equality before the law and merit in the criteria for advancement in the military career and in local administration and for the choice of clerics who would lead the local religion. Due to the publicly announced demands, the local authorities immediately suspected, and rightly so, that the group was made up of people of different social status.

The Portuguese Crown and local authorities, headed by the governor of the captaincy of Bahia (1788-1801), Fernando José de Portugal e Castro, acted quickly. The investigation was initiated at once, with the collaboration of some judges of the Court of Appeal of Bahia and a group of powerful and rich men, called the *corporação dos enteados* (corporation of stepchildren) by chronicler Luís dos Santos Vilhena (1969), due to complaints of "lack of transparency" in public administration posts and participation in the movement. Two members of this group of powerful people were summoned by the judges to make denunciations. They told about the episode "prompt delivery of slaves", in which José Pires de Carvalho e Albuquerque, the third richest man in the captaincy and Secretary of State of Brazil, personally took eleven slaves of this group to justice. These episodes ended up interfering in the course of the investigation and in the social restraint of the uprising.

On 7 September 1798, Francisco Vicente Viana, a white man, Judge in Bahia, Judge of Orphans and Absentees, owner of the Madrugada Cedo, Paramirim and Monte *Engenhos* (sugar cane mills), all located in the district of Vila de São Francisco do Sergipe do Conde, formally charged Luiz Gonzaga das Virgens for participating in the "planned revolution". On the same day, another slave master, Manoel José Villela de Carvalho, a white man, single, Treasurer of the Royal Treasury, wholesale dealer and owner of the Marapé *Engenho*, in São Francisco da Barra de Sergipe do Conde, was summoned to formally present an accusation. Following the pattern of Francisco Vicente Viana's accusation,



Manoel José Vilela de Carvalho told Judge Costa Pinto that he knew and had heard repeatedly:

*that an uprising was planned in this city with looting and assassins in order to establish a free and independent Democratic Government, and that the authors of this enterprise were a few mulattoes, among whom Luiz Gonzaga das Virgens, [...] who was said to have distributed some seditious and libertine papers earlier, in Public and more Sacred Places". He ended his accusation by stating that he reported everything he knew to the "Illustrious and Honourable Governor, making prompt delivery of the slaves"<sup>3</sup>.*

For this reason, just over two months after the first arrests resulting from the distribution of the "revolting" pamphlets on the morning of 12 August 1798, Fernando José de Portugal e Castro, then governor-general of Bahia, sent a long letter to Rodrigo de Souza Coutinho, Minister of Maria I<sup>4</sup>, explaining the procedures adopted in the enquiries to discover, respectively, the author(s) of the pamphlets and the participants in the movement.

Justifying the measures immediately taken, "which were required in such a delicate and sensitive matter", the governor said that in order to discover the authors of the "papers" he would use "all the other procedures he deemed necessary". And he did. After the arrests and the information obtained from the first confrontations, the governor pondered with Rodrigo on the most suitable means to discover the accused

*During the enquiry, I reflected that, in this case, the most compliant with the Law is not regularly the most effective [means] to discover the Accused of this crime, who try to use all disguise, secrecy and caution when they commit it so that there is a lack of eyewitnesses to prove it. So, all inquiries should be made, even if uncertain and doubtful<sup>5</sup>.*

The doubtful path chosen by Fernando was examining several old petitions kept at the State and Government of Brazil Bureau commanded by José Pires de Carvalho e Albuquerque. The objective was to compare the letters of the official documents with the letters of the "seditious rags". It must be pointed out that the documents sent to the governor referred to urban militia troops, circumscribing the defendant(s) in advance to a certain group of the society, the militiamen.

The examination resulted in the discovery of two petitions that indicated that they were authored by Domingos da Silva Lisboa, a *pardo* man. The arrest was decreed "although this evidence was remote and fallible", as the governor "heard" that Domingos was said

<sup>3</sup> Cf. "Testemunhas da devassa...". Read, especially the testimony of witness no. 6, Francisco Vicente Viana. In: Autos da Devassa da Conspiração dos Alfaiates. Arquivo Público do Estado da Bahia, 1998, vol. 2, pp. 923-924. Henceforth ADCA.

<sup>4</sup> Biblioteca Nacional of Rio Janeiro, Henceforth BNRJ, Sessão de Manuscritos, I-28, 26, 1, no. 13. Letter of 20 October 1798.

<sup>5</sup> Ibid.



to have “a loose tongue”<sup>6</sup>. In addition to the accused's verbal laxity, his profession weighed heavily against him.

It was customary for the investigation of crimes, whatever they were, to draw up the term of imprisonment, compulsory attire and hair cut (*termo de prisão, hábito e tonsura*) on the same day or the day after the accused's arrest, to ensure their physical integrity, based on the description of their characteristics (Wehling, 1986: 151). In the case of Domingos da Silva Lisboa, it is noteworthy that the exact date of his arrest is not included in the records. However, the “finding and seizure report”, done on 17 August 1798, indicates that the accused, if was not arrested on the same day, was arrested a day later. However, his term of arrest was drawn up eight months later, on 2 March 1799. This strange procedure also occurred with the next accused person.

The suspicion of the governor of Bahia in relation to Domingos da Silva Lisboa was not confirmed. Ten days after his arrest, two notes were sent to the Head of the Discalced Carmelites, proving that Domingos da Silva Lisboa was not the author of the papers, and that the means used to investigate the “leaders” of the movement were very doubtful. However, the governor again looked for evidence in the petitions from the State Bureau and found three documents that “attested” that the papers had been written by Luiz Gonzaga das Virgens e Veiga, an equally *pardo* man and soldier of the First Line Regiment from Salvador Garrison and the Fourth Company of Grenadiers<sup>7</sup>. It so happens that this time a “daring request” weighed on the defendant, once sent by the accused, so that Fernando

*would appoint him Adjutant of the fourth Regiment of Militias of this City, composed of pardo men, claiming that they should be equally attended to as the whites, which I did not grant, and I kept in my power due to its extravagance*<sup>8</sup>.

By analogy to the content of the letter, the governor made a conclusion regarding the content of the subversive pamphlets, since the papers also “referred to that same equality between *pardos*, blacks and whites”. That said, “he is persuaded that he [Luiz Gonzaga das Virgens e Veiga], and not someone else, is the author of the Seditious Papers”<sup>9</sup>.

Despite having been arrested on 23 August 1798, his term of arrest was drawn up on 24 February 1799, a week before the term of imprisonment of the first accused, Domingos

<sup>6</sup> “Auto de exame, e combinação das Letras dos pesquins [sic], e mais papeis sedicciosos [sic], que apparecerão nas esquinas, ruas, e Igrejas desta Cidade que se achão incorporados na Devassa, que esta debaixo do N. 1 e do papel que elles estão escritos, com as letras de Domingos da Silva Lisboa nas peticoens, que forão achadas em sua caza, e com o papel limpo, que ahi tambem se achou, e tudo se acha junto ao auto da achada, e apreensão constante do appenso N. 9”. In: Autos da Devassa da Conspiração dos Alfaiates. Salvador: Imprensa Oficial do Estado, 1998, vol. 1, pp. 86-89.

<sup>7</sup> “Auto de combinação de letra dos pesquins [sic], e papeis sediciosos, que apparecerão nas esquinas, ruas e Igrejas desta Cidade, incorporados na Devassa debaixo do n. 1 com a letra de Luiz Gonzaga das Virgens nas peticoens que estão no appenso n. 4 e papeis juntos por linha ao appenso n. 5, e com a letra de Domingos da Silva Lisboa nas peticoens...”. In: ADCA, vol. 1, pp. 123-124.

<sup>8</sup> Biblioteca Nacional of Rio de Janeiro, Sessão de Manuscritos, I-28-26, 1, n. 13. Letter from Luiz Gonzaga das Virgens from 1797.

<sup>9</sup> “Cópia do termo de prizão habito e tonçura feita ao Reo Luis Gonzaga das Virgens”. In: ADCA, vol. 1, pp. 142-143.





da Silva Lisboa. The governor of the captaincy of Bahia believed that he had solved the crime involving the seditious papers promptly. However, that was not what happened.

Soldier Luiz Gonzaga das Virgens was arrested on 23 August 1798 on the accusation that he, and not Domingos da Silva Lisboa, was the author of the seditious papers. Luiz Gonzaga das Virgens was well known to the local authorities. At the age of twenty, he became a soldier and was assigned to the grenadier company of the 1st troop regiment of the frontline, sworn in on 30 August 1781, and was discharged as a deserter on 30 October of the same year. He swore in by the flag and deserted twice more, and after 1791, he wandered through the hinterlands until being arrested, answering a verbal case in the Council of War, established on 9 April 1793<sup>10</sup>.

It was in the documentation on Luiz Gonzaga, at the Council of War, kept in the State Bureau, that the governor had compared the handwriting in the papers with some petitions that the accused had once written. The petition that contributed to his conviction indicated that

*Pardo men are recruited and assigned to the Military guild of the Paid Troops [...]. The so-called pardo men are of the same substance and sensitivity of other individuals of the Military and Civil Society, with no greater difference than that colour, a dissimilar accident with which nature distinguished them [...] remaining, however, equivalent to whites, both regarding the Material, and the core, the spiritual substance. [however, they are treated] as objects of slavery, of contempt [eroded] and finally as exterminated, or spurious with minimal access, and graduation of posts [...], and without a premium, which is all that makes past works enjoyable<sup>11</sup>.*

Luiz Gonzaga ended the petition requesting equality in rising to the highest ranked posts in the military career, claiming that as “an individual from the class of the aforementioned unfortunates [*pardo*], he has the pain, the inconsolable pain of seeing the colour white ascending to the ranks [...], with no other relevant reasons than [not] different merits, and noble ascent”<sup>12</sup>. Before the publication of the seditious papers, on the morning of 12 August 1798, Luiz Gonzaga requested “one year's leave without loss of pay, bread, and consequence, due to his poverty”<sup>13</sup>. It which was denied to him, before being arrested and taken to Court. During the testimonies, Luiz Gonzaga provided important information about what he had done during his stay in the hinterlands. He said he had met João da Silva Norbonha, in the city of Natal dos Reis Magos, in Rio Grande do Norte. He informed that João was a Portuguese born in Porto, a businessman who lived in Salvador, but who often went to the interior lands on business. He was asked about the names of the people with whom the said João had had conversations, to which Luiz Gonzaga replied that “he

<sup>10</sup> ADCA...vol. 1, p.127 – Council of War on Luiz Gonzaga das Virgens.

<sup>11</sup> Cf. Arquivo Público do Estado da Bahia, Bundle 581, attachment no. 5, L – Comparison of Luiz Gonzaga das Virgens' signature on the document of the Council of War with the petitions and requests he would have written. This document was incorporated into the second edition of the *Autos das Devassas*, from 1998, when Luiz Gonzaga das Virgens e Veiga was asked questions. Cf. ADCA, vol. 1, pp. 116-117.

<sup>12</sup> Idem, p. 117.

<sup>13</sup> AHU\_CU\_Baía\_Box 96, doc. 18920: Request by Luiz Gonzaga das Virgens e Veiga, in which he asks for a year's leave to deal with his interests in the Kingdom. It is annotated by José Luiz de Magalhães e Menezes on 4 May 1798.





[João] was friends of Priest Padre Francisco Agostinho Gomes and Jacinto Dias Damasio, and many other men from Praia, and that he did business in their homes”<sup>14</sup>.

Asked what they used to talk about, Luiz Gonzaga said that João da Silva Norbonha was a very educated man and well-informed about events in Europe, from what he read in the newspapers, and about the situation in France and England. He often spoke about the equality of men and humanity with whom they were to be treated, “especially the injustice of *pardo* people not being admitted to higher positions, without however, acting against the Church or the State”<sup>15</sup>. The authorities asked no more, resuming the statement on another date and adopting the same pattern as the testimonies of the slaves and Domingos da Silva Lisboa.

The content of the petitions, testimonies and confrontations demonstrate that Luiz Gonzaga das Virgens' libertarian ideas and “French inclination” meant, above all, improved position in the military hierarchy, where he had the lowest position. His understanding from the conversations he had with João da Silva Noronha about revolutionary events in France and the reading of texts by d'Anglas, Carra, Volney and the Notice of Saint Petersburg found in his house suggest that such readings potentiated the claims of those militiamen and the became tools they believed could change their lives in some way.

Captives and militiamen who knew how to read and write believed that they were able to claim their rights, since this political sociability made them more sensitive to the hierarchization they were victims of. Indeed, reporting to the local authorities the participation of men “placed among the peoples” in the “planned revolution” was not just a strategy of the captives.

On 25 August 1798, two days after Luiz Gonzaga's arrest, the governor was surprised by three accusations, whose content revealed that another *pardo*, João de Deus do Nascimento, had invited some people from the Artillery Regiment to a meeting that would be held that night, in the Campo do Dique do Desterro, whose objective was

*to organize a rebellion, and revolution, which hinder other people he had so well called to his side, begging them to go to his house the following night, and to go from there with him [João de Deus] and others to the Campo do Dique, in order to adjust the mode, means, and occasion when the planned revolution would to take place*<sup>16</sup>.

The meeting at Campo do Dique was aborted. One of the reasons was that among the participants there were those who recognized the whistleblowers and distrusted their presence. After this episode on 26 August of the same year, another enquiry was conducted to investigate the crime of conspiracy, led by judge Francisco Sabino da Costa

<sup>14</sup> ADCA, vol. 1, p. 101 – Questions made to Luiz Gonzaga das Virgens e Veiga, soldier of the Grenadiers Company of the First Regiment of this Garrison.

<sup>15</sup> ADCA, vol.1, pp. 104-105.

<sup>16</sup> “Denúncia publica jurada e necessária que dá Joaquim Joze da Veiga, homem pardo, forro, cazado e official de ferrador [...]”; “Denúncia publica [...] que dá o Capitão do Regimento Auxiliar dos homens pretos Joaquim Joze de Santa Anna [...]”; “Denuncia publica [...] Joze Joaquim de Serqueira, homem branco e Soldado Garnadeiro do primeiro Regimento pago desta Praça [...]”. In: ADCA, vol. II, pp. 910-920.



Pinto. Several people were arrested over the course of six months. Among them, some only provided clarifications, others were considered guilty *a priori*. The social cleavage meant differentiation between the accused. According to what Fernando José de Portugal e Castro explained to Rodrigo de Sousa Coutinho

*the context of the seditious Papers, so poorly organized, since they are extremely bold and brazen; the character and quality of the author, and of the main heads who dealt with the rebellion such as Luiz Gonzaga das Virgens, João de Deos Alfaiate, Lucas Dantas, and Luiz Pires, all four pardo men, of terrible conduct, and lacking in religion, made me realise that these attacks contained no people of consideration, nor understanding. They had no knowledge or enlightenment, as shown in the confessions of these Defendants*<sup>17</sup>.

According to the information in the records, the situation was not exactly the one described in the letter by D. Fernando. Parallel to the arrests, judges Manoel Magalhães Pinto e Avellar de Barbedo and Francisco Sabino Álvares da Costa Pinto collected, since 17 August 1798, the detainees' testimonies and coordinated the "Assentadas", testimonies of witnesses who, in this case, were sugar cane planters, merchants, thirteen women and some free men who had some relationship with the accused. It was increasingly clear that political sociability among the participants of the event was not limited to the middle and lower strata of that society, D. Fernando insisted on affirming to D. Rodrigo de Sousa Coutinho, because, on the occasion of the report of the arrest of the first accused, Domingos da Silva Lisboa had been "[...] enticing and inviting to this end [revolt] several Slaves of different Masters, and some soldiers, and other individuals who were successively arrested [...]"<sup>18</sup>.

Over five months of depositions to confirm the author of the "revolting and nervous papers", the witnesses stated that they "heard" about the content of the said papers, but that they were not sure of their author. The testimony of Francisco Pereira Rabello, a white man, Lieutenant of the Auxiliary Branch of *Ordenanças* and a resident in Itapagipe, near Salvador, is quite significant. He affirmed

*To have publicly heard that certain daring papers will appear in the streets, however he [...] doesn't know who wrote them or who helped with their making. And [...] while he was in the location of Bomfim and the news of the arrest of Domingos da Sylva Lisboa was made public, the witness said that the said Lisboa had not been the Author of the papers but his superiors were, and all they needed was to have the support of the troops*<sup>19</sup>.

Judge Manoel Magalhães Pinto de Avelar e Barbedo did not check the deponent's information, preferring to report it to the governor<sup>20</sup>. Aware of the possibility of urban

<sup>17</sup> Letter from D. Fernando José de Portugal e Castro to D. Rodrigo de Souza Coutinho dated 20 October 1798. Biblioteca Nacional of Rio de Janeiro, Sessão de Manuscritos, doc. cit.

<sup>18</sup> Idem.

<sup>19</sup> ADCA, vol. 1, p. 61.

<sup>20</sup> Idem.



troop commanders being among the "leaders" of the movement and commanding a large number of men to carry out the uprising, D. Fernando did not comment on these denouncements in his letter to D. Rodrigo de Souza Coutinho, preferring to gain time in the investigation, relying on an accomplice mechanism for silencing some information operated by the judges.

This was because during the inquest, the local authorities could no longer hide from Lisbon that the uprising was planned by people of different social status and that their demands made explicit in the streets of Salvador questioned order through a "Republic". In addition to forming a government for the common good, this plan could also lead to a republican ethics experienced by all members of a given community (Mattos, 1998: 71). The testimonies of the defendants also highlighted the involvement of these gentlemen in meetings that discussed "French ideas", a term often associated with the republican system of government and the ideas of liberty, equality and fraternity that led to the end of the French Ancien Régime. The main complaint was about the attempted reform of Rodrigo de Sousa Coutinho, Minister of the Navy and Overseas Dominions, which compromised the group's privileges due to the end of monopolies and fair taxation, among other "vexations". The readiness to incarcerate the enslaved would prevent information from being revealed, dispel the suspicions raised in the process and reaffirm loyalty to the Portuguese Crown. Although from the beginning of the investigation the social composition of the defendants was limited to the militia, removing powerful men from the inquiry and minimizing the participation of slaves in the revolt, the processes were formalized and all the procedural acts were preserved. On 12 March 1799, seven months after the revolt broke out, the lawyer of *Santa Casa da Misericórdia*, "graduate" José Barbosa de Oliveira was appointed defender and guardian of the defendants, also allowing other lawyers to make other claims in their defence. The prisoners had the right of defence for five days, and although the lawyer's appointment took place on 12 March, the defence began on 12 June 1799. José Barbosa de Oliveira began his defence resorting to modern natural law:

*Because, by the Ordinance of Book 5, title 6, the death penalty is naturally cruelly established against the one who is convinced of having committed the horrific crime of Lese-Majesty, and by the aforementioned Respectable judgment it is ordered that the Appellants state In fact, and in law, the foundations of their defences, it is certain that in exposing them, the Appellants only seek to show their innocence of the crime of which they are accused, without their guilt becoming more aggravated in this action, after the defence of any defendant being Natural, Divine and Positive Law<sup>21</sup>.*

Three important questions guided the central argument of José Barbosa de Oliveira's defence. The first and the most important was the absence of evidence for the crime of first-degree lese-majesty (political crime against the Crown of Portugal): the absence of *Corpus Delicti* in the prisoners would be enough to ask for suspension of any penalty against the appellants "even though, by the way, they were fully convinced of the crime, since *Corpus Delicti* is the total foundation of the Criminal Court, according to the Rule".

<sup>21</sup> ADCA, p. 947-949.



For the lawyer, the second fundamental issue for the defendants' defence was the magnitude of the crime "a Confederation against His Majesty and his State", so that the judges would have to consider that "without weapons or dispositions, one could not commit the horrific delict of Uprising in such a populous City, and the Capital of America". According to José Barbosa de Oliveira, the lack of evidence for the prosecution is closely related to the second issue of the central argument of his defence, the way how the accusations were formalized by "less legal witnesses": planters and members of the local administration who did "prompt delivery" of their slaves to justice to get rid of rumours about "absence of transparency" and "sedition crime".

The lawyer concluded the central argument of the defence, stating:

*Because the Defendants could never have any intention of promoting an Uprising, and Sedition against the State, in order to establish a Democratic Government; for if the {p.48} the Defendants are tailors; others masons; others are common Soldiers; slaves; and of minor age, all people of low status, they lacked the necessary education, and wisdom, or knowledge, to be able to establish a Government of that quality, which requires special Laws, and whose establishment could not reach the inferior quality, and abject condition of the Defendants<sup>22</sup>.*

The defence's final decision reiterates the need for the evidence to "conclude with the greatest possible accuracy, disregarding this view that the opinion of less legal witnesses is sufficient, in view of the seriousness of the crime. For the same reason, it is necessary to have higher Solemnity to know the true delinquents"<sup>23</sup>. After suggesting that the accused took the blame through physical punishment and the absence of an examination of the corpus delicti, for the defence lawyer, the conduct of the inquiries failed to prove the accused's guilt for the crime of first-degree lese-majesty. On the contrary: "only the testimonies of notoriety and publicity are discovered, which lead to nothing but slander, or a Remote indication, which by itself is not enough for the imposition of the ultimate penalty, nor even of torture" (Valim, 2018: 135).

With the defence's final decision demonstrating the lack of proof of the crime of lese-majesty by the accused and given the evidence of the participation of powerful men in the crime of sedition, which could compromise the career of the governor of the captaincy of Bahia, Fernando José de Portugal e Castro began to participate more effectively in conducting the investigation, stating to D. Rodrigo de Sousa Coutinho:

*what has always been feared in the colonies is slavery [...] it is not natural that well-employed and established men, who have goods and properties, want to participate in a conspiracy or attack, which would have terrible consequences<sup>24</sup>.*

<sup>22</sup> ADCA, p. 952.

<sup>23</sup> Idem.

<sup>24</sup> Ibidem.



The governor's effort to circumscribe free, poor and *pardo* men as the only possible defendants for the crime of lese-majesty led the Portuguese crown to order the imperious exemplary punishment of the participants of the planned revolution:

*These Defendants are to be sentenced in Court for the merit of the case, and they must be tried with greater promptness, and with the publicity that the Laws allow [...] receiving the deserved punishment for their crimes, using with them the full severity of the Laws, both concerning the Leaders, and those who accepted the invitation; and those who did I do not denounce such a huge Crime. In future, it must be known to all that in such a great attack on the public good, there is no moderation of the penalty ordered by the Law*<sup>25</sup>.

In view of the orders of the Crown and the statements obtained throughout the investigation, D. Fernando pondered the necessary distinction in the application of the penalty, since

*there seems to be several classes of Defendants, perhaps four or six reputed as the main leaders of this sedition, others who, although they were not the authors, have given their consent, and invited several people, others who accepted the invitation and attended the meetings alternately, others who were invited and will not denounce it as they are obliged to, and some, finally, who did not accept the invitation and were disgusted by it, or who were merely aware of this disorder, and remained silent and kept it a secret, either or thinking that such revolutionary projects would not have any effect, or through ignorance, if they can allege they lack the first and most essential obligation of a subject. As a consequence, some will receive ordinary and capital punishment, and others will be sentenced to exile, more, or less severe, for a greater or lesser number of years, according to the various degrees of accusation against them*<sup>26</sup>.

Thus, on the eighteenth of October 1799, the criteria for the sentences and the conclusion of the investigation on the "planned revolution" were defined. It was concluded that some inhabitants of the city of Salvador tried to carry out an uprising to take away the government from Portugal. In order to attain the uprising, the authorities stated that the participants elected leaders who were

*individuals of the lowest [...] class of pardo men, a quality that was hateful to them, intending therefore to extinguish it by means of the indistinct equality to which they aspired [...] to disseminate Free ideas and anti-political feelings among those who they believed to be the most capable and willing to follow them [...] and have the imaginary advantages and prosperity of a Democratic Republic, where all will be Common without difference of colour*

<sup>25</sup> Copy of the Royal Letter of Her Majesty, D. Maria I to D. Fernando José de Portugal e Castro. ADCA, vol. 1, pp. 71-72.

<sup>26</sup> Letter of D. Fernando José de Portugal to D. Rodrigo de Souza Coutinho. BN, Sessão de manuscritos.



*or condition, where they will occupy the most important Ministries, living under general abundance, and contentment*<sup>27</sup>.

The detailed account of the conclusion document demonstrates that by "inculcating at the same time knowledgeable and interested persons in its execution [they invited] people of such pre-eminence, authority, and honour, that these same qualities exclude them from the slightest thought of infidelity". After a year when "the hidden conspiracy was planned", several of the most impious, darting and seditious papers were found in the streets, and churches, which could abort their heated and devoid of fire idea of Religion, and due respect to the Supreme Ruler", which resulted in the capture of a "monster of evil". After the first arrest, the judges concluded that the meeting on 25 August at the Campo do Duque do Desterro had taken place because after the statements of the then accused, the participants

*fear of being discovered in the Confessions, and declarations of their Partner and Friend [Luiz Gonzaga das Virgens] and considering themselves to be in a risky situation, they chose not to go ahead with their projects, and reduce their effective execution*<sup>28</sup>.

It was concluded that those guilty of the first-degree lese-majesty crime, conspiring against the Portuguese Crown, and planning an uprising in Campo do Duque do Desterro, were

*the unfortunate, and disgraced [defendants] Lucas Dantas de Amorim, João de Deos do Nascimento, Manoel Faustino dos Santos Lira, Romão Pinheiro and the absent Luis Pires Condemned to death by the Respectable Judgment [blank], as well as the Lieutenant of 2nd Regiment of this Garrison Hermógenes Francisco de Aguillar Condemned to one year imprisonment, and the [defendants] Manoel Jose da Vera Crus and Ignácio Pires condemned to 500 whiplashes and sold out of the Captaincy*<sup>29</sup>.

Luiz Gonzaga das Virgens, in turn, was the only one convicted of being the author of the seditious pamphlets posted in the streets of Salvador on the morning of 12 August 1798, as it was concluded that Domingos da Silva Lisboa could not be the author of the papers. On 7 November 1799, the conclusion of the investigation read as follows:

*Justice that the Queen Our Lady orders to be enforced on this execrable defendant Luiz Gonzaga das Virgens, a pardo man, born in this City [Salvador], to be taken publicly with shame and sound to the gallows erected for this torture, and in it die natural death forever. And after death, his hands and head are to be cut-off, which will remain in the said place of execution, until time consumes them. And his property is to be confiscated for the tax*

<sup>27</sup> ADCA, vol. II, pp. 1122-1123.

<sup>28</sup> Idem, p. 1124.

<sup>29</sup> Idem, p. 1144.





*authorities, and Royal Chamber, and at the expense of the Court of Appeal, which also declared his children and grandchildren infamous, and ordered that the house of his dwelling be demolished, spread with salt, never to be built again*<sup>30</sup>.

As for the slaves handed over to justice by their owners, José Felix da Costa and Luís Leal, who were accused in the charge against Luiz Gonzaga das Virgens and then indicted in the investigation of the "planned revolution", one was deported to regions in Africa outside Portugal's domains, and another was acquitted for being "absolutely free of any guilt". The slaves of the Secretary of State of Brazil, José Pires de Carvalho e Albuquerque, in turn, had their sentences alleviated, as they were found guilty "for the lack of denunciation of the planned crime being slaves. they could not know of the obligation to report"<sup>31</sup>.

Regarding the "abominable French principles" that so worried agents in Portugal, the judges of the Court of Appeal concluded that only *pardo* men were sectarians of "pernicious principles", since, after the investigation, the accusations that some important people also approved the doctrine, did not stand. They were "intellectual raptures of young people that were impossible to fight, because the pamphlets on which they were based were difficult to control and circulated freely"<sup>32</sup>. The authorities did not take this information forward because it was not in the interest of the Portuguese Crown to break the partnership with a sector that provided support for colonial exploitation in the main captaincy of Portuguese America. This is why the royal authorities were very interested in circumscribing the social composition of the event to the middle and lower sectors of that society with the objective of socially delegitimizing any project of a republican nation.

Thus, on the hot early morning of 8 November 1799, according to the friar, the troops occupied Praça da Liberdade, a large square located in the centre of Salvador. The people kept coming. An isolation perimeter was established between the troops and the public scaffold built especially for the occasion. At eleven o'clock, the procession began. In front, there was a band of horns and drums, followed by the brotherhoods covered with their capes and covers, holding a cross and their respective vicars. Soon after, those condemned to exile walked with their hands tied behind their backs, preceded by the porter of the Council, with the insignia of his office, followed by the four defendants sentenced to capital punishment for the crime of first-degree lese-majesty, accompanied by two Franciscan friars, in addition to all the clerks, bailiffs and the porter of the Court of Appeal of Bahia.

The Senate of the City Council, the councillors, the senior mayors, the junior staff, and the attorney of the Council followed, holding Portugal's flag. Further back, there was the brotherhood of Mercy and the executioner, bearing the insignia of their office. People were crowding the windows of the houses to see the procession of the condemned. The

<sup>30</sup> "Conclusion document, Notification of the Sentence regarding defendant Luiz Gonzaga das Virgens. ADCA, vol. 1, pp. 175-176.

<sup>31</sup> ADCA, vol.2, pp. 1161 and 1191.

<sup>32</sup> In: Accioli, op. cit., vol. III, p. 133



procession went through the streets of the Cathedral, from Terreiro de Jesus to the top of the Tira Preguiça slope, arriving in Piedade. After the drumming, the chief bailiff read for the last time the royal orders that announced the severity according to which the accused would be punished for being considered by the royal authorities the heads of the “planned revolution” that aimed to create a democratic government in Brazil. Faced with the three paid regiments of that garrison, holding arms to prevent any accident that might result in favour of the defendants, the condemned went up to the scaffold<sup>33</sup>.

The first to be hanged was Luiz Gonzaga das Virgens e Veiga. Before, according to the barefoot Carmelite, the defendant had an “act of protest”, regretting his actions, especially for having disrespected the Church. The “admiration that all felt with what Gonzaga said was astonishing”. He said that Luiz Gonzaga told everyone “I confess that this pious Father [...] shed his blood not only for them, but also for many to save me; in it I wait for my pardon [...]”. He continued his public confession by complaining of the harm done to him by bad friends, advising people to stay away from their influence, and he asked forgiveness for not having followed the virtuous advice his godmother had given him.

He ended up making the most “tender supplications to God to save him”. After confession, he was hanged, amid the commotion of people at his words. Crying a lot after witnessing the hanging of Luiz Gonzaga das Virgens and Veiga, João de Deus do Nascimento asked Friar José to come closer for “a sincere act of contrition”. According to the barefoot Carmelite, minutes before being hanged, João de Deus said goodbye to life telling the “innumerable people who were in that square” that

*Follow the law [of] the true God, the Catholic Religion is the only true one, and everything else is deceit; when I followed it without a doubt I lived and even if quite poor, perhaps independent, but after I read some texts by Voltaire, Calvino, Rousseau, I departed from what I should not, which is why I ended up here. Gentlemen, whoever wants to be bad, be only for himself, and don't summon other people. [...] Freedom and equality is this, he said pointing to the gallows.*

Still, according to the friar

*At the last moment of his life, João de Deus said to all who heard him, asked God for mercy, and asked the Priests for help; He also asked the executioner to give him a good death. So before he fell off the scaffold, shaking to death, and screaming for Jesus Mary, he fell from the scaffold, ending his life with the words in life: mercy, mercy<sup>34</sup>.*

<sup>33</sup> Other report by Priest Joze D'Monte Carmelo, barefoot Carmelite. Instituto Histórico e Geográfico Brasileiro, Notícia da Bahia, tomo IV, Lata 402, manuscript 69. Arquivo Histórico Ultramarino, inventário Castro e Almeida, Bahia, documentos avulsos, boxes: 41- 82. The document “Outra relação...” is fully transcribed in the work of Luís Henrique Dias Tavares. História da Sedição intentada na Bahia em 1798 (A Conspiração dos Alfaiates). São Paulo/Brasília: Pioneira/INL, 1975, pp. 123-137, passim.

<sup>34</sup> Idem.



The execution of the other two defendants was followed by the dismemberment of their bodies. Lucas Dantas' head was cut off, as were those of the other three, and then skewered on a pole in Dique do Desterro. The other pieces were exposed on the way to Largo de São Francisco, where Lucas Dantas resided. In front of the same place, the head of Manuel Faustino dos Santos Lira was placed, as he was a frequent visitor and because he did not have a fixed address. The head of João de Deus was exhibited in Rua Direita do Palácio, now called Rua Chile; his legs, arms and torso were scattered through the Comércio streets, a busy trading area downtown. The head and hands of Luiz Gonzaga were stuck on the scaffold, as he was considered by the royal authorities to be responsible for the pamphlets that announced the "planned revolution" to the population.

The day after the morbid event, the bodies exposed to the heat showed signs of rapid decomposition and attracted a flock of vultures that filled the city with pestilential fumes. On 11 November 1799, the city's air was unbreathable; rot had invaded every house and the population feared for its health. Faced with the precarious state of health in the city, some authorities and *Misericórdia* brothers asked governor Fernando José de Portugal e Castro to remove the dead and exposed bodies at the behest of justice for the example of the peoples. The request was granted at dawn on the 15th. The remains were collected by the authorities and buried in a place that is still unknown (Valim, 2009: 14).

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The danger of deviating from human nature, passion, and reason, such as the possibility of corrupting man and the social fabric, seems to be one of the faces of the laudatory report the friar made. By allowing himself to be swept away by the normative content of Bahia's society from the end of the 18th century, he converted the miracle of divine mercy, after the repentance of the condemned, into a part of the political dimension of exemplary punishment. The political dimension given to the miracle of divine mercy is one of the consequences of the logic of exemplary punishment. In addition to the defendants' repentance in public having meant their conversion, it also meant a public confession. It is worth remembering that in Friar José's narrative the condemned people's repentance occurred during their torment. In this sense, the final words of João de Deus do Nascimento were significant. In "tears", he said just before hanging "Follow the law [of] God, the Catholic Religion is the only true one, and everything else is deceit; when I followed it without a doubt, I lived well even if quite poor.] Freedom and equality is this, he said pointing to the gallows".

Exemplary punishments in Absolutism had in common the fact that they involved some type of physical suffering and, therefore, targeted the body (Foucault, 2009). Even in the most recurrent forms of punishment, such as banishment, one can find some dimension of "suffering", whether through exposure, fines, whipping or branding. Far from being a savage procedure, the author draws our attention to the fact that torture is a form of calculated suffering, in which the political power seeks to publicly establish causal relationships between crime and punishment, according to the political uses that can be had in this procedure.



As one of the last punitive examples of Portuguese absolutism in Brazil, the punishment of the defendants in the 1798 Bahia Conspiracy corresponds not only to corporal punishment, but also, above all, to a ritual organized in order to reinforce the power of the Portuguese monarchy in Brazil<sup>35</sup>. The ritual of torture expresses, therefore, the sumptuousness of sovereignty, the strength of the monarch in his exercise of power and rights. The death of the defendants in the public gallows of Salvador was a spectacle that aimed to reaffirm the cleavage between the forces of the sovereign and the subjects, since the torture of the defendants narrated by Friar José can be considered as a very effective way of showing the asymmetry between the subjects who dared to violate the law and the absolutist power that asserts its strength.

However, on 25 October 1799, ten days before the hanging followed by the dismemberment of the bodies of the men considered defendants in the 1798 Bahia Conspiracy, the Portuguese crown sent a Licence to the Bishop of Olinda, José Joaquim da Cunha Azeredo Coutinho, about the creation of a new Regiment based in Recife to operate in a vast region, including the Captaincy of Bahia. The new regiment would be composed of 1600 men, similar to the Royal Army Arsenal, starting to function by means of "clear public" resolutions. In addition to meeting the main demand of the militia members who participated in the Bahia Conspiracy, establishing the payment of 200 réis in daily wages, the New Regiment provided for a date to receive wages, one-month training for the troops and a public examination for purposes of rising in the military career, with five-stage tests and a panel composed of three examiners: Lieutenant Colonel, Major and Captain<sup>36</sup>.

A significant fact in the conflicting transition from the 18th to the 19th century, the analysis of the documentation of the New Regiment indicates the change from the typical criteria of the Old Regime to the principle of isonomy in the public sphere and the compromise solution that the Portuguese crown established with the militia members who participated in the movement. It met their main demands as a way of containing the rebellious. By transforming them into "subjects in their own right", the Portuguese crown recognized the legitimacy of the public claim and struggle of those men. When men of different social status appealed to the population to join the uprising that would lead to a republican government, they broke the circle of making politics restricted to virtuous men of power, in the tradition of Montesquieu. They blurred the cleavage between those who work and those who do politics; between those who command and those who obey; and those who dared to deviate from the original trajectory.

The fracture caused by the radical nature of the discourse in the handwritten texts and the action of those men from the middle and lower sectors made the authorities realize that it was not enough to leave the powerful on the side-lines of investigations to restore order. It was necessary to eliminate this experience in the streets of Salvador from within these sectors. It was also necessary to reaffirm the intrinsic superiority of the Portuguese Crown through the exemplary punishment of men who dared to do politics, questioning order and proposing alternatives for the future.

<sup>35</sup> Idem.

<sup>36</sup> "1799 – Formação do Batalhão e do Estado Maior para conter a Inconfidência Baiana". Private documentation made available for this research.



However, nothing was the same afterwards: after more than a year of inquiries, the Portuguese Crown undertook a series of compromise solutions with the *enteados* corporation to create a political consensus around which these men would increase their funds, privileges and powers, and would continue to constitute, in the captaincy of Bahia, the social base for the maintenance of colonial exploitation. Some of the slaves brought to justice by their owners were sentenced to exile, others tried to escape the 500 lashes in *Pelourinho*, while others had their sentence changed after the “justification notice”, as they did not denounce their masters.

The contradictions in the concepts of freedom and equality are the synthesis of the ideas of the Republic formulated in the 1798 Bahia Conspiracy and of the crisis of the Ancien Régime, where the new and the old coexisted in constant tension, disputing spaces, ideas, hearts and minds. The “Bahia Republic” outlined by those men and politicized in the streets of Salvador represented, above all, the possibility for all sectors to make politics and alternatives to living in a colony, giving their own colours and rhythms to the political language of revolutionary France, which at the time reached several overseas domains. The republican ethics of feeling free announced, at the end of a conflicting century, that man could realize his humanity in and through politics and no longer through religion or just through work.

The greatest weakness of the “Bahia Republic” and of this modernity, however, lied in the conservative critique of slavery explained within the limits of the project of freeing that group of slaves and not ending slavery, according to the testimony of the African Vicente. Slavery as the limit of possible republicanism and the distinction according to capacity as the limit of political coalition between sectors of that society suggest that the ideas of freedom and equality in the colonial universe, in the late 18th century, can stimulate both revolutions and reforms to avoid them, since in this universe any attempt to reduce structural inequalities sounded like Revolution.

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## ON THE EVE OF LIBERALISM, GOOD REASON AND PROOF OF COMMON LAW IN PORTUGUESE AMERICA (1769-1808)

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### Abstract

This paper presents the unfinished result of a research work, still in progress, on how the administrative justice of the Portuguese empire was conducted in the kingdom and its domains in America at the end of the Ancien Régime. It focuses on the impact of the *Lei Máxima* (Law) of 18 August 1769, later called the Law of Good Reason, in Portuguese America, considering the validity of common law and customary practices during the period under study (1769-1808). The aforementioned law, enacted by the Secretary of Affairs of the Kingdom of King D. José I, Sebastião José de Carvalho e Melo (Count of Oeiras and Marquis of Pombal), instituted the mandatory nature of national law and subdued the customary practices operating throughout the empire..

### Keywords

Common Law, Reforms, Reason, Justice, Minas Gerais

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## ON THE EVE OF LIBERALISM, GOOD REASON AND PROOF OF COMMON LAW IN PORTUGUESE AMERICA (1769-1808)<sup>1</sup>

CLÁUDIA ATALLAH

### Introduction

This paper examines the use of common law in Portuguese America after the institution of the *Lei Máxima* of 18 August 1769. It starts by assessing the historiography on Pombal's reforms. The objective is to understand the fundamental interpretations about the changes fostered by Carvalho e Melo during his period as Secretary of State and analyse the interpretations of the main authors about the post-Pombal period. Then, it examines the impact of Good Reason and the requirement for a legal basis on the daily activities and local government based on the requests for proof of common law submitted to the Overseas Council during the period (1770-1808) filed in the *Projeto Regate* (archive). The captaincies under research are: Rio de Janeiro, Minas Gerais and São Paulo (and the counties that separated them territorially).<sup>2</sup>

### The historiography of the reforms in Pombal's period

The theory about the gradual political centralization operated in modern monarchies during the last decades has been closely studied. Some studies identify political-legal plurality when analysing the power structures of the Portuguese Ancien Régime. The intention is to review the research structuring bases by examining the medieval features of social self-organization, as well as interdependence relations and the corporatism signs of that society. These debates point to the absence of the State as a sovereign entity in terms of doctrinal and political practices (Cardim, 1998). The debate was not restricted to Portugal, extending to the entire modern Europe (Elliot, 1992; Ladurie, 1994; Greene, 1994).

António Manuel Hespanha showed how much of daily activity were based on customary practices and late-medieval legacies that remained almost unaltered over time. Accordingly, the crown adapted itself, throughout the modern period, to these structures of power, seeking ways to strengthen the symbolic and customary bonds of interdependence with the subjects (Hespanha, 1994).

<sup>1</sup> Article translated by Carolina Peralta.

<sup>2</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso Brasileira. Projeto Resgate. Available at <http://resgate.bn.br/docreader/docmulti.aspx?bib=resgate>



The author drew attention to the precarious use of control mechanisms over institutions of power, both in the kingdom and in the Portuguese colonies. Royal officials, appointed to oversee council practices and exercise justice on behalf of the king, were almost always involved in the plots of local powers. This made remote administration and inspection even more complex. Governability was exercised by local authorities on a daily basis. They were responsible for choosing their representatives and for the municipal burden. Statutory laws were limited and ineffective, especially when extended beyond the territorial limits of the kingdom. Administrative and legal relations gave way to morality and habits that had long characterised social and political relations and which involved royal agents in the local administrative routine (Hespanha, 1994; Hespanha, 2010).

According to Nuno Gonçalo Monteiro, the years that preceded the reign of D. José were characterised by a "silent mutation". Under D. João V, the sociability rituals and practices were redefined, leading to new symbolisms and representational niches, thus reorganizing the forms of exercising power and the interdependence networks. In this respect, the monarchy had a central position. According to the author, one of the major focuses of this mutation was the reform of the Secretaries of State in 1736. This new arrangement was maintained until the reign of D. José, when the secretaries attained the status of ministries, like in Portugal's neighbouring monarchies. In almost twenty years (1736-1750), the relationship between the administrative centre and the overseas territories made the administration even more complex, reinforcing the importance of the Portuguese agents operating overseas. However, despite all these arguments, the author stated that "the most systematic reforms were still to come" and it was during the time of the Marquis of Pombal that the intervention of the monarchy expanded considerably (Monteiro, 2006:36 e 37).

In "O terramoto político" (The political earthquake), José Manuel Subtil used a metaphor, in an analogy between the earthquake that struck Lisbon in 1755 and the rise of Sebastião José de Carvalho e Melo, the future Marquis of Pombal, to Secretary of State of Affairs of the Kingdom in 1756. After carefully examining the composition of the Secretaries of State, before and after the 1736 reform, the author reached a conclusion: the practices that characterized the secretaries' policies were still based on political habits associated with personal relationships typical of the politics of the Ancien Régime. "This means that during the reign of D. João V, there was never a political reshuffling of the government, and even the beginning of the reign of D. José was not used to form a new government" (Subtil, 2006:39).

Regarding this "silent mutation", Subtil (2006:45) states that in the reign of D. João V, social relations and political structures were still supported by "symbolic orders" that represented the symbolic legacy of the Ancien Régime. In his opinion, the royal centrality that Lisbon came to represent had a greater relationship with the ability to run the administration and its complexities that stemmed from mainland and overseas locations.

In this sense, the changes conducted during the monarchy of D. José I represented the "moment of political rupture with the past" (Subtil, 2006:12). The uncertainties caused by the 1755 earthquake created the conditions for Sebastião José de Carvalho e Melo to take the lead in the political administration and choose the reforms as a strategy for the country's recovery when he became Secretary of State of Affairs of the Kingdom in 1756. From then onwards, the intentions to overcome the corporate and jurisdictional tradition,



which had already been discussed in the Portuguese intellectual and diplomatic circles for half a century, would delineate the reform plans (Subtil, 2011).

More recently, Hespanha provided a fundamental study that enables us to understand these paradigm shifts between the 18th and the 19th centuries in the Iberian world. Analyzing the balance between the legal and doctrinal sources of law and their continuation during much of the nineteenth century, he noted the importance of instituted modern codes and how they were "guaranteed with the authority of a legislator which, if not yet legitimized by vote, was already legitimate because of its wisdom and the authority of the monarch, which the legal doctrine of post-Enlightenment presupposed" (Hespanha, 2017:52). The author clearly defines the complexity that the influence of the reforms had during this period and notes the continuation of traditional practices in the construction of contemporary Law.

On the subject, although the historiography departs from different interpretations, it is unanimous in recognizing the impact of the Pombal period and its reforms on the modernization process experienced by eighteenth-century Portuguese institutions on the eve of the 1820 Liberal Revolution.

### **Reforms in justice and compliance with the *Lei Máxima* of 18 August 1769**

With regard to the enforcement of laws, the Pombal period sought the construction of the legal framework according to state reason and under the auspices of "regulatory forces" (Antunes, 2011:18), scrutiny phase and norms, aiming at rectitude in trials.<sup>3</sup>

The basis for reform in the area of Law and Justice was the *Lei Máxima* of 18 August 1769, later entitled *Lei da Boa Razão* (Law of Good Reason).<sup>4</sup>

With fourteen items, its structure aimed to formalize Portuguese law and align it with the authority of the State. It would be a national law, anchored on the Enlightenment ideas and the rationalization of institutions. This project was conducted based on a set of reforms led by Sebastião José de Carvalho e Melo, appointed Secretary of State of Affairs of the Kingdom in 1756 (Subtil, 2006; Pollig, 2017).

The 1755 earthquake created the opportunity for a kind of "zero degree of politics". According to Subtil, from then on the autonomy of the "group of Pombal's men" increased slightly. Notable judges who held the confidence of the Secretary of State were at the forefront of outlining the steps to be taken. After the first four years, by stifling some conflicts and persecutions, Carvalho e Mello once again annihilated the "conservative group that maintained influence in the Court" and began a consistent "reform cycle" that profoundly shook the political and legal structures of the Ancien Régime (Subtil,

<sup>3</sup> Pierre Bourdieu drew attention to the idea of legal field: a place where disputes guarantee the "monopoly of the right to say the law", thus leading to the "good order". Social agents, equipped with techniques and previously recognized, legitimize the interpretation of texts that "enshrine a legitimate, fair vision of the social world". According to Bourdieu, it is a process that includes professionalization, hierarchy and symbolic appropriations. (Bourdieu, 2010: 212 and 213).

<sup>4</sup> *Ordenações Filipinas*. Book Three. Amendments. Law of 18 August 1769. Based on the critical commentary by jurist José Homem Correia Telles in 1824, with the aim of opposing the legal pluralism typical of the ancient régime that had been left behind. (Telles, 1824).



2013:276). For this author, such reforms extended into the kingdoms of D. Maria and D. João and led to the Police State. It was "a proto-liberal State" that established a dialogue with some "identity aspects of liberalism", while at the same time using discipline to regulate social life, establishing codes of conduct that created models of citizenship and marginalization (Subtil, 2020: 3).

In this aspect, the *Lei da Boa Razão* meant the establishment of a legal field that aimed at professionalizing and specializing its agents, in addition to controlling their actions. In addition to the strict observance of the laws of the kingdom, it established jurisprudence from the records of *Casa de Suplicação* (Subtil, 2020). The purpose of such measures was to prohibit (or at least destroy) the customary and common law practices that had long been rooted in society.

The Law of 18 August 1769 also aimed to eliminate the untouchable and symbolic authority, hitherto unquestionable, of the judge. Based on a culture of litigation, the administration of justice during the Ancien Régime was sometimes mixed with political practices and had a plural action and interpretation. Educated men, trained under the Coimbra ethics and the care of Jesuit neo Thomism, bachelors, magistrates and judges were aware of representing royal justice and, in cases of litigation, should act in the name of the monarchy (Atallah, 2016). This practice, imbued with Roman law, imposed on the monarch the role of mediator and gave shape to the theory of "the king's two bodies": the monarch's body and that of Christ, "a mixed persona" responsible for divine and men's justice (Kantorowicz, 1998: 48).

Similarly, the 1769 Law revoked the secular authority of canon law, prohibiting its invocation in civil audiences, a practice permitted by the Ordinances and commonly used by judges and court officials. Thereafter, the use of Canon Law became restricted to ecclesiastical courts.<sup>5</sup>

This set of reforms and institutionalization of legal rationalism that served the interests of a strong and regulatory State and its rule of law (Hespanha, 1993) generated conflicts and resistance throughout the Portuguese empire: accusations of mistrust for blasphemy against Pombal and (or) D. José (Cato, 2005; Atallah, 2016); expansion of the *Ordenações Filipinas* regarding the power of the ministers and officials of the kingdom, turning any resistance to these men into a lesser crime of lèse-majesté (*Segunda Cabeça*)<sup>6</sup>; condemnation and execution by his majesty of the main leaders of the rebellions in Vila Rica and Salvador (Furtado, 2002; Valim, 2018).

As for the *Lei da Boa Razão*, everyday life in Portuguese America had difficulty adapting to the imposition of legal rationality. The people believed that they could manage their lives based on local and regional codes that had been socially rooted for a long time. This perspective generated legal clashes between the colonial residents and the kingdom and often involved agents of the crown who exercised their positions in the western part of the Portuguese empire.

<sup>5</sup> *Ordenações Filipinas*. Book Three. Amendments. Item 8. Available at <http://www1.ci.uc.pt/ihti/proj/filipinas/ordenacoes.htm>

<sup>6</sup> *Coleções da Leis, Decretos e Alvarás que compreende o feliz reinado Del Rei Fidelíssimo D. José o I*. Book II. Lisbon Oficina Miguel Rodrigues, 1761-1769.





## **The proof of common law and the exercise of customs in the colonies - the case of Minas**

On 8 May 1783, Dom Rodrigo José de Menezes e Castro, governor of the captaincy of Minas Gerais, wrote to Martinho de Melo e Castro, Secretary of State for the Navy and Overseas of the Kingdom of Portugal, to discuss the “establishment of customary law, contrary to the provision of the law, in the said captaincy”.<sup>7</sup>

Dom Rodrigo had taken up the government of Minas Gerais, one of the most important captaincies with regard to commercial activity and population of the Portuguese empire, in February 1780. At the time, the region faced an increase in gold shortages and tax debts, which, according to the authorities, were justified by the increase in smuggling and the lassitude with which this was addressed. It had also long faced the clandestine settlement of the hinterland regions, a situation that became complex at the end of the 18th century (Rodrigues, 2003).

These were difficult times. In addition to seeking means of control over mining and the debtors of royal taxes, the governor had to struggle with the unspecified borders of the gold mines, getting involved in a tangle of local powers that challenged royal officials and imposed their own political and social wills. All over Portuguese America, gangs led by men who had acquired some social and political prerogatives in the area during the conquest process deeply disturbed the instituted powers (Anastasia, 2005).

In his jurisdiction, he was involved in clearing these hinterlands and their networks. The aim was to extinguish the areas considered “forbidden” and to integrate them, politically and socially, into the domains of the crown. The inhabitants, until that moment marginalized by the legislation, should become loyal subjects<sup>8</sup>.

Charles Boxer was one of the pioneer historians to note Portugal’s great success in consolidating its sovereignty in areas so disconnected and remote from each other. A maritime empire: from one end of the southern hemisphere to the other, “the human societies that flourished and declined throughout America, and much of Africa and the Pacific, were completely unknown to those living in Europe and Asia” (Boxer, 2002:15).

Dom Rodrigo José de Meneses noticed this territorial and political discontinuity in Minas Gerais and its surroundings. In his reflections sent to Martinho de Melo e Castro, he recognized the use of customary law in “almost all contracts of the highest sums” judged in the mines. However, he justified it, noting how inhospitable Portuguese America was and how “the great distances between villages” made it difficult to ensure “the continuous deals of interior commerce that demands speed in its operation”. He recognized the ineffectiveness of the kingdom’s actions in face of the discontinuity of those lands, populated, but largely alien to the written laws in use.<sup>9</sup>

<sup>7</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 8 May 1783. Minas Gerais. Box 119, document 31.

<sup>8</sup> Arquivo Público Mineiro. Seção Colônia. *Registro de Ofícios do governador à Secretaria de Estado*. Codex 224.

<sup>9</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 8 May 1783. Minas Gerais. Box 119, document 31.



The governor referred to the *Lei Máxima* of 18 August 1769 decreed by Carvalho e Melo. His concerns revolved around the numerous debt and lien contracts in the region and the difficulties in judging court charges under the new law. He claimed that

*Almost all contracts of the highest sums were celebrated by simple private obligations. Justice ministers, seeing the general disorder that would otherwise result, were forced to take into account public pledges, judging according to their existence or validity of the largest debts and seeing their sentences confirmed in Relação*<sup>10</sup>.

Therefore, it must be stressed that there were major difficulties in imposing royal laws in those parts, where the maintenance of order had always depended on negotiations between the peoples and royal agents, and customary relations supported a precarious balance that made the empire work. Justice ministers lived daily with the plurality of justice and late-medieval legal practices that supplanted the legislative reforms implemented by Pombal.

According to D. Rodrigo, the situation described in his letter, although unfortunate, was necessary due to the “circumstances” under which the mines lived. The king's magistrates, in their corrections and trials, were often forced to reflect on the enforceability of the law and its interpretations.

*notwithstanding the mandatory necessity to follow the principles established by the times, only the Legislator had the remit to deal with the Circumstances and derogate from, or declare in whole or in part the Provision of the Law and, in compliance with it, make some sentences condemning only the part where he same Law gives validity to the said obligations.*<sup>11</sup>

Legal rectitude caused the disappearance of “apparent good faith among men”, in addition to dismaying creditors, making it difficult for them to “request payment from their most feared debtors for fear of seeing their properties lost”. In this customary universe, the Royal Treasury also lost. According to the governor, the difficulty in collecting the debts also harmed the royal coffers, as “very large sums” were lost due to the difficulties in collecting the disputes that were being dealt with in the courts.<sup>12</sup>

According to D. Rodrigo, it was of paramount importance that the crown recognized the need for magistrates to deal with disputes based on common law, under the influence of Roman law, which for centuries supported the enforcement of justice in Portugal, and, later, in its colonies. This was the everyday life of the mine regions and of the entire Portuguese empire.

<sup>10</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 8 May 1783. Minas Gerais. Box 119, document 31.

<sup>11</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 8 May 1783. Minas Gerais. Box 119, document 31.

<sup>12</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 8 May 1783. Minas Gerais. Box 119, document 31.



The evidence of common law was a resource increasingly used by people in the colonies to resolve their judicial disputes. Hespanha has stated how precarious the law was in the legal universe of the Ancien Régime. "Living the law" was associated with "the social, cultural and political conditions" on which the law depended (Hespanha 1993: 8). During most of that period (16<sup>th</sup> and 18<sup>th</sup> centuries), "it would have lived" under the shelter "of royal law and common law", mainly under the Glosses of Accursius, in Bartolus's comments and later "in the communis opinio of the 'modern'" (Hespanha, 2005: 49).

By expanding the imperial borders, the conditions of governability became more complex, due to the difficulties of demarcating territories and their troubled control. Gustavo Cabral warns us that, when it comes to the analysis of the law in Portuguese-American lands, "there are difficulties in talking about a Brazilian colonial law as a general category valid as a broad parameter, as occurred in Hispanic America" (Cabral, 2018). The legal area in Portuguese America was almost always fluid and precariously defined by written laws. According to the author, the so-called "Brazilian colonial law" can be understood, following an interpretative bias adopted by Hespanha, as being based on a set of practices, often unwritten, grounded on customs and judicial decisions.

It is still necessary to consider the political and social prerogatives that the local authorities held. It is interesting to note that little customary law was registered by the political communities, despite the kingdom's ordinances recommending that it should be done.<sup>13</sup> Little of these customary practices was, over time, registered in the activity books of the chambers (Hespanha, 2005).

In Portuguese America, requests for proof of common law had been registered by the Overseas Council since the end of the 17th century, albeit not usually. Although the dispersion of the empire was a constant that the royal authorities wanted to neutralize, most of the times without success, the *Lei da Boa Razão* only instituted the compliance obligation in 1769. Since then, there was a significant increase in these requirements.

It was recommended that the legislation of the Kingdom, sparingly extended to the domains, be applied by the legislators. This should already be customary in the courts of the empire. However, it was not. The *Projeto Resgate*, which gathered documents relating to overseas administration, has records of this practice prior to 1769. Most of those catalogued by this research had their requests granted by the crown.<sup>14</sup>

Regarding the Minas Gerais captaincy, two cases were registered. On the twenty-eighth of November 1726, Francisco Ribeiro, in the "general trial at the village of São João Del Rey (...), offered (...) a libel against sergeant major Simão de Almeida Campos". The dispute revolved around the ownership of an enslaved "Negro" and her "children", whom he had received as a dowry for his marriage to her daughter and was in the hands of the sergeant major. The groom sought to retake his dowry through witnesses, as he did not

<sup>13</sup> *Ordenações Afonsinas*. Book One. Title 27, Item 8. Available at [http://www.ci.uc.pt/ihti/proj/afonsinas/Ordenacoes Filipinas](http://www.ci.uc.pt/ihti/proj/afonsinas/Ordenacoes_Filipinas). Book One. Title 66, Item 28. Available at <http://www1.ci.uc.pt/ihti/proj/filipinas/ordenacoes.htm> *Ordenações Manuelinas*. Book I. Title 46, Item 8. Available at <http://www1.ci.uc.pt/ihti/proj/manuelinas/>

<sup>14</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. *Projeto Resgate*. *São Paulo Alfredo Mendes Gouveia (1618-1823)*: 30 October 1710. Box 1; Document 89. *Bahia Luísa da Fonseca (1599-1700)*: 7 November 1673. Box 14; Document 1191 and 26 January 1689. Box 12; Document 1549. *Bahia Avulsos (1604-1828)*: Before 3 September 1720. Box 14; Document 1191. Available at <http://resgate.bn.br/docreader/docmulti.aspx?bib=resgate>



"have a contract" to prove it. It is interesting to note that Francisco, like D. Rodrigo José de Meneses, drew attention to the fact that the dispute was already taking place in the "form that was practiced in those conquests". He mentions the delay imposed by the great distances, which made legislative rectitude difficult.

Captaincy	County	Number
Minas Gerais	Vila Rica	23
	Rio das Mortes	4
	Rio das Velhas	1
	Serro do Frio	1
	No information	7
Rio de Janeiro	Rio de Janeiro	81
	Espírito Santo	1
	No information	33
São Paulo	No Records	

**Table 1: Requests for Proof of Common Law (1770-1808)**

Source: Biblioteca Nacional. Projeto Resgate. Biblioteca Luso Brasileira. Minas Gerais; Rio de Janeiro and São Paulo. Available at <http://resgate.bn.br/docreader/docmulti.aspx?bib=resgate>

In December of the same year, the magistrate of Rio das Mortes, Thomé Godinho Ribeiro, issued a favourable opinion regarding the claim, which was confirmed in the third instance court in January 1727.<sup>15</sup>

In another case, José Fernandes Carreiros, a resident of Vila de Mariana, asked the crown "the favour of allowing him to claim (...) according to the proof of common law" the collection of a debt from Francisco Rodrigues do Passo. There is little information about this case, but there are indications that this dispute had dragged on for years and received a favourable opinion in August 1748.<sup>16</sup> As can be seen, and as far as the research carried out could go, the requests for proof of common law prior to *Boa Razão* were scanty.

It is still unknown whether all disputes handled under the usual customary practice reached the courts.

From Table 1 onwards, requests for proof of common law, or at least their registration, multiplied after the institution of the 1769 law. Rio de Janeiro and Minas Gerais

<sup>15</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate – Minas Gerais (1680-1832): Before 20 January 1727. Box 10; Document 9.

<sup>16</sup> As explained, the research is taking place in the digital collection of *Projeto Regate*, available at the website of Biblioteca Nacional of Rio de Janeiro. Projeto Resgate – Minas Gerais (1680-1832): Before 31 August 1748. Box 52; Document 81. It is important to note that Arno Wehling and Maria José Wehling inform us that these documents analysed here are part of the claim submitted to the Overseas Council and that these cases were also running through the Courts of Appeal. In this sense, there may be some difference in the numbers presented here. The initial intention of this ongoing project was precisely to identify the claim brought together by the CU, the main Court responsible for the overseas disputes (Wehling and Wehling, 1997).



captaincies and counties contain a large part of this material. Epicentres of some of the largest urban centres in colonial America, these captaincies were interconnected, by paths and borders that defined administrative territoriality and, at the same time, outlined clandestine transactions that were alien to the kingdom's administration (Furtado, 2006; Oliveira, 2014). The Rio de Janeiro region was one of the largest in Portuguese America. Created in 1608, it had, at the beginning of the 18th century, a jurisdiction that encompassed a good part of the coast of the State of Brazil. To the north, its boundaries were demarcated by the captaincy of Paraíba do Sul dos Campos dos Goytacazes, a region of constant conflicts, as it was divided between a district administration under the responsibility of the captaincy of Rio de Janeiro and the jurisdiction of the district of Espírito Santo, which ended it (Cunha e Nunes, 2016; Atallah, 2019).

The complexity of remote governance and customary traditions dictated daily actions. The reforms undertaken in the Pombal period and confirmed in the reigns of Queen Maria and King João were difficult to enforce in those parts, as sometimes the laws of the kingdom did not reach them. And, as an expert administrator on behalf of the king and an astute trader in the balances of power, Dom Rodrigo José de Meneses had noticed this situation.

In his letter to the overseas minister, the governor asked Queen Maria I to declare "the validity of the aforementioned obligations in this Captaincy, at least all those that have been done so far in good faith", since "the creditors felt that they had an indisputable right to request their reimbursement". He recognized that

*Otherwise, if all the private fortunes are suddenly upset, the Royal Treasury will experience a considerable loss and the bad faith of the debtor will only benefit if they want to take advantage of the Benefit of the Law, whose spirit can never be directed to sponsor trickery.*<sup>17</sup>

Unfortunately, there is no evidence that Dom Rodrigo's request was answered by the queen or by Melo e Castro. However, as shown above, the Portuguese crown used to comply with requests through proof of common law that came from the colonies.

In August 1779, years before the Minas governor's letter, Lieutenant José de Sousa Codeço asked the queen "for provision to present his proof of payment to Francisco José de Fonseca of the corresponding value for the purchase of the Rio de Janeiro tithe contract carried out with José Francisco de Almeida through common law". The important matter here is the answer given by the Overseas Council:

*Notwithstanding the fact that the grace requested by the lieutenant (...) is grantable to all and Your Mag does not deny it, and much as all may deny it, what the petitioner requests should be denied, given the door he intends to open for his well-known iniquities.*<sup>18</sup>

<sup>17</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 8 May 1783. Minas Gerais. Box 119, Document. 31.

<sup>18</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 11 August 1779. Rio de Janeiro (1614-1830). Box 110, Document 9187.



Lieutenant Codeço was well known to the authorities for "his intrigues, and falsehoods with others in order to defraud the merchants of Rio de Janeiro". The Council also accused him of creating false deeds and presenting false witnesses. Later, it stated that

*Your Mag. usually dispenses with the Law of the Kingdom to prove [disputes] by witnesses the contracts that are signed by public deed, when the appellants are in good faith and, with the same law, declare in the petition which witnesses they had or want to have.*<sup>19</sup>

The Overseas Council recognized the habit of granting provisions that exempted subjects from the righteousness of the kingdom's laws. However, it did not fail to analyze the pleas it received. We can assume, based on the statements in the above document and on the justifications described by the governor, that his letter received a positive response from the Overseas Secretary of State, Martinho de Melo e Castro.

## Conclusion

I would like to draw attention to the conflicts generated by the institutional impositions arising from the Pombal reforms. The empire, with its maritime and discontinuous dimensions, was under the aegis of a set of insufficient laws that made the central administration fragile and dependent on royal agents and local powers and their political rearrangements. This governability depended on the balance, almost always precarious, between these negotiations and the local and regional dynamics that defined daily life. Requests for proof of common law, especially with the approval of an experienced governor who had long lived with the peoples of the colonies and their experiences, can help us understand part of this situation. His justification for such practices reflects the changes that imperial administrative policy underwent as it crossed the Atlantic. Likewise, it shines light on the relevance of longevity and the problematization (increasingly present in the historiography about it) of the reforms promoted by Pombal, from the reign of Dona Maria onwards.

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<sup>19</sup> Biblioteca Nacional of Rio de Janeiro. Biblioteca Luso-Brasileira. Projeto Resgate. 11 August 1779. Rio de Janeiro (1614-1830). Box 110, Document 9187.





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## **"CONTOS LOUCOS" AND "FANTÁSTICAS CARRANCAS": VINTISM (1820-23) IN PERNAMBUCO**

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### **Abstract**

This paper examines the conflicts between liberal monarchy supporters and liberal republicans in the province of Pernambuco in the period that preceded the 1820 Porto Revolution until the independence of Brazil. It highlights the difficulties of the colonial elite in dealing administratively and politically with the two centres of power: Rio de Janeiro versus Lisbon, Pedro versus D. João VI.

### **Keywords**

Liberalism, Constitutionalism, Elite, Pernambuco, Conflicts

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## **"CONTOS LOUCOS" AND "FANTÁSTICAS CARRANCAS": VINTISM (1820-23) IN PERNAMBUCO<sup>1</sup>**

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Historian Carlos Guilherme Mota defined the insurrectionary movements that spread throughout the country in the first decades of the 19th century as the "second discovery of Brazil", highlighting the 1817 Revolution as the culmination of a discovery process (Mota, 2016:252). While the South had the São Paulo, Rio de Janeiro and Minas conspiracy projects, the Northeast experienced the strongest insurrection, when in Brazil the discussion about the form of government and the possible independence of the Kingdom from Portugal was pondered. The Pernambuco elite presented the most radical model of nation through the writings of Frei (Friar) Caneca (Caneca 1875 and 1976). The discussion was influenced by the enlightenment.

In 1798, D. Rodrigo de Souza Coutinho, Navy and Overseas Minister, presented a reform programme<sup>2</sup> to the *Junta de Ministros* (Board of Ministers) of Portugal based on the moderate ideas of Abbot Raynal, the liberalism of Adam Smith, and the ideas of Bishop Azeredo Coutinho, experienced when he held the position in Pernambuco and in Elvas, Portugal. This programme highlighted some points: the crisis of the colonial system combined with the world situation and the restlessness in the colony. Azeredo Coutinho had already indicated that the integration of Portugal with Brazil was necessary, as it would strengthen the ties between them. The loss of a colony such as Brazil would undermine the existence not only of the Portugal, but above all of the Portuguese monarchy and probably the autonomy of the Portuguese nation.

In the opinion of the reformers, Portugal should create two centres of political power in Brazil: one in the north and one in the south, so that they could represent Portuguese power and help each other; there should be changes in unproductive taxation, as many of the colonists' complaints were related to taxes confused with extortion and practices of authoritarian and ethically dubious officials; scientific expeditions to explore Brazil to better know its riches were planned. The exploitation of existing resources and experimenting with new cultures in Brazil were part of the new policy, which attempted to implement the changes resulting from the industrial revolution.

By 1788, Portugal had already received samples of coffee produced in Brazil. In 1795, iron ore mining started in Bonito, in the captaincy of Pernambuco. In 1798, the

<sup>1</sup> Article translated by Carolina Peralta.

<sup>2</sup> Speech given before the Board of Ministers and others on matters relating to the economic and financial development of Portugal and Overseas Domains, especially Brazil (Lyra, 1994: 245).



Portuguese government sought information about cochineal<sup>3</sup> and recommended the creation of a Botanical Garden for the cultivation and recording of plants for the most diverse destinations.

By 1801, sprouts and seeds of sandalwood trees were already being sent from Pernambuco to Portugal. And, with the presence of the Prince Regent in Brazil, in November 1812, a Royal Notice ordered the Governor of the Captaincy of Pernambuco to send vine sticks to the royal estates in Lisbon in all ships going to that port. In 1813, 100 vine sticks were sent from the Olinda Botanical Garden.<sup>4</sup>

This project about discovering wealth in Brazil and improving exploration methods and techniques included the training of nationals such as José Bonifácio, who studied mineralogy in Germany, and Manuel de Arruda Câmara, considered by historian José Antonio Gonsalves de Mello as the "representative model of the educated generation of the late eighteenth century" (Mello, 1982: 58). Manuel de Arruda Câmara had a doctorate in medicine from the University of Montpellier and carried out important studies in the field of botany.

He was part of a generation that focused on science, politics and the economy of Brazil, aware of its contribution to the new emerging society. Arruda Câmara applied the results of cutting-edge research from his time, carried out in France, demystifying the belief that the increase in the harvest could take place through the fermentation of any quality of grain. The cultivated Portuguese realized that the weakened colonial empire could become the new empire, articulating itself with its American colony in order to sustain the monarchy and other overseas dominions.

The list of reforms proposed by Minister Rodrigo Coutinho included the foundation of the Olinda Seminary in 1796, more as a College for young people than as a seminary for the training of priests. Two years later, to run it, the Portuguese Government appointed an enlightened man born in 1742 in the village of São Salvador dos Campos dos Goitacazes, in the captaincy of Paraíba do Sul, and educated in Portugal, Bishop José Joaquim da Cunha de Azeredo Coutinho. In Pernambuco, Bishop Azeredo Coutinho had various functions and in all of them he stood out as an enlightened man, defender of the monarchy and of reforms limited to enlightened despotism. The building of the Seminary began in 1800.

Bishop Azeredo Coutinho<sup>5</sup> wrote to the Prince Regent to inform him about his work in the captaincy of Pernambuco, his religious activities, as general director of studies at the Olinda Seminary, as interim governor of the captaincy of Pernambuco and as president of the *Junta da Fazenda* (Finance Board) in Pernambuco. He described his actions and achievements consistent with the enlightened thinking of the time: he reduced the number of curates in the main churches; he drafted a statute to educate the Portuguese youth in all the main branches of literature, not just for ecclesiastics, but for every citizen who wanted to serve the State; he set up a seminary for young women with status aimed primarily at those who wanted to be mothers; he settled four nations of rebellious Indians

<sup>3</sup> Insect used in fabric dyeing.

<sup>4</sup> This information about the transit of newly discovered or recently explored cultures in Brazil is advanced by F. A. Pereira da Costa (1951). In *Anais Pernambucanos*. Recife: Imprensa Oficial.

<sup>5</sup> Biblioteca Nacional of Rio de Janeiro. Letter of 20 January 1816. *Cartas que o excmo. bispo d'Elvas, don José Joaquim da Cunha d'Azeredo Coutinho, escreveu aos excmos. generaes inglezes que mais concorrerão para a restauração de Portugal*. Por Coutinho, José Joaquim da Cunha de Azeredo, 1742-1821.





towards the State and Church; he clearly informed that, as governor, he did not allow the rich to oppress the poor; he commented on the scarcity of fresh meat in Recife and Olinda, and its abundance in the hinterlands.

To solve this disparity, he proposed opening a road between Olinda and the hinterlands, so that cattle could reach the coast, find good markets and supply them. He informed D. João about the need for a good customs in order to prevent theft; he bought a small frigate and armed it to face the pirates who infested the coasts of Pernambuco; he posted couriers and sentries all along the coast to watch enemy ships; he fought hunger in the hinterlands. As President of the Board of Finance of Pernambuco, he collected the revenues of the Royal Treasury according to products and parishes.

Portugal's efforts to modernize the colony included something not often privileged then – leisure. To the astonishment of the population, a notice to the Government of Pernambuco informed of the concession given to Francisco Antonio Todi, manager of the São Carlos theatre in Lisbon, to establish a *Casa de Sortes* in the city of Olinda. The concession, which recommended caution and public inspection, reflected the new mentality to be introduced in Brazil.<sup>6</sup>

While Portugal led the uplifting of the Empire from a policy of integration with its American colony, understanding its fragility in the face of more powerful nations such as France and England, the conflicts between these two empires ended up imposing a decision on the Portuguese government, which had long been thought by its leaders, but postponed.

The arrival of the royal family and the displacement of the Portuguese state apparatus to Brazil was a far-reaching positive action for the immediate future of Brazil. For the Portuguese nation, it brought the tragedy of having its territory occupied by the French, the English, the Spaniards. In short, it brought war and penury. Minister Souza Coutinho himself had already commented, in 1803, on the possibility of creating a powerful empire in Brazil. The opinion of the Marquis de Belas<sup>7</sup> about this situation is quite enlightening: "With the doors of the continent closed by the French on the inside and by the British on the outside", there was no alternative for the Portuguese monarchy but to migrate to Brazil.

In the political and economic game, between France and England, Regent D. João VI, upon arriving in Brazil, made decisions favourable to England, which would also be in Brazil's interest in the short term. Regardless of the effort to maintain the forces that supported the Empire, the power bloc showed signs of disintegration. These forces did not emerge so explicitly from the state apparatus, but from civil society. (Valentim, 1993:392).

The decisions made by the Prince Regent regarding the colony, such as the opening of ports, the signing of the 1810 Treaty of Navigation and Trade and the rise of Brazil to the category of United Kingdom, led to the rupture of the power bloc. The letters of the Governors of the Kingdom are the best proof of this disintegration, which brought different results to its supporters: positive for the seigneurial/colonial bourgeoisie and negative for the mainland's bourgeoisie and aristocracy.

<sup>6</sup> Costa.F.A.P.da. (1983). *Anais Pernambucanos*, vol.X. Recife, FUNDARPE.

<sup>7</sup> "Memória do Marquês de Belas", not dated, cited by Ângelo Pereira (1953). *D. João VI Príncipe e Rei*, vol. III, p. 40, Lisbon, Editora Empresa Nacional de Publicidade.



Even though the results related to Brazil were positive, their distribution was not homogeneous. In the disintegration of the power bloc, the Captaincy of Pernambuco played a different role from other captaincies, which were divided between the power of Rio de Janeiro and the power of Lisbon.

In 1804, Caetano Pinto de Miranda Montenegro arrived in Pernambuco. He was Governor in Cuiabá and travelled by land, covering a distance of 670 leagues. In 1805, he was appointed governor of Angola. A petition by residents of the captaincy of Pernambuco asked the Prince Regent for his permanence, which was attended to. Until the arrival of the imperial family in Brazil, Governor Caetano Pinto de Miranda Montenegro was seen as an upright man, a good administrator, with a commendable character. For ten years he governed with prudence, did not risk major innovations, but allowed for some improvements. He listened to complaints from the poor and the rich, and was considered a "righteous man".

The changes carried out by the government of the Prince Regent helped the administration of Caetano Pinto de Miranda Montenegro. For example, commercial franchises granted by D. João began to change the habits and customs of colonial society.

*Mesa Grande* clerk Caetano Francisco Lumachi de Melo commented in his report that before 1799, customs revenues were much lower. From 1799 to 1810, these yields almost tripled and by 1823 amounted to more than a million.<sup>8</sup>

At the beginning of the 19th century, Pernambuco competed with Bahia for the second and third place in imports and exports. Rio Janeiro had the lead.

On 10 March 1808, Caetano Pinto de Miranda Montenegro was called to Rio de Janeiro by the King and stayed there until September of the same year. On his return, he brought a commendation from the Order of Christ and another, Knight in the Cape and Sword of the Ministry of Finance. Still, for the people of Pernambuco he brought with him a heavy baggage of taxes: the tenth tax on the houses, the tax on inheritances and legacies, the sugar tithe and the Prince Regent's project to invade Cayenne in French Guiana. This was in addition to other humiliations to guarantee the Court's luxury, expenses that encumbered the national treasury.

Despite the good collection of revenue in Pernambuco, from the point of view of some products, especially sugar, one can speak of a decrease in income, given the expenses, including those incurred by the occupation of Cayenne by the troops. The social situation was oppressive because of taxes. Portugal declared war on France, prepared to occupy Cayenne and demanded 1000 men from Pernambuco for this military expedition. The Governor approved this new tax policy.

Father Dias Martins noted that he returned from Rio de Janeiro with the task of sending all the Province's money to the Court, without thinking about the obligations to the creditors. In fact, these taxes were general to the entire country. However, Governor Caetano Pinto wrote to the Prince Regent about the inconvenience of simultaneously charging more taxes and taking away bread winners or loved ones from families. Despite

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<sup>8</sup> Biblioteca Nacional of Rio de Janeiro. *Relatório do escrivão da Mesa Grande Francisco Lumachi de Melo apresentado ao Governo do Rio de Janeiro*. Registro de Correspondência 1808/1833, CGPP 9, 50.



the reaction of the people from Pernambuco, 300 men were sent to occupy Cayenne in 1809.

Brazil's situation was one of continuous deficit and Portugal's one of complete degradation: plundered, its trade interrupted and its fields deserted. In July 1811, the Prince Regent ordered a loan to be raised in the Kingdom, guaranteeing payment with the rents of the provinces of Bahia, Pernambuco and Maranhão. The aim was to restore industry and farming in Portugal. In Hipólito da Costa's opinion, this loan taken out in the Kingdom impoverished it, as the money drained into the pockets of American and other merchants. (Costa, 2001).

In 1812, the economic-financial and socio-political situation in Portugal was very difficult. In Lisbon, the discount on paper money was 25%, given the disappearance of metallic coins, exchanged for foreign goods, mainly from the United States. Even the remittances of pounds from London to pay British and national troops also ended up falling into the pockets of American traders. A law prohibited the exit of gold and silver, but it was useless. According to current opinions, encouraging trade with Brazil was the only chance for Portugal to get its currency back.

At the end of 1812, Portugal's deficit was 12 million cruzados. In addition to the purchase of food, the military expenses weighed on the finances. D. João tries to obtain a loan from England, but failed. He had to sell the Crown's free property.<sup>9</sup>

The finances were in a mess. The navy had more officers than warships. In Brazil, bills of exchange, interest on loans and civil servants were no longer paid on time, despite all coffers being scraped, including the deceased and absent, in the words of Hipólito da Costa (2001). Portugal checked what was collected in the Captaincies, and suggested the following: collect the amounts of the Captaincies, calculated in 1530 *contos*, paying the expenses through *Banco do Brasil*; Brazil's expenses should be reduced and revenue increased. Rio de Janeiro, Bahia and Pernambuco had the best revenues, so these should be taxed. The Government should tax imports heavily.

And would the 1810 Treaty allow it? How would governments in Brazil and Portugal react?

The Lisbon regency forbade the exit of metals; the Rio de Janeiro government did the same in Brazil's other provinces. Payments would be made in bills from *Banco do Brasil* or dealers, redeemable at the respective markets.

Changes in import taxes took place much later and very weak. As Rio de Janeiro became the centre of mercantile activities, it was more dependent on England than Pernambuco, which at this point was preparing to leave the Empire. The businessmen of Rio de Janeiro, at the end of the 18th century, formed a pressure group, independent of the rural aristocracy – the great landowners. Due to the volume of their business, they were able to accumulate capital and provide credit to the King and rural landowners.

The position of merchants in Rio de Janeiro was far superior to that of merchants in Pernambuco. More affluent than their Pernambuco counterparts and enjoying greater social prestige, they were even honoured with the order of Christ, which gave them

<sup>9</sup> In the Royal Charter of 13 December 1812, D. João authorized the sale of the Crown's free property to cover insolvent expenses. Índice das Cartas de Leis, Alvarás, Decretos e Cartas Régias de 1812. Available at [http://bd.camara.leg.br/bd/bitstream/handle/bdcamara/18322/collecao\\_leis\\_1812\\_parte1.pdf?sequence=1](http://bd.camara.leg.br/bd/bitstream/handle/bdcamara/18322/collecao_leis_1812_parte1.pdf?sequence=1)



aristocratic status. The businessmen of Pernambuco, on the other hand, massacred by the *Companhia de Comercio da Paraíba e Pernambuco*, only became ennobled if they became landowners, and they were not familiar with the credit and interest system.

The Pernambuco Revolution of 1817 was the result of these new standards introduced by Souza Coutinho's reform project and by the circumstances of the time. Led by Pernambuco residents, but with important support in Paraíba, Ceará and Rio Grande do Norte, it is a good example of the fractures that gradually undermined the Empire. To get an idea of these divisions, Caetano Pinto de M. Montenegro, on 5 March 1817, therefore on the eve of the Revolution, reaffirmed to the inhabitants of Pernambuco the king's intention to unite the kingdoms and denounce the infidels:

*People from Pernambuco: calm your spirits, do not listen to rumours: some inconsiderate words uttered in excess of joy, do not decide the character of men nor make them infidels and traitors. His majesty has just united all his kingdoms into one: this happy union must spread. What basis could these parties have to divide you? We are all Portuguese, we are all subjects of the same Sovereign, we are all fellow citizens of the same United Kingdom: men are not distinguished according to their place of birth, but according to love and fidelity to their King, and their homeland, this being the honourable motto of the Portuguese for their talents, virtues and the accuracy with which they fulfil their duties<sup>10</sup>.*

In response to the numerous proclamations by rulers loyal to the King, revolutionaries also published them – like the one below, at the end of the Revolution on 15 April 1817:

Whoever you are

*We have read your proclamations, worthy of those who make them and worthy of those who spread them. And we admire the grading of your threats: in the first, on 21 March, you were happy to call us unworthy; on the two of 29 March, you refer to us as infamous, despicable and other epithets that certainly belong to you more than to us. You require our death and promise to use the sword if you do not establish the Laws of your good King. See how different we are, we do not hassle you, we do not hate you, but we will play murder with murder, fire with fire and war with war. We do not fear you, come, you will disembark and experience what free men are like. In payment for your three proclamations, we send you another three. I warn you that if any of our raftsmen suffers any insult, we have in our hands your Marshals, Brigadiers, and officers who will pay head for head.*

*House of the Provisional Government in Pernambuco, 15 April 1817.*

*Signed: Father João Ribeiro Pessoa, Domingos José Martins, José Luiz de Mendonça, Manoel Correia de Araújo, Manoel José Pereira Caldas, Antonio Carlos Ribeiro de Andrade, Miguel João de Almeida e Castro.<sup>11</sup>*

<sup>10</sup> Biblioteca Nacional of Rio de Janeiro. Documentos Históricos: *Revolução de 1817* (1954) v. CVI

<sup>11</sup> Idem.



Upon learning about the outbreak of the revolt, D. João ordered the departure of the fleet destined to block the port of Recife under the command of Admiral Rodrigo José Ferreira Lobo. An army with eight battalions, artillery and cavalry left Rio on 4 May in 10 sailboats. The general command was entrusted to General Luís do Rego Barreto, who considered the liberal and revolutionary ideas of the Pernambuco inhabitants to be insane.

Due to the influence of the literature of French and American liberals, introduced in the Colony in various ways, including by Arruda Câmara, these dreams of independence seemed to Luís do Rego "*contos loucos*" (crazy tales). He pejoratively called the battalions formed and directed by the natives "*fantásticas carrancas*" (whimsical grimaces).<sup>12</sup>

The situation of the revolutionaries became untenable. Attempts to support the neighbouring provinces, Paraíba, Rio Grande do Norte and Ceará were successful, but attempts to obtain military support from the United States were unsuccessful no matter how much effort the Freemason had made. The exchange of proclamations between the parties' military leaders also had no effect. The Rio de Janeiro Court sent a group of men presided over by General Luís do Rego Barreto, who for consecutive years subjected Pernambuco's inhabitants to many vexations. The main leaders of the Revolution were sentenced to death, dismemberment and their remains were displayed in public squares.

Governor Luís do Rego Barreto imprisoned Pernambuco citizens right, left and centre. He punished some by exiling them to Africa. Others were sent to various prisons in Brazil, and forty-two were tried by courts in Lisbon, on the accusation of being supporters of independence. As a result, the Minister of Justice in Portugal ordered the magistrate of Belém to take the prisoners to the Castle, to the *Regedor das Justiças*, and to prosecute them immediately.

According to Hipólito José da Costa, the prisoners triumphantly paraded through the streets of Lisbon, exposed to the horrified eyes of the inhabitants, escorted by cavalry and infantry with drumrolls and pomp. And since their clothes had got held in their trunks at Customs, they weren't dressed with dignity. The forty-two prisoners met with the weight of the Portuguese Court's absolutism, in the humiliation of this parade and in the triumph of Governor Luís do Rego.

General Luís do Rego Barreto believed that he had defeated the "*contos loucos*" and the "*fantásticas carrancas*". However, the "crazy tales" crossed the Atlantic and inspired Portuguese constitutionalists, victorious with the Constitutionalist 1820 Revolution in Portugal, which forced King João VI to return to Portugal and sign a liberal constitution, approved by elected deputies from various parts of the Kingdom, led by the *Cortes*.

Supportive of the liberal constitutionalists of Pernambuco, the Lisbon *Cortes* participating in the 1820 Revolution ordered the release of the revolutionary survivors of 1817<sup>13</sup> and

<sup>12</sup> An allusion to the heads of monsters that were placed on the prow of boats on the São Francisco River, representing ferocious animals, supposedly to chase away evil spirits.

<sup>13</sup> After the trial of the cases of the 42 Pernambuco prisoners in *Casa da Suplicação*, they were released and received in Pernambuco with great festivities. The final judgment took place on 27 October 1821. (Costa, 2001: 325)



created Governing Boards in all the provinces in an attitude of disrespect towards absolutist governors, such as Luís do Rego Barreto.

As in Pernambuco in 1817, the military and magistrates of the city of Porto were already preparing the constitutionalist revolution some years before August 1820. José Ferreira Borges, a member of the Council of the 1820 Porto Revolution, was a member of the *Sinédrio*, an association founded in Porto in 1817 by Manuel Fernandes Tomás, whose purpose was to prepare a liberal revolution in Portugal.

The Portuguese situation at the time brought dissatisfaction to the bourgeoisie, farmers and the military. It meant the closing of factories, the abandonment of agriculture, the delay in the payment of wages and salaries to the military, British tutelage, the Brazilian primacy and the invasions that Portugal suffered by France and Spain. With the opening of Brazilian ports 'to friendly nations', such as England, British competition destroyed the Portuguese economy.

The 1820 Porto Revolution faced additional problems: the Portuguese absolutist monarchists, who followed D. João VI, did not opt for the King's return. Brazil and the divided Brazilians took different positions: some preferred the constitutionalism of the *Cortes* to the government of Regent Pedro; the English minister Thornton and the Count of Palmela pressured the King to send his son Pedro or return to Lisbon, thus putting a stop to the democratic side of the 1820 movement; and the Austrians, although enlightened, did not support the 1820 movement, and remained absolutist.<sup>14</sup>

The political arguments of the liberal constitutionalists and of the more conservative Portuguese originated in the two trends within the Portuguese monarchy: absolutism and constitutionalism. The Portuguese constitutionalists presented the Constitution as the remedy for all the ills that afflicted Portugal, even hinting at the recolonization of Brazil. The bourgeoisie of the city of Porto were promised industries that could transform Brazilian raw materials into manufactures - cotton into textiles, raw sugar into refined sugar and its distribution in the European market.

How about the 1810 Treaty with England, would it be disrespected, restructured?

The bourgeoisie needed D. João VI's relationship with England for the construction of the industrial revolution, including new negotiations with the British. The constitutionalists, in an attempt to calm the King, tried to naturalize liberalism by linking it to tradition, recalling the fictional *Lamego Cortes* (Lima, 1997: 16).

What changed in Brazil with the victory of *Vintism*?

The Portuguese living in Brazil, both merchants and State bureaucrats, and Brazilians well positioned with the King, did not want to lose the advantages obtained with the coming of the Court. They were aware that the return of the King would affect them, as Brazil would lose its status as United Kingdom and as head of the Portuguese Government.

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<sup>14</sup> There is no detailed study on the interests of Emperor Francisco I, of the Holy Roman Empire, in marrying his daughter Maria Leopoldina to Pedro de Alcântara - this royal house probably found Brazil important for its politics, especially in relation to the English or they could play further by investing on the American continent.





D. João VI travelled to Portugal to attend the Constitutionalist *Cortes* in April 1821. His son Pedro became the Prince Regent. Unlike the Portuguese constitutionalist liberals, Silvestre Pinheiro Ferreira<sup>15</sup> predicted that the return of the King would bring irreparable damage to the Portuguese Empire. The facts proved this assertion. Pedro's power was much less accepted than the power of D. João VI. Brazilians suddenly had to comply with the laws, orders and decrees coming from two arm wrestling centres of power: the Constitutionalist *Cortes* based in Lisbon, and Pedro's Regency based in Rio de Janeiro. The Portuguese living in Brazil, most of them merchants, and the military pressured him to accept orders from Lisbon, and appeals for this to happen became constant in the main Brazilian cities.

The decree of 1 October 1821 of the Lisbon *Cortes* created Provisional Boards in the Provinces, which reduced Pedro's power, as the customs' administration and the military command were Lisbon's responsibility, which led to fights between opposing factions.

The provinces of Pará, Maranhão and Bahia started to obey the *Cortes* of Lisbon. In Rio de Janeiro, the Portuguese garrison rebelled and forced the Prince to form a Provisional Board dependent on Lisbon. The provinces of Rio de Janeiro, São Paulo and Minas Gerais were directly governed by the Prince Regent.

In the discussion of the Lisbon Constitutionalist *Cortes* on the administration of the overseas territories, the problem of administrative uniformity between Portugal and Brazil came into the agenda. The post of Governor of the Provinces, with its absolutist slant, had no counterpart in Portugal after the 1820 Revolution, and it was soon replaced by the election of the Provisional Boards. The newly elected Boards, in the spirit of the constitutionalist movement, generally had Brazilians, who felt institutionally watched by the Portuguese military and were reduced to mere inspectors of Portuguese customs duties. Without a clear definition of the Prince's power limit, the Boards were, in fact, helpless entities used by the two centres of power: Rio de Janeiro and Lisbon.

The events in Pernambuco in this period were *sui generis* and deserve special analysis.

The news of the success of the constitutionalist movement in the city of Porto reached Rio de Janeiro and five days later it was known in Pernambuco. Governor Luís do Rego organized and presided over the Constitutional Governing Council of the Province of Pernambuco on 30 August 1821. He did not want to officially disclose the news. For a year, he wanted to hide the constitutionalist victory from everyone, which was impossible, as periodicals, pamphlets, and loose information reached the Province. On this, Denis Bernardes wrote:

*Contrary to what happened in Bahia and Rio de Janeiro, the Portuguese troops in Pernambuco did not support the constitutionalist movement, remaining faithful to the Governor's orders. This explains, among other reasons, the fact that about a year elapsed between the arrival of the first news of the Porto revolution and the election of a Board, within the new rules approved by the Cortes and Luís do Rego's ability to remain leader of the Government.* (Bernardes, 2001: 368).

<sup>15</sup> Silvestre Pinheiro Ferreira was in Brazil as Minister of Foreign Affairs and War, from 1810 to 1821, and also as his advisor. Between 1814 and 1815 he wrote by order of the Prince Regent "Memórias Políticas sobre os Abusos Gerais e o Modo de os Reformar e Prevenir a Revolução Popular" (Silvestre Ferreira, 2012).



The county of Goiana<sup>16</sup> did not want to accept the command of Luís do Rego and did not recognize this Council as legitimate. A large part of the Pernambuco counties supported its decision. A few from the south of the Province declared themselves obedient to Luís do Rego. The liberals from Pernambuco had had a bitter experience of the repression of the 1817 Revolution. So they thought it would be better to wait, reorganize the Province, wait for the events between Lisbon and Rio de Janeiro, and between the defence of Portuguese constitutionalism and independence mixed with authoritarianism led by regent Pedro. For these Pernambuco liberals, war in Brazil was imminent, and it could be long, exhausting both power centres. For this region, the republic could no longer be a dream.

Luís do Rego Barreto found out about the constitutionalist movement in Goiana and arrested several military and civilian officers. He immediately sent an official letter to King D. João VI, reporting on the latest events in Pernambuco. He confirmed that Pernambuco was uprising and that there were parties that wanted absolute independence from Portugal and that at the moment they were governed by the Constitution of America. Governor Luís do Rego still had Portuguese troops from the Algarves Battalion. On 21 August 1821, the Regent sent an official letter authorizing the creation of a Provisional Government Board in Pernambuco. On 17 September 1821, Rego sent it to the Recife Chamber for action. However, at this point, Recife was uprising. This letter was published in the press. Olinda tried a conciliation, but Goiana did not accept it.

The Goiana revolt was called Temporary Constitutional Government and publicly supported the Porto Revolution. On 10 October 1821, the Goiana Board sent an official letter to the King listing the recent political events in Pernambuco, justifying its creation and denouncing the abuses of Luís do Rego Barreto<sup>17</sup>.

Then, it sent an envoy to the King and the *Cortes* – Manoel Clemente Cavalcanti de Albuquerque – showing it did not support the independence movement. The creation of the Board was ordered by the crown appointed judge, with representatives of the clergy, nobility, military and people, on 29 August 1821. On 21 September of the same year, there was a bloody battle in Olinda, between the forces of Goiana and those of General Luís do Rego.

The forces of Goiana marched on Recife against the troops commanded by the General and, in the village of Beberibe, they made their camp. The siege of Recife by the Goiana people ranged from Rio Doce, in the north, to Afogados, in the south. Afraid of being

<sup>16</sup> Goiana was founded before 1570, and was originally inhabited by Caetés and Potiguares Indians. It rose to the category of parish in 1568. At that time it belonged to the captaincy of Itamaracá. Due to its expansion, it became a village, then hosting the Chamber and Justice and becoming the head of the Captaincy of Itamaracá. Part of the captaincy of Itamaracá was incorporated into the Captaincy of Pernambuco in 1763. Goiana was the first municipality in Pernambuco to declare the abolition of slavery, before the law of 13 May 1888. See Galvão (2006).

<sup>17</sup> The governor of Pernambuco imposed changes that harmed the economy of Goiana. This village provided meat to Recife and other places; the tax for this service was high. The governor banned this trade and favoured another village, Vitória de Santo Antão. The tax remained high and this shook the economy of Goiana. Another episode that may seem simple, but was demoralizing for the people of Goiana: the Governor occupied the Vila at night and with his troops ripped all the blinds from the windows, which protected from the sun, and then made a big fire with them. This despotic act forced the population to buy iron bars and glass, which were English product. See Ferraz (1996: 145).



crushed by the military forces of other Pernambuco counties, which joined the Goiana battalions, Governor Luís do Rego sent emissaries requesting an armistice.

His great opponent was not another general but merchant Gervásio Pires Ferreira. A businessman, he was the evaluator of the tax system of the Republic from 1817, proposing reforms and improvements. Released from prison in Lisbon on 22 February 1821, he returned to the Province with greater prestige than before. He went to Beberibe and in an agreement signed between the revolutionary forces and the General, it was decided that he would immediately embark for Lisbon with all the Portuguese battalions. This agreement took the name of the Beberibe Convention.

On 15 October 1821, an official letter arrived from Lisbon, ordering the creation of the new constitutional government, and on 26 October, the Provisional Governing Board, chaired by Gervásio Pires Ferreira<sup>18</sup>, was elected. That same day, Luís do Rego left for Lisbon, along with part of the Portuguese troops. A new governor of arms was on his way from Portugal to replace Marshal Salazar. The Board had the difficult and delicate task of informing the Prince Regent in Rio de Janeiro and His Royal Highness in Portugal of the changes that had taken place in Pernambuco, because the new Board was not an unconditional ally of either of the two powers, even if it would not explicitly comment on the matter.

The war for independence that broke out in Brazil dismantled the routine work between the provinces and the central power in Rio de Janeiro. Many administrative issues in the Province were raised daily and the Provisional Government did not have immediate answers. It was decided to convene a Grand Council, a kind of Assembly in an attempt to manage heterogeneity and to try democracy by expanding participation and responsibilities. It included landlords, priests, deputies, judges, inspectors, and soldiers.

The first measures taken by the new Governing Board involved restoring order in the Province. Some Portuguese battalions had not yet embarked, due to lack of space on the ships, which caused fear in the population.

With no military power in the Province, the Board, attentive to socio-racial issues, organized a military force composed of native people. Two companies of blacks and two of *pardos* were created and paid for this service. They were commanded by sergeants-majors of the same race and class, respectively. The "*fantásticas carrancas*" were back.

The relations between the Board presided over by Gervásio Pires and the government of Rio de Janeiro were, from the beginning, tense. The Rio de Janeiro power did not trust a Board led by an ex-revolutionary of 1817. The balance between both had always been dangerous for Pernambuco. Between the two centres of power, the Board presided over by Gervásio honoured in all its acts the *Cortes*, the King, and Lisbon as the centre of power. However, it felt helpless in its policy against the Rio de Janeiro power. The Province paid taxes to pay for the lighting and police in Rio de Janeiro. As much as Pernambuco requested a reduction in taxes, it did not receive any positive response from the two powers. The small and medium producers of brandy, a secondary elite, were not helped by Lisbon, while the large owners were not affected in their fortunes. In

<sup>18</sup> The Provisional Governing Board was made up of the following members: Gervásio Pires Ferreira – president, Fr. Laurentino Antonio Moreira de Carvalho – secretary, and by Manuel Ignácio de Carvalho, Antonio José Vitorino Borges da Fonseca, Filipe Neri Ferreira, Joaquim José de Miranda and Bento José da Costa.



retaliation, they started to support the Prince Regent, in Rio de Janeiro. Allegations that Gervásio Pires would not support the independence proposed by Pedro and the Andrada's ministry reached the Rio court.

On 1 June 1822, the area where the members of the Pernambuco Board were meeting was invaded by envoys of the minister José Bonifácio de Andrada, representing the four military branches, forcing Gervásio Pires Ferreira to sign a document of loyalty and adhesion to the regency of His Royal Highness, D. Pedro. Reacting against that mutiny, Gervásio replied that such attitude was not a regular act of the people and so he resigned from the Presidency<sup>19</sup>. One of the Rio de Janeiro envoys, João Pedro Estanislau, replied that "the people have assumed their rights, the people want it, it is necessary to obey." The ousting of Gervásio Pires Ferreira was followed by his imprisonment in Bahia. He was later sent to another prison in Lisbon.<sup>20</sup>

In a confused period when national independence and liberalism were intertwined, the idea of democracy became associated with popular anarchy. The population was outraged by rumours. This state of rebellion had deeper causes, appearing in various forms, either in conflicts between the ruling class fractions or in the formation of the Colony's military battalions. This recurrent insubordination of the northern region in relation to the southern region was a sign that the model of nation that this region imposed, explained in the writings of José Bonifácio, would harm the northern region in the vision of the revolutionaries.

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<sup>19</sup> Minutes of the Board of 1 June 1822 in *Atas do Conselho do Governo de Pernambuco*, vol. I, 1821-1824. (1997). Recife: CEPE Editora, p. 104.

<sup>20</sup> Ibid, p. 105.



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## THE *SUBSÍDIO LITERÁRIO* TAX. CONTINUITY OR BREAK?

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### Abstract

This paper is part of the study carried out on education in the liberal period based on the minutes of the sessions of the *Cortes*. The analysis of parliamentary activity - the political debate and the consequent legislative action - indicates the importance paid to Instruction and Education matters with the aim of meeting the needs of the Liberal State. Based on the *subsídio literário* tax created by the Marquis of Pombal on 10 November 1772, nineteenth-century society claimed the right to promote primary education, basing its claim on the fulfilment of tax duties. The continuity of Pombal's political action embodied the interests and will of the liberal nation. However, the ideological demand of liberalism demanded its extinction in the parliamentary debate. The oscillation between continuity or break marked the political-economic views on the *subsídio literário* in the 1800s.

### Keywords

Education, Instruction, *Subsídio Literário*, Parliamentary Debate, State Budget

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## **THE *SUBSÍDIO LITERÁRIO* TAX. CONTINUITY OR BREAK?<sup>1</sup>**

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### **Introduction**

The 1820 revolution unequivocally affirmed the Enlightenment philosophical ideals in Portuguese society, widely disseminated at the end of the century of enlightenment and in the first years of the new century. The revolutionary echoes sustained by new values and renewed institutional powers, placing in the hands of men endowed with individual rights the duty to reorganize the new moral and political order embodied in freedom and popular consent, were responsible for social reconstruction. The reformed, modernized society called on everyone to participate, asking for individual and collective collaboration for its development and national progress. These contributions implied the acquisition of school knowledge and skills, thus recognizing the importance of providing them through formal means.

These skills were acquired through the education and instruction of everyone - children, youth and adults. This education privileged the paternal right, the private sphere in the definition of goals for moral education, virtues and talents, determining, depending on the social strata, the educational qualifications and social skills to be gained. Simultaneously, the public sphere was given the greatest mission: the education of citizens – instruction.

Under the jurisdiction of the State, the youth were offered elementary education, fundamental for the exercise of civic participation, and technical and professional training, allowing for a more enlightened and civilized society. The State saw political responsibility as an individual right and as a duty, a function that it shared with the private sphere – the family - enshrining the different actions in the State's supreme law. Therefore, the words Education and Instruction, despite identical in meaning, had different representations and actions in the contemporary period.

It is important to emphasize that the use of the words education and instruction – synonymous in a dictionary - were not used to reinforce the meaning of the political discourse, or to identify ideologies. Its use had a leading role in communication, so the knowledge of its meaning, its linguistic and semantic use proved to be fundamental for understanding the discourse and political action of the 19th century. This situation was common to the one that had occurred in the Ancien Régime, revealing, therefore, continuity in the use, identification and representation of words in communication. We recognize, however, that after the 1820 revolution, the discourse became more modern, a reference of revolutionary ideas based on individual rights and freedom. It revealed a

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<sup>1</sup> Article translated by Carolina Peralta.



communication more attentive to signs of change, proposals for investment in literacy and in education. The arguments for the development of instruction and education were supported by political actions that encouraged literacy and showed concern to address social needs.

## Educational Projects in the Ancien Régime

Let us recall the political action to support education and instruction in the Ancien Régime.

The creation of the *subsídio literário* tax in 1772 by the Marquis of Pombal aimed to promote public education and proved to be an important milestone for the development of education. The legal provision regulated the procedures for tax collection, extinguishing previous financial support to public instruction and instituted a body responsible for the administration of funds -*Junta*-, which showed the State's careful supervision in the education of youth. It is important to emphasize that the regulation of the creation of smaller schools, promulgated previously, with the small difference of four days, supported its political action in the financial taxation<sup>2</sup>.

The following year, in 1773, three other regulations, the 15<sup>th</sup> February licence, the 4th September Instructions, and the 16th December diploma clarified the importance of the tax for the development of public education, allowing assessing the school network. Thus, it must be emphasized that the set of laws placed in the fiscal issue, the financial distribution of the tax, the essence of the education system reform project. This project aimed to foster the development of state education and elementary education under the remit of the State. In view of this, two questions arise: Has the restructuring of the education system led to a policy to promote elementary learning? Are we facing a proposal to generalize the elementary education system?

The intention of the Marquis of Pombal was the development of education and civilization by promoting, at all levels of education, the dissemination of ideas of the enlightenment, valuing knowledge and technical and scientific preparation. He believed it would contribute to the modernization of a strong State taking into account its political, economic and social interests, and the benefits and *usefulness* of the Kingdom.

This action aimed at political progress, favouring a social elite that proved to be committed to the economic growth of the centralized state. Therefore, and despite the significant step towards promoting elementary education, the reform elementary education project was not able to stimulate the expansion of the school network to make education popular.

However, the legal provision that created the *subsídio literário* tax was a fundamental financial instrument for the promotion of learning.

Pursuing a political action of continuity, the reign of D. Maria I, despite favouring the Church again by handing over to the Ursulines the responsibility for school education, invested on free female education, on the establishment of specialized classes in scientific

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<sup>2</sup> The Bill of Law of 6 November 1772 established the administrative organization of schools, in order to allow everyone to learn, and modernized the syllabi. It also defined the rules for teaching practice, the functions to be exercised, and established the means of "subsistence" to be attributed to "masters and teachers" in order to ensure and preserve the education system throughout the Kingdom and in the provinces.



and technical areas - mathematics, foreign languages (French and English), rational and moral philosophy, commerce and agriculture - particularly in the city of Porto, and also supported qualified training in the wool sector. These measures proved to be essential for the encouragement and continued development of education and instruction<sup>3</sup>. It is also important to emphasize the legislative distinction granted to the most disadvantaged and to female education.

Starting with the diplomas of 24 and 31 October 1814, the first provided measures for the protection and benefits for orphaned and destitute children. The second granted to three applicants, Margarida de Jesus, Teresa Rosa de Jesus and Maria Procópio, authorization to continue teaching "in their current homes", 20 girls per house, promoting moral and elementary education "reading, writing, counting", to which other skills deemed essential were added such as "sewing and making dresses". Each teacher received a monthly payment of 6,000 *réis*, "paid through the *subsídio literário*". The teaching activity was supervised by the *Junta da Diretoria Geral dos Estudos* (RDHE, Legislação, 1814: 334) (Board of the General Directorate of Studies).

The Notice of 15 May 1815, in accordance with the previous royal resolution of 31 October 1814, confirmed the decision to create 18 schools for girls in the city of Lisbon to encourage the learning of elementary knowledge, moral values of "Christian doctrine" and the learning of crafts like "spinning, knitting, sewing, embroidering and cutting" (*Legislação Régia*, 1815: 57).

In view of these political actions, we see continuity in the public proposals for education and instruction, clearly highlighting three perspectives: cultural concern, social intervention and the economic-financial approach, all converging towards a single purpose: development of the education system by promoting the *usefulness* of school, scientific and technical knowledge, placing it at the service of the Kingdom. This benefit was, of course, supported by the *subsídio literário*".

### Another look at Instruction and Education in the liberal period

Whereas one can perceive another approach in the liberal period at instruction and education, the aim remained the same: the progress of the Nation. Since 1820, Portuguese society promoted the education of all citizens to sustaining its development.

The reform of the education system, at the different levels of learning, proved to be essential, highlighting the main areas of intervention. At the pyramid of school improvement there was the pressing need to promote elementary education, allowing children to learn basic knowledge, moral education, and liberal ideals, all necessary for demanding civic participation. Physical education activities, essential for the healthy

<sup>3</sup> The permit of 31 July 1788 granted privileges and exemptions for a period of ten years to the wool and dyeing factory in the Village of Covilhã and to the Spinning School in Celorico da Beira, given their "utility". The laws of 24 and 31 October 1814 showed concern for the development of education. The former provided protection measures and benefits to orphaned and destitute children and the second granted Margarida de Jesus, Teresa Rosa de Jesus and Maria Procópio authorization to continue teaching "in their current homes" 20 girls (in each one) receiving a monthly payment of 6,000 *réis*, "paid by the *subsídio literário*" (Digital Repository of the History of Education, Legislação, Resolução Régia 31-10-1814, p. 334). The Notice of 15 May 1815 determined the establishment of 18 schools for girls in the city of Lisbon with the aim of "teaching Christian doctrine, reading, writing, counting, spinning, knitting, sewing, embroidering and cutting" (*Legislação Régia*, Edital, 15-5-1815 p. 57).



physical development of children and young people, were included in the syllabi. At the same time, the syllabus modernization in secondary and higher education introduced new scientific and specialized technical areas, thus encouraging socio-cultural enrichment and the development of professional skills. The parliamentary debate dedicated to the introduction to the study of political economy and new disciplines in the area of law must be stressed.

On a second level and to respond to the investment needs in elementary education, the social concerns focused on the following priorities:

- establishment of basic education institutions, enabling the expansion of the school network;
- diversification of teaching methodologies, adoption of updated teaching material suitable for different levels of education and school ages;
- modernization or construction of school spaces for the practice of teaching and learning, including projects for the foundation and provision of libraries, awakening a taste for learning and reading;
- checking pedagogical and administrative competences by the management bodies under the Ministry of the Kingdom - the *Junta da Diretoria-Geral dos Estudos*, *Conselho Superior de Instrução Pública* and the *Direção Geral da Instrução Pública* and the ensuing debate on the need for training teacher pedagogy. It proved to be of great importance for the improvement of the system.

This was followed by administrative organization that called for the involvement of other entities responsible for political and territorial management, requiring the intervention of the municipal power regarding the responsibility for regional school administration and pedagogical supervision. We highlight the admission exams to the teaching career for teachers, and the procedures for teaching the subjects, which allowed the regularization of the professional career. There was also pedagogical inspection to ensure good academic and didactic practices, and finally, the issue that turned out to be the most important: the payment due to teachers and assistants. Difficulties in timely payment of active or retired teachers accounted for a very significant number of petitions filed in the *Cortes* in the 19<sup>th</sup> century, becoming a real political and social problem.

The recurrent and persistent representations, individual and collective, focused mainly on the financial difficulties that teachers and their families were experiencing. The main reason for the petitions was the delay in the payment of salaries. In addition, the irregular and controversial management of the collection and distribution of funds resulting from the *subsídio literário* tax was denounced, as it was sometimes diverted to meet other education needs.

Pombal's action in support of state education was welcomed by the majority of the Nation's representatives, even though the mismanagement and use of financial funds were the object of derogatory parliamentary comments and opinions. Even so, the creation and maintenance of the *subsídio literário* made a relevant contribution to encouraging elementary education. The revenue from this tax made it possible to respond to evident deficiencies in the education system. In addition, it contributed to a



better definition of strategic guidelines with a view to the development of all levels of education.

These topics were debated and analysed diligently in the sessions of the *Cortes*, with the politicians responsible for the Kingdom and Treasury ministries frequently participating in the discussion. None of the petitions were left unread in the Chamber of Representatives. After being submitted, they were all carefully forwarded for a second reading and a more detailed opinion in the different parliamentary commissions or went to other ministerial services. The preoccupation and political urgency in answering the pleas demanded it. The speed imposed in responding to all requests overcame another need: the social care and attention that all requests deserved. Thus, the political action sought to find adequate responses to the pleas, taking into account the financial possibilities of the Nation. It was a thorny job, but it was also an intense and stimulating period of political-social debate.

The petitions sent to the *Cortes* revealed different perspectives, mixing different feelings that oscillated between civic participation enthusiasm, enshrined in the Constitution, the social stimulus in meeting the reform needs, contributing to cultural modernization and the realization of the economic and financial weaknesses that the Country experienced<sup>4</sup>. The greatest political difficulty was the impossibility to respond to the recurring economic and financial problems that persistently affected education professionals. The government's difficulties in solving delays in the payment of salaries owed to teachers, particularly to elementary education teachers, despite the collection of the *subsídio literário* tax being the main source of revenue for the development of elementary state education, was one of the main political debate issues, alongside the reform of the education system that was insistently demanded.

<sup>4</sup> It is interesting to recall the constitutional texts promulgated in 1822, 1826 and 1838 and the administrative reforms that the country adopted throughout the 19<sup>th</sup> century. The consecration of the individual rights and duties of the citizens, assuring everyone the right to education, the attribution of specific powers to the municipal powers, were adjusted to the political moment. Under the banner of the decentralization of political power, the political centralization exercised by the government restructured the administrative map and, consequently, its competences. We underline, in a more liberal perspective, article 223 of the Constitution of 1822 (título VI- Do Governo Administrativo e Económico, capítulo II- Das Câmaras) entrusted the Councils with the obligation to "Take care of primary schools, and other educational establishments that may be paid from public income, as well as from hospitals, homes for the abandoned, and other charitable establishments, with the exceptions and in the form that the laws determine" (Assembleia da República, Portuguese Constitutions, 1992, 93). The constitutional texts of 1826 and 1838 referred these prerogatives to the regulatory law guaranteeing the right to free primary education (Carta Constitucional, título VIII "Das Disposições Gerais e Garantias dos Direitos Cívicos e Políticos dos Cidadãos Portugueses" - artigo 145º, §30; Constituição de 1838, Título III- "Dos direitos e garantias dos Portugueses, artigos 28º e 29º). Among the administrative reforms we highlight: the Law of 20 July 1822, published on 1 August of the same year. The decree of 16 May 1832, preceded by an extensive report on the powers of public administration, justice and the treasury, highlighted the measures of the "organization and administration of the Treasury", according to the Napoleonic model. The 1836 Administrative Code restructured the new map of municipal administration. Changes under the government of António Bernardo da Costa Cabral – Administrative Code of 1842-. In the second half of the 19<sup>th</sup> century, the administrative and territorial reorganizations that were promulgated in 1867, 1870, 1878, 1886 and 1895-1896 revealed the main concern of the liberal state, the political redefinition of the map of municipal powers, the suppression of councils, the duration of mandates and competences assigned to the appointed bodies and members.



## The just claims for the enforcement of the *Subsídio Literário*

The many petitions that sent to Parliament throughout the 19 century requested the enforcement of the *subsídio literário* tax to in public education. The first plea was sent to parliament on 14 April 821. It was a congratulation letter sent by the Municipality of Torres Novas to the representatives of the Nation. The message of congratulation for the revolutionary political success was followed by requests for intervention with a view to regularizing primary and secondary education in the region. The lack of provision of primary and secondary education subjects proved to be incomprehensible for the citizens in view of their regular compliance with their taxes.

*The inhabitants of the aforementioned Village cannot be indifferent spectators of such deficiency, when they recall the considerable taxation imposed on their wines, and which they pay every year, and whose collection is therefore destined by the law to support the Teachers, and it is not being enforced in the Village in proportion to the payment made* (DP-MCCGE, session no. 58, 14/04/1821: 578).

The municipality of Torres Novas, determined to implement primary education, sent a new petition to the *Cortes* on 24 April of the same year. Despite the order of the Board of the General Directorate of Studies ratifying the intention of the region, the political decision fell to the Finance Commission. We believe, however, that the decision satisfied the interests of the municipality, considering the content of other requests presented that evoked as an example the success of the Torres Novas district in its requests.

A similar situation was repeated a few years later, in the sessions of 23 and 27 January 1835, with several municipalities in the Province of Minho demanding the use of tax funds in the development of public education in the region.

We also recall in the same parliamentary year two interventions by deputy José Ferreira de Castro. The first, made on 14 March, highlighted the legislative compliance that instituted the Lisbon Lyceum (Decree of 17 November 1836). He then drew attention to the relevance of the collection of the *subsídio literário*, essential to the promotion of public education, suggesting rigorous use of funds to encourage training. In the second, it required the approval of "some small, and provisional measures" (DP-MCCDN, session No. 54, 28/03/1835: 696) that would allow the founding of primary schools in rural parishes and the creation of complementary training subjects in the district main cities—logic, metaphysics, philosophy and ethics – with the aim of developing the education of the youth, basing the materialization of the proposals on the good administration of the *subsídio literário*.

In 1837, the six requirements relating to primary education called for the timely payment of teachers and referred to the various procedures for using the *subsídio literário* in different locations, underlining arbitrariness in its application. Deputy Baron of Ribeira de Sabrosa, in the session of 13 March pointed out these random procedures, stating:

*In the village of Canelas, homeland of my noble friend, Deputy João de Lacerda, seven hundred thousand réis are paid as subsídio literário, but there has never been a teacher of first letters there, nor there is today: on the contrary, in Beira Baixa, villages that pay no more than 20\$000 réis in*





*subsídio literário, have always had teachers of first letters. The worst thing is that these same few teachers, who exist, are always underpaid. I believe that Mr. Passos has already ordered some of them to be paid; but it is true that the teacher of first letters in my own village had not received, not long ago, a single coin, after the Queen's Government had been re-established (DP-MCCGE, session no. 43, 13/03/1837: 16).*

Similar circumstances were highlighted in 1839 and 1840. The collective requests of primary teachers in the municipalities of Torres Novas, S. Pedro do Sul, Alcobaça, Alpedrinha, Évora, Aveiro and Porto Santo demanded payment of their salaries. The common argument presented for the payment of their salaries was supported by the income from the *subsídio literário*, rejecting the administrative changes approved in 1836, which placed greater financial pressure on the municipalities<sup>5</sup>.

The representative of the Nation Alberto Carlos Cerqueira de Faria added his voice to the protests, defending the preservation of the tax and admitting, however, that the amounts collected proved to be insufficient for the development of education. It was a controversial opinion. Many other deputies considered the funds sufficient to support education in the Kingdom, extending its political and administrative action to the overseas provinces<sup>6</sup>.

We underline yet another case of the municipality of Porto Santo Island, which decided to use the tax revenue in the payment of salaries to teachers, the rental of the school building and also the purchase of teaching materials. It was undoubtedly a unique example, revealing a scrupulous administration of tax collection.

In 1842 there was a request for information on income from the *subsídio literário* tax relating to the districts of Lisbon, Santarém and Leiria in the last two years. Was it an unusual request? No. The request was presented by Deputy Bartolomeu dos Mártires

<sup>5</sup> On the territorial and administrative reform and its effects on political and financial structures and procedures, we highlight the following references: SÁ, Victor de – A reforma administrativa liberal que precedeu a de Mouzinho da Silveira. *Revista da Faculdade de Letras*. Nº 2 (1985), p. 202.

We highlight other studies on local and regional administration, such as the work coordinated by Professors Monteiro, Nuno Gonçalves; Oliveira, César – *História dos municípios e do poder local: dos finais da Idade Média à União Europeia*. Lisbon: Círculo de Leitores, 1996, de Silveira, Luís Espinha da – *Território e poder: nas origens do Estado contemporâneo em Portugal*. Cascais: Patrimonia Histórica, 1997, Manique, António Pedro – *Mouzinho da Silveira, liberalismo e administração pública*. Lisbon: Livros Horizonte, 1989, and the article *Liberalismo e Finanças Municipais da Extinção das Sisas à Proliferação dos Tributos concelhios*, Penélope, Fazer e Desfazer História, no. 3 June 1989, by Fernandes, Paulo Jorge Azevedo – *As faces de Proteu-elites urbanas e o poder municipal de finais do século XVIII a 1851*. Lisbon: Câmara Municipal, 1999, Catroga, Fernando – *Natureza e História na fundamentação do municipalismo da Revolução Liberal ao Estado Novo (uma síntese)*. In Silva A, Francisco Ribeiro da... [et.al.], org. – *Estudos em homenagem a Luís António de Oliveira Ramos*. Porto: Faculty of Humanities of the University of Porto, 2004 and *A república una e indivisível: no princípio era a província*. *Revista de História das Ideias*. Coimbra. V. 27 (2006), Silva, Carlos Manique da, *Da vontade unificadora do Estado à adaptação da escola às realidades locais: o papel dos governadores civis e dos comissários de estudos (anos de 1840-1860)* *Revista da Faculdade de Letras, História*, Porto, III series ére, vol.10, 2009, pp. 151-160, Tomás, Ana; Valério, Nuno – *Autarquias locais e divisões administrativas em Portugal 1836-2013*. Lisbon: Instituto Superior de Economia e Gestão da Universidade de Lisboa, 2019 and the article by Langhans, Franz Paul de Almeida – *Organização administrativa e local*. In Serrão, Joel, dir. – *Dicionário de História Portugal*. Porto: Livraria Figueirinhas, 1984. vol. IV.

<sup>6</sup> The legislative provision published on 24 July 1851 by the Ministry of the Navy recognized the financial importance of taxing the *subsídio literário* in all the islands of the province of Cape Verde, highlighting its contribution to the development of education in the overseas province. In this regard, we also point out the decree of 1 September 1881, which promulgated the maintenance of this tax collection in the State of India.



Dias e Sousa at the 24 August session. His intention was to obtain detailed knowledge of the movements of the Lisbon port, in particular the amount of wine exported<sup>7</sup>.

Therefore, economic reasons motivated his request. However, since the value of exports influenced education matters and also because in 1841 two legal provisions on the auctioning of the tax in the mainland districts had been approved – 23 October and 2 November – we took into account the documents relating to the State budget foreseen for the economic year 1839-1840. Thus, in this sense, and for a better interpretation, we analyzed the following headings: State income and charges and other specific documents. Based on documents relating to the Ministry of the Kingdom, it was possible to assess the state of education, having as a starting point the request of the parliamentarian elected by the Madeira constituency<sup>8</sup>. We also take the opportunity to highlight the opinion of deputy Alberto Carlos Cerqueira de Faria, presented earlier, defending that the income from the *subsídio literário* was insufficient to meet the needs of public education.

Let us pay attention to the documents presented in the *Cortes* relating to public accounts for the financial year 1839-1840. We start with the report by the finance minister drawing attention to the State's difficulties, taking into account the debts and burdens of the ministries. The issue of public debt, a major problem with a complex resolution, was portrayed in the various maps that were delivered to the Assembly for due analysis. For

<sup>7</sup> Professor Fernando de Sousa's studies on Real Companhia Velha allow us to take a new look at the company and its commercial relations. In *Arquivo Real da Companhia Velha*, he reveals the complexity of tax collection in the north region. The joint article by Fernando de Sousa, Francisco Vieira and Joana Dias – *A cobrança de impostos régios pela Companhia Geral da Agricultura e das Vinhas do Alto Douro (1872-1832)* reveals some data about the relevance of taxes, the amount of tax collection and its effect on the structure of the State. On the *subsídio literário* tax, the Company collected in "production and commercialization" around "315 *reis* in barrels of red wine (...) 120 *reis* in barrels of vinho verde, (...) 210 *reis* in exports to Overseas; 105 *reis* in wine barrel for Brazil". These amounts were reduced from 1825 onwards. The amounts of tax income in the North region in "Porto and councils" by the Company and by private individuals are also listed below. If in the year under review, 1802, the total amount was 25,710\$206.

In the book *A real Companhia Velha. Companhia Geral da Agricultura das Vinhas do Alto Douro (2006)*, and in one of the chapters *A Companhia Geral da Agricultura das Vinhas do Alto Douro, Empresa Majestática (1756-1834)* (Fernando de Sousa, Diogo Ferreira, Francisco Vieira and Ricardo Rocha) continue the analysis of financial data confirming the importance of taxes – *subsídio literário* and military tax – as being "responsible for every year for more than 62% of the global amount" (229) pointing out the doubling of revenues between 1802 and 1814. More detailed information on the collection of direct and indirect taxes from the 1830s onwards is found in the documents of the state budgets, that can be viewed in the repository of the General Secretariat of the Ministry of Finance. <http://purl.sgmf.pt/repositorio/orcamentos/index.html>

<sup>8</sup> We draw attention to the legislative provisions that requested detailed information about the income from the *subsídio literário* tax. The Ordinance of 18 November 1837 requested discrimination on tax collection in the years 1834, 1835 and 1836 throughout the Kingdom. An identical situation was published on 28 June 1851, demanding the appraisal for the biennium from July 1851 to June of 1853. The laws of 20 May, 29 August, 10 and 16 October and 11 November 1837 requested data on charging in the municipalities of Guarda, Santarém, Coimbra, Vila Real, Lisbon and Aveiro; the orders of 15 March and 7 June 1838 set out procedures for collecting the tax throughout the Kingdom. On 12 July of the same year, an income table was published for the period from 1 July 1838 to 30 June 1842. This was followed by bills enacted in the same year and referring to the district of Leiria. The ordinance of 12 July 1839 requested the tax remittance certificates relating to the district of Coimbra. The two ordinances of 22 October and 2 November 1841 defined the collection procedures in the Kingdom. There were also requests on 10 December 1844, 12 January, and 18 March 1850, and on 24 December 1852. On 19 February 1853, a new condition was added to the collection process for the district of Aveiro, in compliance with the Regulation and the Law of 15 April 1857, extinguishing the tax on the mainland and replacing it with the property tax, keeping its collection on the islands. The ordinance also determined that the average income of the last 10 economic years – 1846-1856 – set at 115,904\$780 was placed directly in the total revenue from the property tax and was subsequently distributed among the administrative districts. It further informed that the amount collected in the year 1857 – 1,328:752\$000 was distributed among the 17 districts, according to the administrative and territorial reorganization – 24 October 1855 – and in compliance with the conditions stipulated on 17 July 1855, putting in practice principles of fiscal equity.



an estimated deficit of 1,413,896\$137, the outstanding debt reached the amount of 2,588,171\$219 despite pointing out measures for its attenuation. Thus, after “change was approved”, it was necessary to carry out a complex financial work.

Regarding the direct income of the “*subsídio literário*”, its collection was estimated at 120,61\$828. The tax increase was contemplated in the report of the responsible for the Ministry of Finance, so the law determined an increase of 600 *reis* for each barrel of six hundred and fifty litres, irrespective of the type of wine, in the taxes charged at the Sete Casas customs, an estimated income of 200,000\$000, which raised the total income by 320,616\$828. If we take into account the budget proposal for the primary and secondary State Education heading, the estimated value was 209,871\$254, 55,183\$334 less than in the previous year. However, the estimate on 31 July 1840 calculated the charges to be around 266,048\$561, much higher than presented. It is also interesting and relevant to observe the following maps: State funds on 30 June 1839, the table of taxes levied in 1837-1838 and in 1838-1839 in all administrative districts and, finally, the demonstration by districts, so that we can better understand the request of the deputy.

In the first document, we recorded the amounts calculated to be collected on the mainland -193,743\$783- and in the district of Funchal - 10.45\$462- relative to the *subsídio literário*, in the second document we broke it down into three columns: the regularization of collection in its entirety in the economic years 1837-1838 and 1838-1839, the amounts missing in relation to direct taxes, which include the income from the aforementioned tax and the total amount of the missing collections - own income, direct and indirect taxes, various income and related to litigation -, referring only to the three regions indicated in the request of deputy Dias e Sousa. Despite recognizing the political effort undertaken by the State, the total amounts to be collected on 30 June 1839 were still very significant.

Table 1 - Treasury Accounting Table on the collection of the *subsídio literário* tax

Districts	Tax Office		
	Total amounts collected in the economic years 1837-38 and 1838-39	Direct taxes	Total amounts to be collected
Leiria	85,414\$318	24,071\$081	54,318\$216
Lisbon	404,233\$435	851,997\$928	567,748\$926
Santarém	95,293\$213	102,139\$815	55,518\$411

Source: Ministério das Finanças, Secretaria Geral - *Repositório, Orçamentos de Estado 1839*

With regard to the *subsídio literário*, we can confirm from the same table that the regularization of the payment of the tax in the financial year 1837-1838 amounted to 56,492\$973 and in the following year to 53,215\$178. Can we consider the economic recovery undertaken by the Government particularly auspicious for education? For the State, yes. We have no doubts. For the education sector, namely for the teaching staff, we do not see it. The immediate interpretation allows us to understand the persevering political strategy of the executive, in the sense of trying to balance the income and expenses of the State, seeking to alleviate the economic and financial weaknesses.



However, we cannot fail to confirm the profound economic and social difficulties of teachers, exemplarily portrayed in the petitions sent to the *Cortes*.

Despite the detailed data in the documents referring to the Ministry of the Kingdom, the absence of an indication of the number of teachers assigned to each administrative region and their respective remuneration did not allow us to draw up a map of the school network. Therefore, we believe that it is convenient to go back and advance an economic year so that it is possible to build the map of the school network. We found that the teaching staff appointed in 1838 was precisely the same as in 1840 with regard to the level of elementary education in the districts of Leiria, Lisbon and Santarém. In the case of secondary education, we registered a decrease in the Lisbon region, with the other two regions maintaining the same number of employments.

Table 2 - School network map for the districts of Leiria, Lisbon and Santarém in the years 1838 and 1840

District	Primary Education		Secondary Education	
	1838	1840	1838	1840
<b>Leiria</b>	38 Teachers 1 Female Senior Teacher 1 Teacher of monitorial system + 1 Assistant	38 Teachers 1 Female Senior Teacher 1 Teacher of monitorial system + 1 Assistant	5 Latin Teachers 1 Rhetoric Teacher 1 Logic Teacher	5 Latin Teachers 1 Rhetoric Teacher 1 Logic Teacher
<b>Lisbon</b>	117 Teachers 18 Female Senior Teacher 1 Teacher of monitorial system + 1 Assistant (Lisbon) 1 Teacher monitorial system (Belém – Casa Pia)	117 Teachers 18 Female Senior Teacher 1 Teacher of monitorial system + 1 Assistant (Lisbon) 1 Teacher of monitorial system (Belém–Casa Pia)	1 Arabian language Teacher 3 Philosophy Teachers 6 Latin Teachers 3 Greek language Teachers 2 Rhetoric Teachers 3 Substitute teachers	1 Arabian language Teacher 1 Natural History Teacher 6 Latin Teachers 3 Greek language Teachers 2 Rhetoric Teachers 1 Substitute teacher
<b>Santarém</b>	44 Teachers 1 Female Senior Teacher 1 Teacher of monitorial system + 1 Assistant	44 Teachers 1 Female Senior Teacher 1 Teacher of monitorial system + 1 Assistant	7 Latin Teachers 1 Rhetoric Teacher 1 Logic Teacher	7 Latin Teachers 1 Rhetoric Teacher 1 Logic Teacher

Fonte: Ministério das Finanças, Secretaria Geral - *Repositório, Orçamentos de Estado de 1838 e 1840*

The school network map indicates that the data for 1839 should not differ much from those presented for 1838 and 1840.

We believe it is equally important to analyze the state budget for the economic year 1840-1841, seeking to find more evidence to prove improvements in the administration of public accounts and in school management. The direct income from the collection of the *subsídio literário* for the referred economic year was estimated at 114,809\$000, coming from the Sete Casas customs office, reflecting a decrease compared to the



previous year of around 56\$000. The collection by district presented the following amounts: Leiria – 4,640\$000; Lisbon - 16,787\$000 and Santarém - 10,330\$000.

The state budget for primary and secondary education was estimated at 209,871\$254, 1,413\$346 less than in the previous year. If we take into account the total value of the tax rate (114,809\$000) and the budget proposal for elementary and complementary education (209,871\$254), we clearly realize the insufficiency of financial means to cover all expenses with education<sup>9</sup>. If we consider the tax rate income and the budget proposal for the economic year 1840-1841, we understand the challenge the government faced.

Table 3 - Record of the *subsídio literário* tax income by *Alfândega das Sete Casas* (customs) and budget for primary and secondary state education

District	<i>Subsídio Literário</i> Tax	Budget
Leiria	4,640\$000	5,456\$666
Lisbon	16,787\$000	22,400\$000
Santarém	10,330\$000	6,456\$666

Fonte: Ministério das Finanças, Secretaria Geral - *Repositório, Orçamentos de Estado de 1840*

The amounts shown in the districts of Leiria and Lisbon revealed obvious difficulties with regard to the financial support of the teaching staff. Even though we have to take into account that the detailed information on the number of professors by subject did not always correspond to their effective placement, there were repeated petitions demanding the appointment of teachers. It is also interesting to point out that the acquisition of teaching materials and the renovation of school spaces was not included in the budget, thus creating an imprecise interpretation of educational expenses. However, we cannot fail to underline the efforts of the public authorities – Chamber of Representatives and Government – to encourage the training of children and young people, even though the picture of the school network does not show such action regarding the districts of Leiria and Lisbon. The main reason preventing a more robust action was the demand for budgetary control, which manifested itself significantly in the reduction in the hiring of teachers throughout the 1840s.

In 1849, two requests entered the Assembly at the hands of the representative of Extremadura Francisco António da Fonseca. The first required the creation of a primary school under the administration of the parish council of the parish of Carvalhal - Cadaval municipality - and the request was sent to the education committee. The second petition signed by the land owners of the same municipality requested improvements in wine-growing production. Their request was sent to the special wine committee. The joint submission of requests is not indicative of combined political action, given the interpretation they give rise to. We believe that it was an opportune coincidence, like many others that we found in the reading of the parliamentary minutes. However, we

<sup>9</sup> We found it interesting to point out the intervention of deputy João Baptista da Silva Leitão de Almeida Garrett in the session of 9 July 1841 during the discussion of the project, presented by the government for the launch of the tenth. The deputy drew attention to the proposals to increase the *subsídio literário* tax, which aimed to bridge the financial differences in education, thus providing its necessary development, refusing to accept them, denouncing the initiatives that promoted the tax increase.





cannot fail to register its relevance and convenience here. The request from the Cadaval municipality was joined by others from the same western region (Aldeia Galega, Merceana, Alenquer, Lourinhã, Óbidos, and Alcoentre) and from the municipality of Leiria, the area of the Setúbal Peninsula and Alentejo, claiming control and protection in the commercial lists and production awards. Obviously, the demands of the main national wine production region, the Alto Douro, were reflected in other matters of an economic and social nature, also centred on agricultural production and the financial burden. However, when considering these claims, we underline the intention of the municipality of Leiria to request the approval of specialized measures in agriculture and the “total abolition” or reduction of its contribution for the *subsídio literário* tax (DP-MCCDN, session no. 77, 11/04/1849: 87). Complying and the request demand for financial commitments proved to be increasingly burdensome, successively contributing to economic weakness. The political resistance, the attachment to the characteristics of the society of the Ancien Régime were still very striking, even though we recognize the political will to promote the reform(s).

The education committee's opinion regarding Francisco António da Fonseca's request did not take long. The answer was in agreement with the reasoning of the parish's residents, claiming the payment of the tax in 400\$000 in proportion to the parish having “more than three hundred dwellings”. Given the argument that based the request on exemplary fiscal compliance, the prompt deliberation of the committee was approved without parliamentary discussion and sent to the executive. These procedures would have been very time consuming, considering the new representation of the Parish Council presented by Deputy Paulo Romeiro da Fonseca on 16 March 1857, underlining in his intervention the “gross collections” carried out by the citizens taking into account the characteristics of wineries in the region, suggesting thus “the duty of restitution” (DP-MCCDN, session no. 57, 16/03/1857: 140) to support the development of primary education in the municipality.

In 1849, the public education committee had no doubts in approving the fair request of the residents of the parish of Carvalhal regarding the foundation of a primary school. The following year, deputy Agostinho Albano presented an interpellation to the Minister of Finance on the evolution of the tax in recent years in view of the increase in wine production and the respective listings, auctioning and inspection of collection, revealing disproportionalities in production and price inventory, identifying irregularities in the collection of the tax, to the detriment of the public purse. António José de Ávila's ministerial response was brief and succinct, pointing decisively to the extinction of the tax, even though he did not present any proposal in this regard.

The law proposal was made by the deputy for Viseu José Isidoro Guedes, naming the bill as “savior of our wine industry” (DP-MCCDN, session no. 88, 7/05/1850: 62). The proposal regulated the production activity and respective export, proposing the abolition of the *subsídio literário* tax, allowing the termination of contracts and the collection of calculated income, expressing political will and social ambition to change the tax system.

The political challenge to the maintenance of the *subsídio literário* tax was increasing. Inconsistencies in the definition of collection and irregularities in the administration of income were the main points of objection. However, we cannot fail to point out the political uncertainties that the elimination of the tax provoked in the parliamentary





debate and in the reappraisal of the different items of public accounts. In the same way, we cannot fail to emphasize the continued importance of the fiscal contribution in the promotion of elementary education.

### **The *subsídio literário* during the “Regeneration” movement. Continuity or Break**

The requests analysed in the sessions of the *Cortes* from 1851 onwards did not show arbitrariness and excesses in the administration of income from the *subsídio literário* destined to elementary education. No request saw the tax as the main reason for the delay in the payment of primary education teachers.

The economic and financial issue continued to be the main reason that mobilized teachers from different levels of education. The arguments that supported the claims were the same: the payment of salaries, providing for the family, and respect for the dignity of the teaching career. Other requirements followed: the founding of schools for primary and secondary education, the promotion of female education, which we underline in view of the greater attention paid to it, the restoration of additional subjects, support and encouragement of elementary learning for workers, popularizing evening education and training for adults. Other claims were also analysed in the *Cortes*, exposing other needs and presenting other assessments and perspectives on state education. We highlight the regular request for institutional reports from the political administration bodies on the education system, on the supervision of pedagogical practices, on the assessment of learning methodologies, namely on the sudden method, or Portuguese, on the encouragement and support for scientific production of academic works and teaching materials, and also on the organization of administrative procedures in school management. These requests were not only made by civil society but also the representatives of the Nation. In fact, after these first years of experience and liberal affirmation, the 1850s defended and confirmed the political principles that shaped the liberal movement.

Pursuing the ideological assertion and preserving the principles of political freedom, the representatives of the Nation continued solicitously to meet all the requests that entered the Assembly, and promptly responded to all of them. The parliamentary diligence of previous decades was maintained. Just as the political decision, the ultimate decision remained in the hands of the government, which sought to decide quickly although the execution was often slow.

The financial difficulties that the country continued to go through in the second half of the 19<sup>th</sup> century demanded the greatest discipline in carrying out expenses. Thus, the option of continuing political activity is not surprising, despite the approval of some reforms. We underline the consequences of the administrative-territorial changes that prolonged the controversial debate, highlighting the socio-economic divisions that manifested themselves in the *Cortes*. We also highlight the continuity of the tax system, ensuring, in a certain way, stability to the government's actions. However, we cannot fail to emphasize the stimulating parliamentary debate on its modernization, which made the discussion, especially from the second half of the 19<sup>th</sup> century want change and, simultaneously, raising doubts and questions that characterized the political scenario.



Difficulties in collecting taxes, the possibility of increasing contributions, which were hardly well received, or the extinction of taxes forced changes in institutional and administrative procedures, leading to State reform. And such renewal imposed on the main actors the decision to *modernize*, to *update* political institutions at *costs* for the State (Freire, Lains, Miranda, 2011: 347).

The demanded fiscal modernization quickly placed, in 1821, the Cortes Gerais e Extraordinárias da Nação, under analysis the critical application of the income of the *subsídio literário* tax. Regulated to provide education for children and young people, ensuring the creation of the "necessary means for the perpetual conservation" (LR, 1772: 642) of teachers, it determined the administrative procedures for collection and defined the jurisdictional bodies, also remunerated by the royal decision.

In the first years of tax administration, the income from the *subsídio literário* was actually higher, so it was possible to provide the salaries of state education teachers -first letters and elementary-, also providing allocation of funds for the regular needs of *Colégio dos Nobres* and for university education. The diversion of funds from the *subsídio literário* for purposes other than those that presided over its creation was strongly criticized in the first nineteenth-century legislative assemblies. The immediate development of elementary education was vehemently called for. These opinions were being given in an increasingly vigorous manner, demanding from governments institutional respect and strict compliance with the regulations.

The possibility of extinguishing the *subsídio literário* tax was pointed out by the finance minister António José de Ávila at the session of 16 February 1850, during the interpellation made by deputy Agostinho Albano on the non-conformity between the calculations of wine production and the actual collection of taxes expressed in the State Budget. This situation resulted in financial loss for the Treasury, given the economic benefits that the bidders achieved. Parliamentary criticism of tax revenues was no longer limited to the use of tax revenues in the development of primary and secondary education in accordance with the legal provision and took another direction: the defence of fiscal justice.

Irregularities in tax collection systematically accentuated the State's financial losses and this was explicitly evident in the global assessment of public revenues. This way, the political discourse privileged and prioritized "in the oratory of its ministers and parliamentarians, the efficiency of liquidation and collection" (Mata, 2006; 70) as a banner for combating social inequalities.

Given that our study is dedicated to the promotion and implementation of state education, we focused on the analysis of State Budgets between 1851-1861 under the headings: - revenues - direct taxes - *subsídio literário* - and expenditure on primary and secondary state education.

The analysis of the table built from the documents: income budget and expenditure calculation for state education and for the items of primary and secondary education in the different economic years, shows it was impossible to meet the needs of literacy and complementary education with the tax revenue.

The documents attest a regular increase in the burden of state education in general, even though the budgetary control measures discussed in the Cortes and demanded by



successive political actors have always been present on the political agenda. At first sight, we have witnessed an increase of about 10% -15% in state education, with the exception of the economic years of 1853-1854 and 1857-1858, when there was a percentage break of approximately the same amount. If we look at the column of funds earmarked for primary and secondary education, the oscillation, even though small, expressed an investment on the development of the education.

Table 4 - Comparative table by tax years regarding income and expenditure on state education in its totality and by levels of education

Economic Year	Revenues		Expenditure State Education	Expenditure Primary and Secondary Education
	Direct Taxes – <i>Subsídio Literário</i>			
	Mainland	Islands		
1851-1852	127:695\$560	5:393\$378	368:257\$710	198:279\$900
1852-1853	127:717\$900	6:221\$000	387:775\$710	198:169\$900
1853-1854	127:376\$434	7:777\$469	378:516\$610	203:630\$300
1854-1855	123:643\$000	3:289\$207	408:774\$090	212:922\$100
1855-1856	123:643\$382	2:086\$382	411:914\$510	215:337\$200
1856-1857	123:643\$382	2:086\$665	425:809\$145	221:361\$823
1857-1858	123:643\$000	3:832\$635	413:826\$820	237:109\$640
1858-1859	-----	3:033\$507	463:123\$790	241:181\$775
1859-1860	-----	2:017\$378	474:142\$115	250:543\$600
1860-1861	-----	609\$531	527:388\$220	258:045\$970
1861-1862	-----	370\$826	559:949\$720	270:226\$095

Source: Ministério das Finanças, Secretaria Geral - *Repositório, Orçamentos de Estado de 1851 a 1861*

We also highlight, despite the table not showing it, the financial corrections recorded over the economic years, raising the amounts initially foreseen for expenditure on state education by around 5%. It is, without a doubt, one more sign that we must pay attention to and that can explain the political action for the development of state education, regardless of the level of training.

Taking into account other elements relating to the first levels of education, we start with the funds allocated to teacher training schools, even though they may be considered residual funds. The institutionalization of teacher training schools was only implemented for males in 1862 and for females in 1866<sup>10</sup>.

<sup>10</sup> Since 1852, the documents on the estimates of expenses for the ministry of the Kingdom concerning primary state education presented financial amounts to be allocated to the pedagogical training of teachers, even though the activity was non-existent. It was only from 1857 to 1869 and in accordance with article 5 of the regulation of 20 February 1856 that the indication of funds for normal schools based in Lisbon and Santarém correspond to their effective use. From the 1870s onwards, we witnessed proposals to expand the network of teacher training (Lisbon, Porto, Coimbra, Évora and Viseu). It was during the government of António Bernardo da Costa Cabral – Ministry of the Kingdom – that the regulation of the Primary Normal School of the District of Lisbon was published (1845) establishing the pedagogical training of teachers. However, its implementation took place years later in 1862 in Marvila, with the institution dedicating itself to the didactic training of male teachers. In the case of female education, the school located in the Recolhimento do Santíssimo Sacramento, in Calvário, began its formal activity in 1866.

The studies by Joaquim Pintassilgo and Lurdes Serrazina, *A escola Normal de Lisboa e a Formação de Professores \_ arquivo, História e Memória* (2009), by Joaquim Pintassilgo and Maria João Mogarro, *Das escolas normais às escolas do magistério primário: percurso histórico das escolas de formação de professores do ensino primário* (2014) and by Nuno Martins Ferreira, *A escola normal primária de Lisboa em Benfca -1916-1930-* (2018) contribute to a better knowledge of teacher training in its early days.



However, the indication of the amounts destined to the training and qualification of the teaching career has been continuously entered since 1852 in the State budgets.

We also note the official indication by administrative districts of the number of teachers by levels of education designated for school practice, even though many subjects remained inactive. It can again be considered that these were very small amounts, but still, not to be ignored.

Finally, we point out the insignificant and sometimes non-existent allocation of funds for the acquisition of teaching materials, for the renovation of school spaces and for the provision of furniture suitable for teaching practice<sup>11</sup>. The promotion of didactic instruments appropriate to the age and level of learning, the adoption of new teaching methodologies, which combine elementary education with moral values, allowing for literacy and development of skills, as well as the adequate definition of spaces for teaching practice, including specific spaces for the practice of physical activity, were topics that aroused academic attention and political appreciation.

Although we may have many doubts about the use of the *subsídio literário* tax in the development of state primary education and additional, we recognize that the financial amounts collected during the period of the "Regeneration" were insufficient to support education at the two levels of teaching. This enables us to better understand the requests claiming its extinction.

The parliamentary debate on the bill proposed by the Government to extinguish the *subsídio literário* took place in the sessions of 21 and 23 March 1857. The preamble of the proposal presented by the Finance Committee emphasized the "unequal contributions", the "excessive" tax burden that falls "on some classes of taxpayers", then alluding to the "expensive" administrative procedures and the benefits of "contractors", thus acknowledging social injustice that endangered the principles of liberal society<sup>12</sup>. The *subsídio literário* was "replaced by the increase "in the property contribution in the amount of the average term of the product of this tax in the last ten years of collection", that is, the average amount value calculated at 115:904\$780 réis, entered directly into the property tax accounts, being distributed equitably among the administrative districts of the mainland territory. (DP-MCCDN, session No. 62, 21/03/1857: 196).

Regarding the debate, the first political intervention revealing "apprehension" was made by deputy Francisco de Azeredo Teixeira de Aguiar, Count of Samodães. The argument distinguished two positions. Based on the same principles - "injustice" and "inequality" -

<sup>11</sup> The encouragement of reading and cultural development, the popularization of education and training shape 19th century society and, in this context, the promotion of public libraries from the 1870s onwards, took on a mobilizing role that should be remembered. We highlight the studies by Maria Manuela Tavares Ribeiro, (1999) *Livros e Leituras no Século XIX*, the article by Eduardo Arriada, Gabriela Medeiros Nogueira and Mônica Maciel Vahl, (2012) *A sala de aula no século XIX: disciplina, controle, organização*, the Ph D. theses of Maria de Fátima Machado Martins Pinto, (2017) *Bibliotecas Populares em Portugal: práticas e representações esboçar de uma missão (1870-193)*, of Carlos Manique da Silva, (2013) *Escolas, Higiene e Pedagogia: Espaços desenhados para o ensino em Portugal (1860-1920)*, (2016) *Práticas Pedagógico-didáticas e a sua influência na configuração do espaço escolar. A materialidade das escolas de ensino mútuo em Portugal. À luz dos diretórios do Método (1835-1844)*.

<sup>12</sup> For an ideological perspective see the chapters of work by José Luis Cardoso *História do Pensamento Económico, Temas e Problemas* (2001) regarding Ethics and Economics: the moral dimension in economic analysis; Economics and Law: normative framework for economic action; Market and State: papers and functions of economic agents; open or closed economy? The false option between free trade and protectionism, references to the liberal period.



the deputy simultaneously defended both its suppression and its maintenance. The justifications presented for the maintenance of the tax were based on the defence of the economic interests of the large landowners, in particular winegrowers in the Douro region, doubting the equitable distribution of income by administrative districts that the government presented in the proposal<sup>13</sup>. In his view, the approval or rejection of the proposal forced the representatives of the Nation to take a position that divided them between protecting the economic interests, or supporting society, which for the Count of Samodães remained in "misery". The financial burden caused by the lack of wine production, the difficulty in controlling the deficit, the defence of the economic interests of the owners and, above all, the risk of overloading society with more taxes should be resolved by the Chamber at the time of voting. The motto for the debate was set.

This was followed by the intervention of the deputy elected by the Lousã constituency, José de Morais Pinto de Almeida. Despite the initial declaration of vote in favor of the project, his intervention followed the concerns raised by the Count of Samodães, regarding economic and social issues, underscoring the lack of executive supervision in granting moratoria to those most in debt most debtors, harming society as a whole.

António Rodrigues Sampaio, Maximiano Xavier Osório de Figueiredo, António de Serpa Pimentel, Paulo Romeiro, José Ferreira de Macedo Pinto and António Xavier Rodrigues Cordeiro expressed their support for the government, although some inconsistencies were felt in the communication, evidencing doubts, contradictions and political tensions regarding the procedures to be adopted in the collection of the tax and its respective distribution by administrative regions. Issues of an economic and financial nature clearly dominated the political debate in the first public discussion session. And about the political relevance of the tax in education development not a single word

It was in the following session that deputy Rodrigues Cordeiro called the attention of the Chamber to the moment of creation of the *subsídio literário*, alluding to its greater relevance in the "support of schools", and immediately engaged in economic analysis referring to the importance of taxes, their proportionality in the wine-growing regions and to the "diseases" that affected the vines. The assessment of the bill, in the second parliamentary session, was once again directed towards the doubts of a political, social and economic nature that the extinction of the tax necessarily raised. The controversial political positions, oscillating between approving and challenging the fiscal change at the 21 March session, were maintained in the speeches of the representatives of the Nation: José Jácome Correia, António Luís de Seabra, António de Serpa Pimentel, Roque Joaquim Fernandes Thomaz, Faustino da Gama and Paulo Romeiro.

The importance of safeguarding the interests of the Nation from the "injustice" and "inequality" that marked the analysis of the tax obligation marked all parliamentary interventions. The guarantee of fiscal equality, avoiding the increase in taxes and the

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<sup>13</sup> The note that we added to the deputy's intervention alludes to the reference that he himself made during his political intervention, justifying that the statistical statements he presented regarding the levels of wine production, the income from the activity and the difficulties of their owners do not come exclusively from the fact of being a representative of the electoral circle of the Douro but because he agrees with the "principles of justice and equity, principles that the (Finance) Committee inculcates in its opinion". This was the only reason the deputy maintained throughout his speech. (DP-MCCDN, session no. 62, 21/03/1857: 200).





disproportionate collection, both from a social point of view and depending on the administrative regions, continuously marked the political discourse.

Even so, the importance that the subsídio literário had in promoting public education, despite the initial reference made by parliamentarian Rodrigues Cordeiro, in the session of 23 March, was only mentioned again, and very briefly, by deputy Paulo Romeiro in the same meeting. Let us pay attention to the excerpt of his intervention where he refers to public education:

*The subsídio literário, as my illustrious friend and colleague from Leiria, who opened this debate today, said very well, was created to subsidize and develop state education in the country. I will not refer to the way in which its income has consistently been used in relation to the purpose for which it was instituted. But what is true is that not even to this end, as fair as it is, can justify its resurrection today. Is state education not a benefit common to all of society, shouldn't all of it contribute to pay for it? Are the doors of science closed to any class or to any individual who seeks them, or should they be? Is it not the duty of modern society not only to open them wide to everyone, but to call and attract everyone to it? The agricultural class was never more favoured than the others in this division of civilization? Why should one say to that class, who has always been looked down upon with more disfavour than any other - you only pay, for the benefit of all? - Why should they not be extended to all charges, as are the benefits that should result from them? (DP-MCCDN, session no. 63, 23/03/1857: 22).*

After the parliamentary discussion, the proposal was approved by the Chamber. As for the tables relating to the payment of the tax as a function of population proportionality (houses) in the different districts (total contribution), the vote was nominal, clearly showing the political division in the *Cortes*. (76 for, 41 against). The law was enacted on 15 April 1857.

At the session of 27 August 1861, the abolition of the tax on the islands was discussed. The political experience of 1857 was reflected in the appreciation of bill No. 103, proposing the extinction of "tithes, land tenth, fifth, subsídio literário, *finto* on Madeira Island, and *quartos* of *maquias* on the island of S. Miguel" (DP-MCCDN, session No. 142, 27/08/1861: 2434). After requests for additions to the project were presented, the detailed discussion followed and the articles were successively analyzed and approved, according to the particularities of the islands<sup>14</sup>. Therefore, and in accordance with administrative procedures, respecting the Constitutional Charter, its publication was registered on 11 September of the same year, starting to be used on 1 January 1863 in Madeira and on 30 June of the same year in the Azorean islands ensuring "the

<sup>14</sup> The first supplement was presented by deputy José Maria Sieuve de Menezes (circle of Vila Praia da Vitória). This was followed by very specific proposals from the deputies of the islands, Francisco Manuel Raposo Bicudo Correia (Ribeira Grande) António Vicente Peixoto de Mendonça e Costa (Horta) and António Gonçalves de Freitas (Ponta do Sol). The following representatives joined the debate: Joaquim Tomás Lobo de Ávila (Santarém), Francisco Manuel da Costa (Minho) and Joaquim José da Costa Simas (Bragança). The Minister of Finance António José de Ávila accompanied the debate, clarifying the doubts of the representatives of the Nation about procedural details with a view to the enforcement of the law in the different administrative regions, always ensuring the principle of fiscal equity.





organization of the respective matrices" so that the law according to the established deadlines "can be implemented" (LR, 1861: 367)

## Conclusion

This study on state education policies based on the reading of the minutes of parliamentary sessions allows us to have an image, in different perspectives, of Portuguese society, revealing its contrasts. The experience of political liberalism, initiated in 1820 and interrupted by the absolutist reaction in 1823, oscillated between processes of political *regeneration* and counter-revolutionary movements. This pendular action in political activity naturally had the same effects on the social structure, being equally reflected in matters of an economic nature.

The economic situation characterized by deputy Manuel Fernandes Tomás on 5 February 1821 revealed the great weaknesses of the country. Weaknesses that provoked political unrest, compromising the great purpose of the Nation: progress. A determining word in political communication, a mobilizing word in liberal society.

The ideological demand of liberal ideals claiming a break with the past, throughout the nineteenth century, clashed with a more conservative mentality that sought to ensure continuity in political processes. Thoughts and actions followed different paths between modernity, causing change and tradition, preserving custom and memory. These paths intertwined continuously, confirming the intended renewal, despite frequent opposition to change.

Divergent ideological views in the assessment of education and training matters should not be viewed in a derogatory manner. On the contrary, they should be taken into account, bearing in mind the will and aspiration of the Nation for progress. On the other hand, the spectrum of financial difficulties that overshadowed the State that were constantly felt in the various sectors, despite the spirit that Portuguese society was nurturing, were decisive in understanding the prudent actions taken by governments. They often chose political continuity, even though we have to recognize and extol the interventions invoking the need for reform.

Let us take into account the supreme laws of the State. The political Constitutions of the Nation promulgated in 1822, 1826 and 1838, under the auspices of liberty, enshrined the right to education. Notwithstanding the significant differences in the wording of the articles that confirmed the individual's right to school education, free elementary education paid by the State, Public Treasury, clearly revealed an important political option. The maintenance of the *subsídio literário* tax, created by Pombal, largely allowed the pursuit of the political guidelines for the development of the education system.

Despite a lot of parliamentary disputes, especially ideological and in particular during the period of the *Cortes Extraordinárias* 1821-1822, the tax was decisive for the generalized appreciation of the education system. Evidence of the diversion of income from the *subsídio literário* tax to pay the teachers of Colégio dos Nobres - also instituted by Pombal - to overcome other difficulties of the treasury by satisfying other educational institutions and degrees underlined the financial importance of the contribution, highlighting the value of income.



The individual or collective petitions, read and analysed in the Cortes, substantiated the demands for the creation of elementary schools and secondary education subjects called or compliance with the rules regarding the tax contribution. Due payment of the *subsídio literário* tax allowed civil society and municipal authorities to demand its correct use in elementary education, moral education and the learning of civic values, together with the training and acquisition of technical skills that provided development of the State and its economic growth. This education enabled the exercise and civic participation that was required, and which is still required of citizens. These are essential values in the past and in the present, for socio-cultural development, economic growth, and the progress of the Nation. These are principles that the State intended and aims to preserve, consolidating social construction in the ideas of freedom, equality and justice. These were the main ideas that supported the debate on the extinction of the *subsídio literário* tax.

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## **PATRIOTIC SOCIABILITY AND DEFENCE OF THE CONSTITUTIONAL CAUSE**

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### **Abstract**

The philosophical modernity of the Enlightenment contributed to change cultural agents and international knowledge networks. The European agents and values of eighteenth-century intellectual communication were expanded and secularized. New forms of intellectual and patriotic sociability emerged in the public sphere. In this context, sociability was marked by the establishment of philanthropic, economic and patriotic associations. This study highlights the importance of three associations created and imagined in the late 18th and early 19th centuries: the *Sociedade dos Mancebos Patriotas of Coimbra* (1780); the *Montepio Literário* (1813); and the *Sociedade Patriótica Literária de Lisboa* (1822).

### **Keywords**

Enlightenment, Sociability, Patriotic Societies, Philanthropy

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## **PATRIOTIC SOCIABILITY AND DEFENCE OF THE CONSTITUTIONAL CAUSE<sup>1</sup>**

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In the period between the second half of the 18th century and the beginning of the 19<sup>th</sup> century, significant changes occurred in Portugal's agents and mechanisms of literary, cultural, scientific and political sociability. The Enlightenment encouraged new perceptions of encyclopaedia culture and philosophy. Access to foreign publications through the clandestine circulation of books, periodicals, literary and theatre novelties, in cities such as Lisbon, Porto and Coimbra, led to the creation of a diversified set of associative institutions (Araújo, 2003). In Portugal, as in other European countries, participation and interaction characterized leisure spaces, literary gatherings and philosophical sessions attended by cultural elites and educated men and women (Chartier, 1990). Social interaction and awareness of current issues by these social groups reflected changes in knowledge appropriating and sharing in cosmopolitan cultural circles, events and meetings that were marginal to court traditional interactions and academic sessions (Araújo, 2017a).

Therefore, modern sociability was felt differently in intellectual associations with a markedly pedagogical repertoire. This was the case in the literary, scientific and military academies, economic societies like the *Sociedade Económica dos Bons Compatriotas Amigos do Bem Público* (Economic Society of Good Compatriots Friends of the Public Good) of Ponte de Lima, aimed at local economic and educational development. It was also seen in more or less anonymous meetings in cafés, bars and public areas, where the politicization of debates was evident from the beginning of the 19<sup>th</sup> century.

In large cities, besides these conversation places exposed to onlookers and to spies or agents of the General Police Department, there were also literary salons. The best known were organised by the Marquise of Alorna. There were private and public gatherings, Masonic lodges, patriotic societies, reading rooms, the Public Library of Lisbon created in 1796, and other libraries with more controlled access, but visited by interested people and scholars from various social backgrounds.

These places enabled growing forms of sociability almost always associated with mundane, philosophical and political concerns, leading to a new urban sociocultural

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<sup>1</sup> Article translated by Carolina Peralta.



morphology, especially in Lisbon. They dismantled the traditional coexistence areas of the elites, giving a more interclass nature to educational and recreational associations.

Despite the differences between the aforementioned associations and institutions - organized or informal, spontaneous or exclusive, secret or public, with or without the support of the king or a patron- in most the members aimed at progress and cultural modernization. At the heart of a renewed conviviality, shaped by secular concerns of the philosophical and scientific horizon of the second half of the 18<sup>th</sup> century in the distinct literary and academic scenes, "individuals looked for a place, more than just devoted to leisure, where they could think, debate and criticize freely. Free from the usual measures and conventions they had to follow, such as at the Court or the University, they update their interests and redefine, as actors, the public sphere they fit in" (Silva, 2020: 27).

As Maria Alexandre Lousada states, these new meeting and discussion spaces acted as authentic "social laboratories" and proved to be essential for the emergence of public political participation in the early 1800s, under the auspices of the French Revolution (Lousada, 2017: 319).

It is not possible to briefly evaluate the organization and meeting models of these associations, nor the result of their hard work. However, it is easy to see that many started with discussions in circles of friends on topics related to public improvement projects, philanthropic and educational works. The more enlightened minds considered that friendship and philanthropy converged towards improving the human race, inspiring action influenced by the ideals of the Enlightenment (Ramos, 1988: 99).

In this context, the altruistic contribution of a few for the good of all led to the emergence of the friends of the common good societies, also known as patriotic societies. Their programmes showed that civil mobilization was determined by the correlation between education, philanthropy, scientific dissemination and promotion of economic activity. In Portugal, the model was inspired by the robust Spanish *sociedades economicas de los amigos del pais*.

The expansion of economic societies began in the Basque Country with the *Vascongada* Society (1764), and had the strong support of Minister Campomanes.

In Portugal, economic societies comprising good patriots had a new understanding of scientific culture and its usefulness for the well-being of the nation. They had a renewed vision of patriotism, no longer anchored in warlike deeds, in ancestors and great honours, but in territorial belonging, social presence and active participation in the life of the community. In practical terms, it was patriotism based on the involvement of each for the good of all and for the economic development of the country (Catroga, 2013).

In 1770s and 1780s, there were several attempts to create establish patriotic societies in Minho, Elvas, Douro, Valença and Évora (Cardoso, 1989: 110; Vaz, 2002: 222). Only *Sociedade Económica dos Bons Compatriotas Amigos do Bem Público* (Economic Society of Good Compatriots Friends of the Public Good) of Ponte de Lima, founded in 1779-1780, operated regularly. It aimed to promote *Agriculture in all its branches, the Arts and Industry*. It intended to set up a library with economics works, publish books and found patriotic schools, free of charge, to teach crafts, such as weaving and bleaching linen. It aimed to acquire machinery, agricultural tools, seeds and plants, and to grant





pecuniary prizes to those who solved problems relating to the various branches of agriculture.

With an ambitious programme, the *Sociedade Económica de Ponte de Lima*, like other projects, ended up foundering due to the lack of solid social support base. Its vice-president, born in Ponte de Lima, was the enlightened minister António de Araújo de Azevedo, future Count of Barca, whose reformist goals never really took off but still influenced the creation of other similar associations. The attempt to set up the *Sociedade dos Mancebos Patriotas Estabelecida em Coimbra no ano de 1780 debaixo da Real Protecção de sua Alteza o Serenissimo Senhor Principe do Brazil* (Society of Young Patriots Established in Coimbra in 1780 under the Royal Protection of His Highness the Prince of Brazil), whose Literary Statutes we have analysed (Araújo, 2017b), deserves special mention.

Coming from academia and conceived by a group of students, this economic association sought to incorporate and take further the scientific spirit, based on the technical-experimental and rationalist matrix that presided over Pombal's reform of the University of Coimbra (1772). Guided by the certainty that education and dissemination of scientific knowledge was imperative, the young members of this association intended to establish an organization focused on the natural sciences and active in the development of regional production. They aimed to create a patriotic society to raise the awareness of the citizens of the kingdom's provinces to the social utility of technical-scientific knowledge. The Text that accompanied the Literary and Economic Statutes of the Society stated that "the young scholars, sons of the University, focused on Natural Sciences [...] will swear that in future they will offer the Homeland the efforts of their talents"<sup>2</sup>.

The society that "resulted from the votes of good citizens" recommended that "unity, simplicity in behaviour, sincerity in consultations and conferences" be practiced in its activities and public and private meetings<sup>3</sup>. Among other activities related to the collection of Natural History samples, the promotion of crops appropriate to the soils and the development of local manufactures, the partners should regularly produce scientific writings on the field work to be undertaken. They had the translation of several educational works consistent with this and other patriotic projects. A few titles from this modern and specialized library of economic and patriotic texts included the *Discourse on the Education and Promotion of Artists* (*Educação e Fomento dos Artistas*) (1774) by Camponanes, published in different Portuguese versions, explaining the educational model practiced in Spain for the promotion of economic activities. But other texts circulated in Portugal in the 1780s, as shown by the translations and articles published in the *Miscellanea Curioza e Proveitoza* between 1781 and 1785 (Nunes, 2001: 55-61); the references to the Economic Society of Bern, created in 1766, made by José António de Sá in *Compendio de Observações que formão o plano de Viagem Politica e Filosofica que se deve fazer dentro da Patria* (1783), by Vilalobos e Vasconcelos in *Elementos de Policia Geral de Hum Estado* (1786-1787); and the translation by Francisco Xavier do Rego Aranha of *Elementos de Agricultura fundados sobre os mais sólidos princípios da razão, e da experiência, para uso das pessoas do campo, que mereceram o premio da Sociedade Economica de Berne em 1774 por Mr. Bertrand*, published in Lisbon in 1788.

<sup>2</sup> ANTT, Real Mesa Censória, no. 702.

<sup>3</sup> ANTT, Real Mesa Censória, no. 702, pp. 26-27.



The s book dates back to the foundation and/or re-foundation of the *Sociedade dos Mancebos Patriotas de Coimbra*, whose life cycle was between 1780 and 1785, as per the handwritten text of its Statutes. As Manuel Henrique de Paiva, the publisher, explained in the dedication and remarks to this edition, the translation of that work, whose author was a Protestant pastor and a member of the Society of Bern, had been carried out by "bachelor FX Aranha (...) when he studied jurisprudence and natural history at the University of Coimbra: and having handed it to me to do as I pleased, I saw it as a work of great use to the Public, publishing it with some notes that clarified the topic" (Araújo, 2017b: 114-115).

Despite its institutional and educational nature, the *Sociedade dos Mancebos Patriotas Estabelecida em Coimbra* Coimbra did not come off the ground, as the students involved ended up being tried in 1781 following accusations of errant and wanton conduct. They were Manuel Henriques de Paiva, Vicente Seabra da Silva Teles, Francisco José de Almeida, Francisco de Melo Franco, António de Moraes Silva, and Pereira Caldas, among other students (Ramos, 2001: 311-326).

Also linked to public education, but with an eminently philanthropic purpose, another association emerged in 1813. It was the *Monte Pio privativo dos professores e mestres da Corte*, which only started to function regularly from 1816 onwards (Araújo, 2021). *Montepio* was formed by a group of royal professors with the purpose of remedying the progressive impoverishment of the class and responding to the difficulties experienced during the French invasions (1807-1811) and the post-war period. The association was based on a philanthropic and mutualist programme aimed at a wide range of members and families of teachers and educated men.

The founders of *Montepio* sought to ensure, voluntarily and freely, decent survival conditions in old age for a considerable group of individuals who stood higher than the rest of population by mastering written culture, but whose material resources were manifestly low. The initiative to set up this patriotic and mutualist association thus replicated the original meaning of other mutualist and charitable associations in Europe, as evidenced by the association's statutes.

The *Montepio Literário* project was conceived by Joaquim Lemos Seixas Castel-Branco, royal primary education teacher in Lisbon, knight of the order of Christ and owner of *Colégio dos Cardaes de Jesus*, which he founded in 1815.

Joaquim de Seixas Castel-Branco was an enlightened man. He had a subscription of *Annaes das Sciencias, das Artes e das Letras*, an exile newspaper published in Paris by Solano Constâncio, and based his pedagogical activity on the humanitarian and philanthropic ideals of the Enlightenment. He was also a supporter of British liberal constitutionalism. Before launching, with other supporters, the *Montepio Literário* project, in 1809 he published a pamphlet entitled (*Breve mas circunstanciada noticia do governo e constituição da Grã-Bretanha, com huma noticia geral de todas as revoluções que tem acontecido aos reis e á nação*/Brief but detailed news of the government and constitution of Great Britain, with general information of all the revolutions that have happened to kings and the nation). To our knowledge, this is the first writing containing explicit support of the English constitutional model published in Portugal. Therefore, this ideological reference was not indifferent to the mutualist sociability paradigm of Joaquim Lemos Seixas Castel-Branco, which, as a result of his intellectual preparation, ended up



being publicly supported in the context of the Napoleonic wars and the international crisis of the early 19<sup>th</sup> century.

Regarding the *Montepio*'s statutes, the approval of this association was initially signed by just over 130 teachers and educated men. *Montepio* membership applicants were asked to confirm their profession, address and age. If they were not teachers, they had to present a certificate of *vitae et moribus* issued by the parish priest. All members had to be virtuous and hardworking individuals, discreet and respectful of the commitment read in the registration act and on which they had taken an oath upon admission. Once registered, they had the status of *compromissários*. They made an initial financial payment and paid a monthly fee to *Montepio*, in order to secure a subsidy, in case of illness and job loss in old age, or an amount due upon death for their widows and orphans. Upon registration, members had to indicate the names of direct family members who statutorily could benefit from the association's coffer.

*Montepio* brought together numerous educated minds. Some of its members were freemasons, such as António Maria do Couto (Marques, 1990: 342) and, most likely, some associates maintained contacts with the group of conspirators that met in Rua do Salitre, on the eve of the Gomes Freire de Andrade's conspiracy.

Due to its mutualist, social and cultural purposes, this association foreshadowed the emergence of a secularized pattern of sociability and new philanthropic concerns in society. Freely, voluntarily and through a system of contributions, it offered its members several types of mutual assistance, including a retirement pension granted to members and their widows through the creation of a financial fund.

Other important aspects to mention include: *Montepio* branched out throughout the country. It had its headquarters in Lisbon and delegations in the provinces. It was a secularized association formed by free and philanthropic men, with a philosophy different from the charity model of the religious brotherhoods. Its statutes forbade the associates to wear, in their annual celebration, religious attire, cape or insignia of another brotherhoods. The statutes also considered the "construction of a college of education" for orphans of the members and to be a shelter for their widows and unmarried daughters, which was never created (Couto 1816: 27). With the aim of doing good and educating the members, the Literary Office was later created in 1821. It was adjacent to the premises of the mutualist establishment in the same common space in Rua dos Douradores, 31.

In the first five years of *Montepio*'s operation, the number of members increased continuously. By 1821, in Lisbon alone, around a thousand individuals had applied for membership (Couto 1821: 11). Despite its mobilization power and social appeal, the mutualist association went through financial difficulties. Soon after the start of the Provisional Board of the Supreme Government of the Kingdom in the capital, one of its first public acts was to appoint Manuel Fernandes Tomás *Montepio Literário* "honorary member"<sup>4</sup>. The recognition of one of the most influential political figures of the liberal movement denotes the support of the mutualist association for the new regime.

<sup>4</sup> ANTT, Ministério do Reino, bundle 360, docs. 6 and 8. The document, sealed and dated 1 October 1820, is signed by the deputy magistrate Joaquim José Ferreira de Carvalho, Treasurer José António Monteiro and secretary Caetano Pedro da Silva. The letter justifying this gracious concession is also signed by the general prosecutor António Maria do Couto.



New rules were made during the liberal triennium to be followed in the institution, which was renamed "*Monte Pio Nacional*"<sup>5</sup>. These norms entailed continuities and changes, the most relevant being the one that gave women access to *Montepio*, with the status of benefactors<sup>6</sup>.

Although the recommendations of the *Montepio Literário* administrative Committee<sup>7</sup>, created by the liberal executive, were not followed, the philanthropic and humanitarian concerns of the political class widened the debate, giving it an interclass character and calling the participation of women in the mutualist association to the fore.

In the context of the 1820 revolution, patriotic and political sociability spread. Many of these active areas of convergence of citizens committed to regime change originated in Masonic and Para-Masonic institutions in the areas of culture, charity, journalistic activity and parliamentary politics (Gil Novales, 1975). According to A. H de Oliveira Marques, the "majority of patriotic societies created in Portugal in 1820-23 (about 18) and then, in 1834-42, "had Masonic origins". He does not equate them with lodges but considers them Para-Masonic organizations (Marques, 1997: 267).

The most important patriotic society of this period was officially founded in Lisbon (2-1-1822) and had 269 members. It was the *Sociedade Literária Patriótica* (Patriotic Literary Society), which had its origin linked to the *Gabinete de Leitura e Composição*, *Gabinete Literário*, *fundado por uma Associação de Patriotas Portugueses* (Reading and Writing Office, Literary Office, founded by an Association of Portuguese Patriots) to gather and undertake all efforts in favour of *Liberdade pela mais perfeita Constituição*<sup>8</sup> (Freedom for the most perfect Constitution).

José Portelli, who was directly involved in the creation and functioning of *Montepio Literário*, was one of the founders of *Sociedade Literária Patriótica*, and of *Gabinete de Leitura e Composição*<sup>9</sup>. Accordingly, we believe that both institutions were the product of the same idea, as stated by Adrien Balbi in the *Essai Statistique Sur Le Royaume De Portugal Et D'Algarve*. This text associates the "members qui formaient le cabinet littéraire de Lisbonne, établi en 1821", with the "Académie littéraire, sous le titre de Sociedade Literária Patriótica de Lisboa" (Balbi, 1822: 1-19).

Benefiting from the freedom to meet and communicate that the new regime had enabled, the *Gabinete de Leitura e Composição* initially had an activity plan with a clear liberal political orientation, more inspired by the model of patriotic societies than by the traditional *cabinets de lecture* (in France ) or the circulating libraries (in the UK). The Gabinete's founders wanted their project to support an orderly and enlightened civic education process, whose main intention would be *firmar a Liberdade pela mais perfeita Constituição* (establish Freedom according to the most perfect Constitution).

<sup>5</sup> ANTT, Ministério do Reino, bundle 360, doc. 9, pp. 63- 68v – Coleção de Regras para o regimen do Monte Pio Nacional.

<sup>6</sup> ANTT, Ministério do Reino, bundle 360, doc. 9, pp. 64v-65 – Coleção de Regras para o regimen do Monte Pio Nacional.

<sup>7</sup> Little is known about the uncertain evolution of *Montepio*. It will have survived with increased difficulties until it became extinct due to a total lack of credit before the end of the second decade of the 19th century.

<sup>8</sup> *O Portuguez Constitucional*, no. 37, 4 November 1820.

<sup>9</sup> As attested in *Gazeta Universal* no. 30, 7 February 1822, p. 2, which reads: "M. R. P. Portelli, Father and founder of the Soc., whose idea he authored, and for the foundations of which he laid a cornerstone in his Literary Office".



To this end, they found it necessary to ensure, first, the observance of conditions indispensable to the support and consolidation of *Sociedade Literária Patriótica* that was created out of the *Gabinete de Leitura e Composição*. Thus, they guaranteed, through member subscription, the financial viability of the patriotic society and made all efforts to define an ideological education programme for civil society. Among the society's working requirements, the international character given to the activities of the members stood out. They should maintain regular contact with foreigners by reading Spanish, Italian, English and French newspapers and periodicals, and foster a close relationship with liberal agents in those countries. Thus, the *Sociedade Literária Patriótica* actively participated in what Maurizio Izabella called the Liberal International of southern Europe at the time of the Restoration.

The *Sociedade Literária Patriótica* had a literary office with reading rooms, planned to publish original works and translated works and published a newspaper. This was an ambition common to other similar organizations, namely the *Sociedade Patriótica Constitucional* and the *Gabinete de Minerva*. However, it did not manage to materialize that goal.

The newspaper of the *Sociedade Literária Patriótica* was generalist. It contained a series of articles on politics, art, industry, commerce, economics, science, history, and literature. It frequently disclosed the subjects discussed at *Sociedade Literária* meetings, which took place weekly. It reported and commented on the most recent international political events (with emphasis on the advances of the *Santa Aliança* and the independence claims of the Brazilian parliament members) and published laws, decrees, ordinances, as well as extracts from the sessions of the *Cortes*.

Five members were responsible for writing the newspaper. They included Almeida Garrett and Nuno Álvares Pereira Pato Moniz, who were responsible for the newspaper's editorial office (Balbi, 1822: 2-138), although no article published in *Sociedade Literária* newspaper had the author's name.

The newspaper was biweekly and its writers intended to publish supplements about the Constitution and Freedom. We find articles on these themes, such as the famous text entitled: *Dos amigos e inimigos da patria e da Constituição* (On friends and enemies of the country and the Constitution) written to strengthen support for the constitutional cause and to reproach all those who tarnished the *leys fundamentaes ou Constituição do estado* (fundamental laws or the Constitution of the state)<sup>10</sup>.

As emphasized by Maria Carlos Radich and Diana Silva, the analysis of its members shows its undeniable bourgeois nature (Radich 1982: 2-125; Silva, 2020: 102-103). In total, about 40% of the members were directly linked to trade and productive activities. Furthermore, 33% of the members of *Sociedade Literária Patriótica* were Freemasons (Marques, 1997: 270).

The sociological and cultural characteristics of the association were in line with the transformation of practices and spaces of sociability that took place in Portuguese society in the transition from the 18th to the 19th century. The civic patriotism of these emerging organizations was correlated with the rise of certain social groups. They stood out for their education or for being rich and sought to gain prestige and political influence in the

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<sup>10</sup> *Jornal da Sociedade Literária Patriótica*, vol. 1, pp. 234 and following.





space of intellectual interaction and leisure. In this context, one can see the impact that patriotic societies had on the bourgeoisie, mobilizing it to support liberalism and to develop the civic and political spirit indispensable to the preservation of the constitutional regime. To a large extent, the public credit of the *Sociedade Literária Patriótica* also involved the discussion, clarification and communication of everything that was discussed in the 1820 Cortes.

Finally, it is also interesting to note that it was precisely under the guidance of one of the Society's members, João Damásio Roussado Gorjão, with the likely collaboration of other colleagues, that the famous work of electoral propaganda, *Galeria dos deputados das Cortes Geraes Extraordinarias e Constituintes da Nação Portuguesa*, was written, referring to the first period of liberalism and published for public information, on the eve of the elections for the second legislature of the Cortes.

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## CONSTRUCTION AND DECONSTRUCTION OF THE LIBERAL INTERNATIONAL ORDER

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### Abstract

What does "liberal order" mean? And should we distinguish between "world order" and "international order"? On what basis did the liberal order emerge and what factors contribute to its erosion? This article seeks to answer these questions in a text divided into four parts. In the first, we explain the meaning of "order" in international relations, the difference between "international" and "world" order and our notion of "liberal international order". In the second, we justify the paradox of considering that the liberal order was built on what many call the "Westphalian system", although we reject this designation and typification and the initial attempt to build a liberal world order after World War I World, as well as its rapid deconstruction. In the third part, we demonstrate the building and consolidation of a liberal order after World War II, within the framework of a broader world order in the context of the Cold War. And in the fourth, we show that this liberal order has been a "world" one since the end of the Cold War, and that this process occurred amidst paradoxes and ambivalences that contribute to its deconstruction.

### Keywords

International Order, World Order, Liberalism, International Relations, History

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## CONSTRUCTION AND DECONSTRUCTION OF THE LIBERAL INTERNATIONAL ORDER<sup>1</sup>

LUIS TOMÉ

### Introduction

Some of the most emblematic and intense debates in International Relations focus on the characterization of the international order. Interestingly, the many distinct and contrasting views converge in the perception of the erosion of the “liberal order”, both among its advocates and among its opponents, ranging from «*The End of the American World Order*» (Acharya, 2014) to «*A New World Order Made in China*» (Gazibo and Chantal, 2011), «*World Order 2.0*» (Haass, 2017), «*A Post-Western World*» (Flockhart et al., 2014), «*The rise of the Rest*» (Beeson, 2020: 17-27) or «*The Return of Anarchy*» (Gaspar, 2019).

Whereas for some the liberal order «*that never existed*» has come to an end (Barnet, 2019; Ferguson and Zakaria, 2017), for others «*the liberal order is vitiated*» (Colgan and Keohane, 2017), and others question «*Why Liberal Internationalism Failed*» (Mead, 2021) or if «*Has China Won?*» (Mahbubani, 2020). Some believe that the liberal order is a kind of constitutional regime of international society and that, therefore, its continuity does not depend on the strategic oscillations of the great powers, including the United States (Ikenberry and Nexon, 2019). Others consider that the liberal order can only exist in a unipolar system «*where the leading State is a liberal democracy*» (Mearsheimer, 2019: 7), and that «*Trump may be the unwitting catalyst for a more equitable era... energize a multipolar world*» (Deo and Phatak, 2016). Some consider the US a benign hegemon (Monteiro 2014, Ikenberry and Nexon, 2019, Mearsheimer, 2018), while others condemn the US “hegemonism” and hope that «*A period of collapse opens up possibilities for the creation of a new world order; hopefully, a fairer, more stable, and peaceful order than has been previously experienced.*» (Karaganov and Suslov, 2019: 72). Some talk about the emergence of a “second” Cold War or even that the US and China may be «*destined for war*» (Allison, 2017), others believe that «*There Will Not Be a New Cold War*» (Christensen, 2021, Nexon, 2021) or propose a new agreement of powers that «*Prevents Catastrophe and Promotes Stability in a Multipolar World*» (Hass and Kupchan, 2021). And while for some the liberal international order «*was destined to fail from the start, as it contained the seeds of its own destruction*», and it will inevitably be replaced by a «*realistic order*» (Mearsheimer, 2019: 7-9), others maintain that it is possible to

<sup>1</sup> Article translated by Carolina Peralta.



save the liberal order through a «*new normative consensus*» (Kupchan, 2014 and Hass, 2021) or by reforming it (Colgan and Keohane, 2017 and Kundnani, 2017).

In addition to these debates, there are conceptual confusions promoted by political leaders. For example, French President Emmanuel Macron, in a speech at the UN General Assembly, spoke of a profound crisis in the «*ordre international libéral westphalien*», transcribed as «*Westphalian liberal world order*» in the official English version (Macron, 2018)<sup>2</sup>. In other words, Macron not only refers to a "Westphalian liberal order" (thus taking as one what for many are two distinct and opposite orders, the Westphalian and the liberal) but also uses indistinctly "international" and "world" order just with variation in the language he uses.

But what does "liberal order" mean? And should we distinguish "world order" and "international order" or do they mean the same? On the other hand, on what basis did the liberal order emerge and what factors contribute to its erosion and crisis? This article seeks to answer these questions, exploring the construction of the liberal international order and the various reasons that explain its deconstruction, also examining its constituent elements and the dilemmas and contradictions that are inherent to it.

In line with our other works, we have adopted an "eclectic approach"<sup>3</sup> and "complexity theories"<sup>4</sup>. Based on a descriptive-analytical model, and supported by specialized literature and official documents and speeches, we present our arguments in a text divided into four parts. In the first, we explain the meaning of "order" in international relations, the difference between "international" and "world" order and our view of "liberal international order". In the second, we justify the paradox of considering that the liberal order was built on what many call the "Westphalian system" although we reject this designation and typification and, on the other hand, the initial attempt to build a liberal world order after World War I, as well as its rapid deconstruction. In the third part, we demonstrate the building and consolidation of a liberal order after World War II, within the framework of a broader world order in the context of the Cold War. And in the fourth, we show that this liberal order has become "worldwide" since the end of the Cold War, but that this process occurred amidst paradoxes and ambivalences that contribute to its deconstruction.

<sup>2</sup> The complete sentence of E. Macron is as follows, in both languages: «*Nous vivons aujourd'hui une crise profonde de l'ordre international libéral westphalien que nous avons connu*» / «*We are currently experiencing a deep crisis of the Westphalian liberal world order that we have known*».

<sup>3</sup> The eclectic approach assumes that none of the conventional IR research/paradigms/theories traditions, in isolation and by itself, can encompass and explain the entire international reality that, by nature, is complex, dynamic, unpredictable, adaptive and co-evolutionary. Thus, limiting the risk of *a priori* alienating aspects that may be crucial, with pragmatism and prudence, the eclectic approach goes beyond the "natural expectations" of these theories, combines different explanatory hypotheses and takes advantage of the potential of complementarities. This aspect is even more relevant due to the opposing views and proposals that often liberal, realist, constructivist, systemic, functionalist, structuralist, critical and other theories confront themselves regarding the international order. For a more detailed explanation of our "eclectic approach" see Tomé 2016.

<sup>4</sup> From the theories of complexity, we have taken, above all, the assumption of "non-linearity", that the result of behaviours and interactions is "naturally unpredictable" and the notion of "complex adaptive systems", emphasizing the ideas of complexity, co-adaptation and co-evolution of actors and the system. Our most developed explanation of the relevance and usefulness of complexity theories and the notion of "complex adaptive systems" in the analysis of International Relations is found in Tomé and Açikalin 2019. For a broader explanation of chaos and complexity theories and their use in several scientific areas, namely in the social and human sciences, see, for example, Erçetin and Açikalin 2020.



## 1. Order in international relations and liberal international order

To speak of "order" in international relations may seem contradictory, given the relatively "anarchic" nature of the international system rooted in the sovereignty of States. This apparent contradiction explains why many theorists avoid using the term. For example, Raymond Aron refers only to "peace", which is obviously not the same thing: for him, international relations have only two forms, war and peace, understanding the latter as *«suspension, more or less lasting, of violent forms of rivalry between political units», unveiling "three types of peace: balance, hegemony and empire»* (Aron, 1984: 158). Hedley Bull, on the other hand, prefers to speak of an "international society", conceived as a *«society of States [...] when a group of States, aware of certain common interests and values, form a society insofar as they conceive for themselves limits in their mutual relations by a common set of rules and participate in the activity of common institutions»* (Bull, 1977: 13). Due to their exclusively State-centric character, these views of realist theorists are contested by liberal, constructivist, functionalist, structuralist, critical and other theories. And, for example, in a radically different perspective, there are those that outweigh the role and impact of non-State actors, capable not only of influencing the decisions of States, but also the international system and even promoting a *«global civil society»* (Keck and Sikkink, 1998).

The fact is that among realists, too, there are many who assume the concept of "order" in IR, such as John J. Mearsheimer (2019: 9), who defines it simply as *«an organized group of international institutions that help to govern the interactions between member States»*. In the same vein, Bart MJ Szewczyk (2019: 34) conceives "order" as *«a set of rules and norms to govern State and non-State behaviour, through international law based on the United Nations Charter, multilateral treaties and political norms resulting from State practice»*. However, while Szewczyk believes that the order's primary objective is *«to minimize violence and provide stability. The opposite of it was "disorder", characterized by war, conflict and uncertainty»* (ibid.), Mearsheimer (2019: 9, note 3) considers that order *«is not the opposite of disorder, a term that refers to chaos and conflict»*.

Another issue concerns the use, often indistinctly, of the terminologies "international order" and "world order" – in addition to the "global order" that some refer to (Hurrell, 2007; Lo, 2020). Its use and distinction is rarely explained by the authors (Bertrand, 2004), but it is relevant to us here. Hedley Bull makes this difference, considering that *«The world order is vaster»* and *«of which the interState system is only a part»* (Bull, 1977: 21). He adds that *«The world order is more fundamental and primordial than the international order because the final units of society for all humanity are not States (or nations, tribes, empires, classes or parties), but individual human beings [...]. The world order is morally superior to the international order»*, since its values are those of all humanity, and not just those that prevail in the society of States (ibid.). Along the same lines, although with different assumptions, James N. Rosenau, one of the main representatives of the liberal IR school, developed the "bifurcation" model between two worlds in what he called the era of "post-international politics": fundamentally, "international" characterizes the order in the *«State-centric world»* among States *«limited by sovereignty»*, using "post-international", "world" or "global" to describe the



order in the «*multicentric world*» of non-State actors «*free of sovereignty*» (Rosenau, 1990 and 1997).

In our opinion, distinguishing between “international” and “world” order, assuming that the first refers to an order between sovereign States and the second to one that also involves non-State actors, does not make sense. The difference is conceptually pertinent and very useful, but on other grounds. We believe that “international order” characterizes the prominent pattern of ideas, values, interests, rules, institutions, behaviours and interactions between State and non-State actors, which can exist both on a regional and global scale, and include only one part of the actors or most of them. When the international order encompasses the world-space and the main actors, it becomes a “world order”. In other words, the world order can include several and distinct international orders, but an international order is only world or global if and when extended to a planetary scale. The distinction is important because one of our arguments, as we shall see later, is that the liberal international order did not become worldwide until the end of the Cold War.

On the other hand, order is not synonymous with peace or stability or absence of competition, just as it is not simply the opposite of disorder (chaos and conflict) nor a concept that characterizes the balance of power in a region or in the world. But it is associated with all of this, as order attenuates the anarchic character of the international system and the use of violence, limits the dependence on power games and provides a certain type of authority, regulation and stability in the coexistence of actors. An international order can exist and be referenced in terms of the power structure, but it is more than a simple reflection of that. The construction of the liberal order is linked to the supremacy of the “West” and the hegemony of the United States, but “liberal” means a specific set of values, norms and institutions, naturally distinct from those of other international visions and orders. Therefore, it is important to explain the elements that constitute it.

The liberal international order is usually characterized around two overriding ideas: on the one hand, it is «*open and rule-based*», in contrast to the other «*organized in rival blocks or exclusive regional spheres*» (Ikenberry, 2011b: xii), being «*enshrined in institutions such as the United Nations and norms such as multilateralism*» (Ikenberry, 2011a: 56). On the other hand, there is the association between political liberalism and economic liberalism, also referred to in the light of terms such as “democracy” and “capitalism”, which for some creates «*an international order deeply dependent on the internal nature of the units that comprise it*» (Simão, 2019 : 42). Thus, the liberal international order includes «*open markets, international institutions, democratic community of cooperative security, progressive change, collective problem solving, shared sovereignty, and rule of law*» (Ikenberry, 2011b: 6). Or it is «*mainly based on democracy, human rights, rule of law, market economies and fair trade*» (Szewczyk, 2019: 34) and on the assumption that «*only the liberal order considers the individual a central actor with inalienable rights*» (ibid.: 35). Others prefer to characterize liberal order by thematically disaggregating its «*three elements: the security order, the economic order and the human rights order*» (Kundnani, 2017: 4-8). The liberal order is also often associated with theories such as “democratic peace”, “economic interdependence” and *Pax Americana*.





Regardless of the multiple ways of characterizing it and referring to the elements that constitute it, we understand that the liberal international order is based on the promotion of Liberal Democracy; in the open market economy and free trade; in a certain limitation of the sovereignty of States and in the sharing of responsibilities, through the joint creation of common rules, rule of law, multilateralism and collective action; in collective security (security for all and on behalf of all); in the free navigation of the seas; in free access to the “global commons” and the dissemination and protection of “global public goods”; in recognizing the legitimacy of different international, State and non-State actors; and in a conception of human rights that implies the safeguarding of individual freedom, human dignity and respect for the inalienable rights of the individual.

Some of these elements may shape other international orders, but, taken together, they define and distinguish what we consider a liberal international order. On the other hand, the constitutive elements indicated were evolving and being adapted throughout the construction of the liberal international order. However, it should be noted that not all of these elements are recognized as part of the liberal order, either by its opponents or by some of its defenders; its general characterization does not mean that the promoters of the liberal order always respect all its precepts; and that there are tensions and contradictions between constituent elements of the liberal order.

## **2. Previous orders and initial attempt to build a liberal international order**

Throughout History, there have been multiple and distinct international orders, usually associated with imperial powers and divine authorities. These various international orders were always limited in time and in space (with successive and coexisting orders in Europe, the Middle East, Asia and also on the American Continent), even if some claimed to be “universal”. However, we must recognize that the “West” has been the main inspirer and anchor of certain international orders and also of the world order for much of the last few centuries. Indeed, many of the ideas, doctrines and ideologies (liberalism, nationalism, capitalism, socialism, democracy, nation-State, sovereignty, multilateralism, institutionalism) that would mark distinct worldviews on the “international order” emerged in Europe. They spread as a result of the domination and colonial expansion of the European powers and, in the meantime, of the rise of the United States. Even so, until the 19<sup>th</sup> century, substantial parts of the world and certain actors, such as the Ottoman Empire, China or Japan were alien to these ideas, and international orders in Europe, Asia, the Middle East and in the Americas remained largely disconnected from each other. In other words, there were multiple regional international orders, but not a “world order”.

### *The previous Anarchic, but not “Westphalian” order*

On the other hand, the idea that the liberal international order arose in opposition to and/or was built on the “Westphalian order” is very frequent. However, it is not appropriate to associate the Treaties of Westphalia (Munich and Osnabrück) of 1648 with an “international order” or even a new “international system”, normally described as the “Westphalian system”. As Luís Moita (2012) clearly demonstrated, the Peace of



Westphalia that ended the "Thirty Years War" in Europe did not represent the origin of the territorialized national State, did not inaugurate the concept of sovereignty and did not found the "modern" European system of Nation States. Without playing down the importance of the Westphalian Treaties, the European order in the mid-17<sup>th</sup> century did not correspond to a homogeneous State-centric system. A diffuse situation prevailed, with very diverse and overlapping political formations coinciding (from empires to principalities, including States, kingdoms and other territories organized under different configurations and designations) with different degrees of autonomy and in which, in essence, the State was "princely" and regimes were absolutist. Only later, in the course of the 18th and 19th centuries, the dissemination and consolidation of national States in the modern sense was seen, including the unified Italy (1870) and Germany (1871), the American (1776) and French (1789) Revolutions and the Industrial Revolution being decisive steps in this process. According to Moita (2012: 38)

*the Nation-State, in the modern sense of the term, historically results from a confluence of elements: on the one hand, the end of the Ancien Régime dictated by the French Revolution, on the other, the emergence of industrial capitalism. The first factor underlines the political-institutional dimension, the second the socio-economic dimension of the process", adding that "the origin of the modern Nation-State must be articulated with the emergence of industrial society and the phenomenon of nationalism (ibid.: 39).*

After the Napoleonic Wars, the great European powers (essentially, "empires") made, at the Congress of Vienna in 1815, an agreement in order to prevent war between them, maintain stability in the Old Continent and preserve the reigning dynasties. However, the "Vienna agreement" was short-lived and obviously never constituted a true world order – suffice to remember, for example, that in the Americas, the international order evolved distinctly between various independences and the prominence of the US, in the Middle East and North Africa the order was essentially the "Ottoman" and in East Asia it was that of the "Middle Empire". On the other hand, the Congress of Vienna of 1815 was just one of several examples of multilateral diplomacy that, in Europe, throughout the 19th and early 20th century, sought to regulate certain issues and stipulate rules of coexistence<sup>5</sup>, to which they added the many bilateral treaties. Also throughout the 19th century, taking advantage of the lead in the Industrial Revolution, the United Kingdom fostered its economic-commercial and naval primacy, promoting an internationalized economy and trade under the auspices of *Pax Britannica*. But neither multilateral agreements nor British supremacy meant "world order" or even international stability, just as they did not prevent new wars in Europe, the Americas and East Asia<sup>6</sup>. At the same time, there were substantial transformations in power structures both in Europe (for example, through the retreat of the Ottoman Empire in the Balkans and the unification of Italy and Germany), in the Americas (US hegemony) and in Asia (the decline of China and the rise of Japan), highlighting the emergence of new great powers

<sup>5</sup> Other outstanding examples are the 1878 San Stefano and Berlin Congresses (Balkan division) or the 1884-85 Berlin Conference (division of Africa).

<sup>6</sup> Such as the Crimean War of 1853-56, the Franco-Prussian War of 1870-71, or the Balkan Wars of 1912-13; between the US and Spain in 1898; or the "opium wars" against imperial China, the Sino-Japanese War of 1894-95 or the Russian-Japanese War of 1904-05.



at the end of the 19th century/beginning of the 20th century, namely Germany, the United States and Japan, which not only impacted regional systems but, along with the "old Great Powers", consolidated a multipolar global power structure.

Paradoxically, although we reject the designation of the "Westphalian order" for the reasons mentioned above, we recognize that the international system and regional international orders which, in the 19th and early 20th centuries, were generally characterized by the elements that are commonly attributed to such "Westphalian system". This corresponds to what J. Mearsheimer (2019: 12-13) calls "realistic order", formed by sovereign national States allegedly "equal" in rights and obligations, namely non-interference in the "internal matters" of each other. In order to attenuate the inherently anarchic character of the system, States have the duty to respect the commitments made (*Pacta Sunt Servanda*) and the rules that they sovereignly and jointly stipulate (International Law). If and when necessary, sovereign States resolve and regulate certain international issues through multilateral coordination (congresses and *ad hoc* conferences). Still in this system, a logic of free trade prevails (imposed by the "Westerners", for example, on China and Japan), of colonial domains, areas of influence and balance of power, the (dis)order in international relations residing precisely in games and (un)balances between the great powers.

### *A first attempt, quickly deconstructed*

As a corollary of this system and of the evolutions and transformations that occurred in the late 19th/early 20th century, another great war took place involving European powers that, however, spread and involved other important non-European powers. It was World War I, which caused unprecedented devastation. The end of this Great War of 1914-18 was marked by the ambition to create a "new world order" to guarantee that a conflict of this magnitude would not happen again. It was in this context that, among the winners, the United States stood out, defining, for the first time, the guidelines of a "new world order", also configuring the first real attempt to transpose the liberal vision to the international order. In his address to the US Congress on 2 April 1917, where he called for the declaration of war against Germany, President Wilson justified the US entry into the conflict to «*make the world safe for democracy*» (Wilson, 1917). Less than a year later, on 8 January 1918, in a new speech to the Congress, he spelled out his famous "14 points", half of which dedicated to specific territorial issues between the belligerent countries and the rest prescribing a vision for peace and the new world order, proposing, in summary "peace without defeated or humiliated"; the end of secret agreements and transparency in international relations; the "absolute" free navigation of the seas; free trade; the reduction of armaments; «*A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.*»; and also «*A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike*» (Wilson, 1918).

President Wilson's idealism won him the 1919 Nobel Peace Prize and inspired what might be called the "liberal international order". However, initially, he convinced neither his



allies nor the US Senate. The big European winners, specifically France and the United Kingdom, shared the political and economic liberalism of the US, but not entirely President Wilson's vision for international relations. Hence, Paris and London preferred to impose a humiliating peace on the defeated, especially Germany, and used the "principle of nationalities" only in the framework of the dismantling of the German, Austro-Hungarian, Ottoman and Russian Empires, without extending it to their colonial possessions. On the other hand, the League of Nations was created in the terms proposed by Wilson, but the American Senate did not ratify the US adhesion to it. In Washington, the "isolationist" impetus prevailed, as opposed to "internationalism".

The post-Great War order of 1914-18 is quite distinct from the international orders that preceded it. This was due to the substantial changes in the power structure, and to the creation of the innovative "liberal" and "Western" inspired League of Nations which, being of a "global" nature (covering the entire world and participants from all continents), should safeguard the free navigation of the seas and free trade, enforce the treaties and guarantee peace and stability between sovereign States based on international law, permanent multilateral diplomacy and collective security. It is along this line that other important international conventions were also established, such as the 1925 Geneva Protocol that prohibited the use of biological weapons, the first multilateral treaty prohibiting the use of "weapons of mass destruction". This means that a certain "world" liberal order began to be built after the Great War.

However, the alienation and lack of commitment of the main liberal powers prevented it from consolidating itself as a true international order. The fundamental elements of the previous "anarchic" system continued to prevail, both globally and in the reconstructed Middle East, Europe and Asia. In Europe, the new order may be termed the one of "Versailles" by reference to the 1919 Peace Treaty imposed by the Allies on Germany, with the victorious powers interested in keeping the results of the conflict and the defeated and dismantled powers interested, above all, in recovering from the imposed humiliations and conditions. Furthermore, for the new Republic of China, Japan or the brand new Turkey, the liberal concept of the international order was relatively foreign. The new "Soviet Russia", which emerged in the context of the Great War, had a view of politics, economy, society and, therefore, of international relations that was not only different from, but hostile to, the liberal vision. However, the emergence of a certain type of "offensive nationalisms", fascism and national socialism, contrary to liberal principles - with emphasis on the "living space" of Nazi Germany and the Imperialist Japan's "Greater East Asia Co-Prosperity Sphere" - would dismantle the liberal aspects of the international system, regional orders and the fragile post-World War II "world order", causing an even more devastating Second World War. In short, the initial construction of the liberal order in international relations first merged into the anarchic system and then was undone by it.

### **3. The consolidation of a liberal, but not a world, international order**

It was in the middle of WW II (1939-1945) that Western leaders again began the reconstruction of a liberal order. Even before the US entered the conflict (which happened in December 1941), its President Franklin Delano Roosevelt referred to the «*four freedoms*» - freedom of speech, freedom of worship, freedom from want, and freedom



from fear - that should exist *«anywhere in the world»* (Roosevelt, 1941), in a message to the American Congress on 6 January 1941. That same year, President Roosevelt and British Prime Minister Winston Churchill proclaimed the "Atlantic Charter"<sup>7</sup>, whose principles would be incorporated in the "Declaration of the United Nations" of 1 January 1942, signed by the 26 allied countries, not just Western countries, but also, for example, the Soviet Union, China, Cuba and South Africa. They were joined later by more than two dozen others, from Brazil to Ethiopia or Turkey. The same principles would also be included in the "United Nations Charter", signed in San Francisco, on 26 June 1945, by representatives of 50 countries, entering into force on 24 October of that same year.

On the other hand, at the end of World War II, the United States enjoyed an unprecedented hegemony (in all domains, including the exclusive one of the atomic weapon) drawing, for the second time in the 20th century, the guidelines of a "new world order," now in the hands of Democrat Presidents Roosevelt and Truman. And this time, unlike 1918-19, the US became founding member of the UN and did not withdraw, only reduced, its military apparatus from the European and Asian theatres, thus assuming responsibility for the post-war world reorganization.

The new UN was not an exact replica of the defunct LN, but its aims and principles were basically the same<sup>8</sup>. Although the Charter of the United Nations begins with the expression *«We the Peoples»* (of liberal inspiration and recalling the Constitution of the United States of 1787), its members were States that somehow self-limited their sovereignty by respecting the Charter and international law, collective security, the right of self-determination and human rights, while granting the organization, in particular its Security Council, the authority and legitimacy to recognize new States, decide on matters of war and peace and sanction the aggressors and violators of the established rules. This was followed by the creation of a series of new bodies of the "UN family", including commissions, programmes, funds and specialized agencies - from the International Court of Justice to the United Nations Development Programme (UNDP), the Organization for Food and Agriculture (FAO), the World Health Organization (WHO) – and new international conventions, with emphasis on the Universal Declaration of Human Rights (also of Western and liberal inspiration) adopted by the UN General Assembly in 1948. The "UN system" was established by balancing the sovereignty of States and the

<sup>7</sup> Stating that the respective countries would not seek any territorial or other aggrandizement; territorial changes should only take place in accordance with the wishes freely expressed by the affected peoples; the right of all peoples to choose the form of government under which they want to live and the restitution of sovereign rights and independence to peoples who have been dispossessed of them by force; all States, large or small, victorious or defeated, must have equal access to the world's trade and raw materials; to promote, in the economic field, the broadest collaboration among all nations, with the aim of achieving, for all, better working conditions, economic prosperity and social security; a peace that gives all nations the means to live securely within their own borders, and people everywhere the guarantee of existences free from fear and want; freedom of navigation in the seas and oceans; the renunciation of the use of force and the disarmament of potential aggressors; and the establishment of a broader and more lasting general security system. (Atlantic Charter 1941).

<sup>8</sup> With its members determined to *«to save succeeding generations from the scourge of war...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and; to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and; to promote social progress and better standards of life in larger freedom; And for these Ends, to practice tolerance and live together in peace...; to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples...»* (United Nations Charter, 1945: Preamble).





associated principle of non-interference in internal affairs, the supranationalism of the Security Council and International Law, and the rights of peoples and individuals.

Does this mean that from the 1939-45 War a liberal world order emerged, resulting from two hundred years of “liberal ascendancy” fused into the “Westphalian system”, as defended by John Ikenberry (2011b: 2)? Only partially. Although Western and liberally inspired, the design of the new UN was done by the US, the UK and also the USSR, the “big three” who, along with those they invited, France and China, became Permanent Members of the Security Council of the new Organization with the exclusive right of veto. At the same time, the US and the USSR articulated and shared with each other, as allies and in a context of war, the surrender conditions of Germany and Japan and, above all, respective areas of influence in European and Asian theatres at the Summits in Yalta and Potsdam, respectively, in February and July-August 1945, in which the United Kingdom also participated. This “sharing” would lead, from 1946-47, to the Cold War between the US and the Soviet Union that marked international relations until 1989-91.

### *The Cold War World Order*

The global power structure established after World War II was not unipolar (as suggested by the US hegemony) nor multipolar (as indicated by the constitution of the UNSC with its five Permanent Members), but rather “bipolar” by the emergence of two superpowers. The US and the USSR shared opposing ideologies, Liberalism and Marxism-Leninism, but «*both were enlightened ideologies that sought to expand into universal civilization*» (Gray, 2007: 30). Then, they became involved in a strategic, economic and ideological dispute that began in Europe and quickly spread to all regions of the world, determining systems of alliances, economic alignments, conflicts, rules, institutions, behaviours and interactions between most State and non-State actors. Much more than the UN and International Law, it was nuclear weapons (which the USSR also possessed since 1949) and deterrence through “mutual guaranteed destruction” that forced Americans and Soviets to coexist in the Cold War and the world to live under this “balance of terror”. Each of the superpowers had “areas of influence” in the world and in the various regions, leading and organizing their “bloc” according to their respective interests, visions and institutions. This bipolar confrontation directly resulted in countless conflicts, civil wars, coups d'état, guerrilla and subversive movements, “proxy wars”, “crises” and international wars.

At the same time, although always in competition, the US and the USSR were able to cooperate and articulate when their interests converged. For example, both favoured the right of self-determination and decolonization by European countries, just as they condemned certain neo-colonial stances (as in the Suez Crisis of 1956). It was possible to develop the “UN system”, recognize countless new independent States and even launch UN “peace missions” (when none exercised its right of veto in the UNSC). The articulation between the Eastern and Western “blocs” was equally crucial for the signature of the armistice that ended the 1950-53 Korean War, Peace Accords such as the 1954 Geneva one, the “replacement” of the Republic of China/Taiwan by the People's Republic of China at the UN (and then as a Permanent Member of its Security Council) in 1971, or the Helsinki Accords attained at the Conference on Security and Cooperation in Europe (CSCE) in 1975. And whereas it is true that the level of economic and commercial





interdependence between the two sides was minimal and did not justify the development of common rules and institutions in this area, they managed to create or support the development of new norms and, at times, institutions, regarding arms control, the non-militarization of certain spaces or the non-proliferation of nuclear weapons, at bilateral and multilateral levels, as attested by the Antarctic Treaty System, the Moon Agreement, the Outer Space Treaty, the Anti-Ballistic Missile (ABM) Treaties, the Strategic Arms Limitations Talks (SALT) 1 and 2 and the Strategic Arms Reductions Talks (START), the Convention on Certain Conventional Weapons, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Biological Weapons Convention, the Seabed Arms Control Treaty, the Intermediate-Range Nuclear Forces Treaty, the Partial Test Ban Treaty, the Nuclear Non-Proliferation Treaty, the International Atomic Energy Agency (IAEA) or the Nuclear Suppliers Group.

Therefore, the world order that prevailed between 1946-47 and 1989-91 was essentially that of the Cold War, merged with the "UN system" which, despite everything, developed and extended to many new States resulting from the decolonization processes which the organization supported mainly through its General Assembly (see O'Sullivan 2005). Within the scope and coexisting with this world order, two other international orders were established corresponding to the "camps" led by each of the superpowers: on the one hand, the "West", "Capitalist", "Liberal", "Democratic" or "Free world"; on the other, the "Communist", "Eastern Bloc", "Soviet" or the "Popular Democracies". These two international orders were dynamic and underwent changes: examples include the Sino-Soviet split that tore up the "communist camp", triggered a new "cold war" between the USSR and the PRC and introduced a triangular dynamics Washington-Moscow-Beijing. On the other hand, these orders were not defined in a regional logic, but in ideological, strategic and economic blocs with their respective multilateral conventions and institutions (see Crump and Godard, 2018). A third international order that has been trying to be promoted can still be included, embodied in the spirit of the Bandung Asian-African Conference and the Non-Aligned Movement, as well as in the Chinese doctrine of the "three worlds", in the adoption by the UNGA of the concept of "permanent sovereignty over natural resources"<sup>9</sup> or the idea of a "New World Economic Order"<sup>10</sup>. Basically, the world order in the decades after World War II was a complex combination of several international orders, the liberal being just one of them.

<sup>9</sup> It was from the 1950s that the concept of "permanent sovereignty" of States (with an economic content, distinct from the usual purely political view) began to emerge within the UNGA, with the adoption of a resolution in 1952 on the "Right of to Freely Exploit Natural Resources and Wealth". The following decade saw a change in the terminology adopted by UN resolutions, referring to "permanent sovereignty over resources". A milestone in this evolution was the adoption by the UNGA, on 14 December 1962, of Resolution 1.803 (XVII) on "Permanent Sovereignty over Natural Resources", developed in subsequent resolutions in 1966 and 1973. In essence, these resolutions support the efforts of developing countries (or "third world") for effective control over the natural resources in their territories, recognizing that each State had the right to determine the amount of compensation and the method of payment, and that possible disputes should be resolved according to the national legislation of each State.

<sup>10</sup> Resolutions 3201 and 3202 of May 1974 adopted by the UNGA, encompassing the "Declaration on the Establishment of a New International Economic Order" and the "Action Programme for the Establishment of a New International Economic Order", which was followed by the "Letter of Economic Rights and Duties of States" (Resolution 3.281) of December of that year.



### *The liberal international order in the "West"*

That liberal international order is rooted in political and economic liberalism and in the four freedoms enunciated by President Roosevelt in 1941, based on "liberal democracy" (as distinct from communist "people's democracy") and on equally distinctive precepts regarding economic organization and social or human rights, embodying its own rules and institutions beyond the "UN-Universe" and opposed to the "Soviet order". For example, in Europe, European democracies early created the Western European Union (WEU) in 1948 and the Council of Europe in 1949, at the same time that the US created on the American Continent, based in Washington, the Organization of the American States (OAS) in 1948.

Given the constraints associated with the ideal of "collective security" inscribed in the UN, the US established with Canada and Western European countries, since 1949, the North Atlantic Treaty Organization (NATO), a multilateral mechanism for "collective defence", in order to contain the expansion of the Soviet Union and communism and «to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and rule of law» (NATO, 1949). However, not all NATO founders were "liberal democracies", like Portugal with its *Estado Novo* ("New State"), which attests the weight of geostrategic considerations linked to the Cold War. The same geostrategic objectives and imperatives presided over the generality of the US Alliance System in other regions and which included both bilateral alliances (with the Philippines, Pakistan, Japan, South Korea, Republic of China/Taiwan or Thailand), trilateral alliances (such as ANZUS between Australia, New Zealand and the US) and multilateral ones, from the Inter-American Treaty of Reciprocal Assistance (Rio Pact) to the Southeast Asia Treaty Organization (SEATO/Manila Pact) and the Central Treaty Organization (CENTO or the Baghdad Pact). Not all of these alliances were successful, some were even dismantled (such as SEATO and CENTO, in the 1970s), and not all allies were liberal democracies, having only the "advantage" of being anti-communist. But the fact is that many of them were crucial to consolidating and/or expanding liberal democracy and maintaining peace between democracies, with the *Pax Americana* being the mainstay of the liberal international order.

The economic pillar is rooted in the "Bretton Woods system", a set of agreements reached at the United Nations Monetary and Financial Conference held in the city of Bretton Woods, in the US State of New Hampshire, in July 1944, with the presence of delegations from 44 countries. It defined the basis for the monetary management of international trade, with the value of other currencies being associated with the US dollar and continuing to have its value linked to that of gold. In Bretton Woods, it was also agreed to create the International Monetary Fund (IMF) - responsible for maintaining an emergency fund to help countries that had unaffordable trade deficits - and the International Bank for Reconstruction and Development (IBRD) to support the reconstruction of countries. IBRD would be integrated into the World Bank which, like the IMF, was formally established in 1945. Two years later, in 1947, they were joined by the General Agreement on Tariffs and Trade (GATT), in order to boost international trade by reducing customs barriers. In the same year, the US launched the "Marshall Plan" designed to aid Europe's economic recovery and eliminate conditions that would favour



the expansion of communism (see Leffler 1988) and, in 1950, it established the Coordinating Committee for Multilateral Export Control (CoCom) for the embargo of goods, technologies and weapons to the countries of the Committee on Mutual Economic Assistance (COMECOM) led by the USSR (Mastanduno 1992). It was based on these principles and under the "American hat" that certain regional organizations were also established and developed, with emphasis on the European Coal and Steel Community (ECSC) in 1951 and on the European Atomic Energy Community (Euratom) and the European Economic Community (EEC) in 1957. Other institutions would be created, such as the Organization for Economic Cooperation and Development (OECD), in 1961, in order to stimulate economic progress and international trade.

In general, the countries of this liberal economic order have experienced significant economic and social development, particularly North America, Western Europe, Japan, Australia, New Zealand and the "New Industrialized Countries" of East Asia. However, completely satisfactory answers were never found for the redistribution of wealth, generating exclusion and inequalities both within countries and between them, while keeping many other peoples and States, namely from the "third world", largely excluded from this development (see Keohane 1984 and Krasner 1999). On the other hand, the erosion of the Bretton Woods system led President Richard Nixon, in 1971, to determine that the US dollar would no longer be associated with gold, putting an end to the historic gold standard and inaugurating a new phase of "floating exchanges". Soon after, the 1973 oil crisis highlighted the vulnerabilities associated with economic interdependencies and insufficient regulation of internationalized markets. This type of distortions and insufficiencies would lead to revisions and re-adaptations of the liberal economic order, through reforms and new rules in the IMF, GATT and the OECD, the creation of new intergovernmental cooperation and regulation frameworks - such as the G7, whose first summit took place in 1975 - or even new mechanisms for dialogue between the private sector and political leaders, of which perhaps the best example is the World Economic Forum/Davos Forum, launched in 1971.

The existing freedoms and rights in liberal democracies attracted more and more peoples and individuals "external" to the liberal order, including many "dissidents" from the "Eastern Bloc". Likewise, the economic development brought about by the liberal model attracted many peoples and even leaders of opposite models. This was the case of Deng Xiaoping who, from 1978 onwards, abandoning Maoist orthodoxy and with great pragmatism, launched deep reforms in the People's Republic of China in the sense of "creating socialism with Chinese characteristics with the means of capitalism". A few years later, in 1985, Mikhail Gorbachev had the hierarchies of the Communist Party of the Soviet Union (CPSU) approve his *Perestroika*. The difference is that the Chinese reforms have never questioned the leading role of the China's Communist Party (CCP) and are at the base of China's modernization and resurgence to this day, while Gorbachev's *Perestroika* did not prevent, in a few years, the end of the "Soviet empire" and the collapse of the Soviet Communist Party and the USSR itself. The Soviet implosion ended the Cold War world order, favouring the expansion of the liberal international order.



#### 4. From worldization to deconstruction of the liberal order

The world order changed suddenly, marked by significant events: in 1989, the "Berlin wall", the greatest symbol of the division of Europe and the world in the Cold War, collapsed; in 1990, the UNSC authorized the use of force to expel Iraq from Kuwait by a broad US-led international coalition; in 1991, COMECOM and the Warsaw Pact were officially dissolved and the USSR gave way to 15 New Independent States, one of them the Russian Federation. The Soviet Union and the People's Republic of China normalized their relations in 1989, the year when the "Tiananmen tragedy" took place. It is important to recall these last events to underline that the "double Cold War" ended, with two main winners, the US and China, and that with the brutal repression of democratic yearnings in China, the CCP regime went against the trend of political liberalization of the time.

##### *The worldization of the liberal international order*

The US stood alone in the superpower category, in a power structure that became unipolar. And for the third time in the 20th century, it traced the guidelines of a "new world order", with Republican President George Bush proclaiming, at the UNGA, the vision

*of a new partnership of nations... based on consultation, cooperation, and collective action, especially through international and regional organizations... the rule of law...a partnership whose goals are to increase democracy, increase prosperity, increase the peace, and reduce arms.... Calls for democracy and human rights are being reborn everywhere... (Bush. 1990a).*

The following year, in the aftermath of the victory in the Gulf War, the same President assured that «*in our quest for a new world order... the United States has no intention of striving for a "Pax Americana"... we seek a "Pax Universalis" built upon shared responsibilities and aspirations.*» (Bush, 1991). The successive White House tenants have enthusiastically assumed the role of superpower: «*There is no substitute for American leadership*», said Bush (1990b); or «*Indispensable Nation*», as the Secretary of State of the Clinton Administration, Madeleine Albright (1998) and President Barak Obama (2014) preferred to say. And the fact is, under the leadership of the US supported by its "Western" allies and partners, the liberal order expanded and became worldwide.

The end of the Cold War unleashed new waves of democratization across the globe, seeming to confirm Fukuyama's (1989) thesis that there was no other viable political organization alternative. In fact, the 1990 "Charter of Paris", signed by almost all European countries and also by the United States, Canada and the USSR, established «*democracy as the only system of government of our nations*»<sup>11</sup>. The vast majority of former communist regimes, from Eastern Europe to Mongolia and to the new Russia, embraced liberal democracy, as did countless former autocratic anti-communist regimes

<sup>11</sup> Also stating that: «*Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person*» (Charter of Paris 1990).



and other authoritarianisms. According to *Freedom House* (2017), 34% of countries were “democracies” in 1986. This percentage went up to 41% in 1996 and to 47% in 2006. The new international context also allowed to put an end to certain previously existing situations, such as the end of the segregationist regime of “apartheid” in South Africa or the end of the occupation of East Timor by Indonesia and the exercise of Timorese self-determination.

At the same time, the liberal/Western conception of Human Rights has become “universal”, favouring numerous human rights campaigns and the defence of minorities, religious freedom and women's rights, often targeting autocratic governments and leaders. They also became the main targets of notions such as “human security”, which gained prominence since the mid-1990s based on the defence of “human dignity” and the formula “freedom from fear and freedom from want”. The new primacy of human rights is also associated with other controversial principles such as the “right of humanitarian interference” (invoked by NATO in the intervention in Kosovo in 1999) or the “Responsibility to Protect”, adopted at the UN World Summit, in 2005. And precisely to reinforce human rights in the world and with specific competence in this domain, the UNGA created, in 2006, the Human Rights Council, heir of the extinct Commission on Human Rights. On the other hand, new international conventions and “global pacts” have emerged aiming at greater protection of the rights of children, women, people with disabilities or migrants and refugees. The international persecution of human rights violators has gained impact, leading some to say that «*Human Rights Prosecutions Are Changing World Politics*» (Sikkink, 2011). International criminal justice was further developed (Teles and Kowalski, 2017) and the International Criminal Court (ICC) was established in 2002. The International Court of Justice, the UN jurisdictional body, and the Permanent Court of Arbitration and other courts gained “new life”. Inevitably, many of these developments meant the erosion of traditional State sovereignty, a distinguishing feature of earlier international orders.

In the field of security, the *Pax Americana* expanded. The US maintained its alliance system inherited from the Cold War, established new bilateral and multilateral strategic partnerships (such as the “Quad” with Japan, Australia and India since 2007) and NATO expanded, almost doubling the number members, mostly former Eastern European opponents. Furthermore, the US maintained its global strategic omnipresence and continued to have the role of “regional balancer” in Europe, the Middle East and Asia-Pacific. And it intervened militarily, not only in the leadership of UN missions (Gulf War or Somalia), but also in NATO (Bosnia, Afghanistan, Kosovo and Libya) and certain “coalitions of will” (Haiti, Iraq and Syria), as well as invaded and occupied Afghanistan in “self-defence” in the wake of 9/11. In addition, there are many special operations, surgical bombing, multiple military and “free navigation of the seas” exercises or even the relentless pursuit of its enemies, from Milosevic to Saddam Hussein, Osama Bin Laden, Muammar Gaddafi or Abu Bakr al-Bagdadi – by sometimes exercising a kind of “right of anti-terrorist interference”.

On the other hand, the end of the Cold War immediately favoured various peace processes, from Cambodia to Angola, from the Israeli-Palestinian conflict to Mozambique. The number of UN “peace missions” has increased considerably, expanding the number of peacekeepers and participating countries, and diversifying the nature and typology of these missions, from conflict prevention to post-war stabilization and reconstruction (see





UN Peacekeeping). "Collective security" had a new impetus, reinforced by the missions carried out by various regional organizations - NATO, EU, OSCE, AU, ECOWAS, OAS - and by *ad hoc* international coalitions, including in the fight against terrorism or maritime piracy (SIPRI Multilateral Peace Operations Database). Meanwhile, the CSCE gave rise to the Organization for Security and Cooperation in Europe (OSCE) in 1994, the year when the ASEAN Regional Forum (ARF) in Asia-Pacific was also established. South Africa, Libya and the former Soviet Belarus, Kazakhstan and Ukraine gave up their nuclear programmes, and it was also possible to establish the "nuclear deal" with Iran in 2015<sup>12</sup>.

In the economic domain, interdependencies increased and "economic globalization" abruptly accelerated. There was a strengthening and expansion of the IMF, the World Bank and the OECD, and the World Economic Forum/Davos Forum started to invite businessmen and political leaders from former communist regimes and from the new "emerging economies". And countless new agreements and free trade zones, new institutions and new multilateral mechanisms were established: such as the G20 which, since 1999, brings together the largest economies in the world and, above all, the creation, in 1995, of the World Trade Organization, replacing the former GATT. According to Ikenberry (2011a: 62), the latter is «*the most formal and developed institution of the liberal international order*». In the spirit of "free trade", but also as a counterweight to China's growing economic influence, the US has promoted new "mega-regional" frameworks with its traditional partners, specifically the Trans-Pacific Partnership (TPP) agreed between 12 countries<sup>13</sup> in 2015 and the Transatlantic Trade and Investment Partnership Agreement (TTIP) with the EU, negotiated since 2013.

At the same time, international and regional organizations proliferated, in all domains and regions of the world. The UN has expanded both to pre-existing States (such as the two Koreas in 1991) and to new independent States, from ex-Soviet and ex-Yugoslav to East Timor or South Sudan, and currently has almost four times as many members than when it was founded, while the "UN system" was reformed and expanded. The Council of Europe extended to former adversaries and the former European Communities gave way to the European Union (EU), which deepened and also enlarged to many new members, mainly from Central and Eastern Europe, including ex-Soviet ones. The former Organization of African Unity was replaced by the new African Union (AU), covering the majority of countries on the African Continent, as well as the Association of Southeast Asian Nations (ASEAN), which has expanded to practically all countries in that region (with the exception being East Timor) and deepened as a "Community". On the other hand, numerous new regional, sub-regional, pan-regional and inter-regional organizations have been created, such as the Asia-Pacific Economic Cooperation (APEC), the North American Free Trade Agreement (NAFTA), the Commonwealth of Independent States (CIS), Mercosur and the Southern African Development Community (ECOWAS/SADC). Indeed, "regionalism" is the other side of "globalization", understood as the intensification of all types of flows and the reduction of spatial and temporal distances on a global scale. The multiplication of institutions was accompanied by the adhesion of more States to international conventions and by a countless number of new

<sup>12</sup> Formally, the Joint Comprehensive Plan Of Action-JCPOA) established between the five Permanent Members of the UNSC plus Germany (5+1) with Iran in 2015.

<sup>13</sup> Australia, Brunei, Canada, Chile, US, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.





international and regional agreements on a wide range of matters, including some that gained prominence on the global agenda<sup>14</sup>.

In order to “globalize” the liberal order, the United States and its allies sought to involve in key institutions, among many others, Russia and China. The Russian Federation was soon recognized as a replacement for the deceased USSR as Permanent Member of the UNSC in 1991, also joining the IMF and World Bank in 1992, the G7 in 1997 (which became the “G8” until 2014) and to the WTO, in 2012. In the meantime, Russia became a formal partner of NATO<sup>15</sup> and concluded with the US several agreements on the reduction and control of strategic arms<sup>16</sup>. The PRC has been a member of the UNSC since 1971 and of the IMF and World Bank since 1980, when it took the place previously occupied by the Republic of China/Taiwan in these institutions. And despite the tensions caused by the Tiananmen tragedy, it was quickly integrated into APEC in 1991 and, more importantly, into the WTO in 2001. The US, China and Russia were also involved in multiple other multilateral mechanisms, such as the “Six-party Talks”<sup>17</sup> on North Korea's Nuclear and Missile Programme, the Global Initiative to Combat Nuclear Terrorism, G20 and the ARF.

### *Paradoxes and ambivalences of a globalized liberal order in deconstruction*

One of the most salient aspects of the post-Cold War world order was the proliferation and increased relevance of non-State actors, such as international and regional organizations, multinational companies, civic associations and transnational activists, terrorist groups, organized crime networks, NGOs, or hackers. However, the international order is what the main actors make of it and, therefore, the great powers continue to be its main architects.

This is just one of the many ambivalences of the globalized liberal order, and some of which paradoxically contribute to its deconstruction. For example, the wave of democratization has not stopped the survival of many authoritarianisms around the world, including some officially “socialist” regimes. There were, however, some “setbacks”, including in Russia since Vladimir Putin's rise to power in 1999. Paradoxically, instead of economic liberalism contributing to political liberalism, economic hyper-globalization seemed to subvert democracy (Rodrik, 2011 and Halper, 2012), given that economic success has become a factor in the “legitimation” of certain autocracies, especially the PRChina. On the other hand, massive human rights violations continue to occur, and international institutions and conventions show that they have a limited impact on the behaviour of States and are unable to effectively and efficiently regulate some crucial issues.

<sup>14</sup> Examples include the International Convention for the Suppression of Acts of Nuclear Terrorism (2005) and the “Global Strategy Against Terrorism” (2006), the Kyoto Protocol (1995) and the Paris Agreement on Climate Change (2015) or the Budapest Convention on Cybercrime (2001) and UNGA Resolution 74/197 (2019) on Information and Communication Technologies for Sustainable Development.

<sup>15</sup> The Russian Federation joined the North Atlantic Cooperation Council in 1991 - a forum for dialogue replaced in 1997 by the Euro-Atlantic Partnership Council - and the Partnership for Peace Programme in 1994, formalizing the bilateral relationship with the “Founding Act”, in 1997 and the NATO-Russia Council, since 2002.

<sup>16</sup> Treaty on Intermediate Range Nuclear Forces (INF), START 1 and START 2, Moscow Treaty on Reduction of Strategic Offensive Weapons (SORT) and New START.

<sup>17</sup> Also with the participation of both Koreas and Japan.



In the economic field, despite a very significant reduction in poverty in the world and the improvement in the living conditions of hundreds of millions of people, certain “crises” were not prevented in numerous countries and regions, such as the one in 1997-98 in Southeast Asia. Emphasis must be placed on the economic and financial crisis that began in the US in 2007-08 and quickly became global. Paradoxically, “hyper-globalization” has taken away influence from both sides of the North Atlantic and instead contributed to the centrality of China and Asia-Pacific in the world economy and trade<sup>18</sup>. And economic growth is at the base of the increase in China's “comprehensive national power”, with consequences in all domains, from military capabilities to science and technology and political-diplomatic influence.

The progress of collective security and the *Pax Americana* did not prevent the Rwandan genocide or other failures in Somalia, Haiti, DR of Congo or Sudan. Numerous territorial, border and exclusive economic zone disputes remained unresolved. There are still hotspots such as Palestine, Kashmir, Taiwan, South and East China Seas or the Korean Peninsula. New conflicts broke out, from Georgia to Syria, from the Sahel region to Ukraine and Yemen. The “Arab Spring” resulted in turbulent “chaos” that instigated further instability, insecurity and violence. Transnational organized crime networks proliferated and powerful new terrorist groups such as al-Qaeda and ISIS emerged. Meanwhile, India and Pakistan (both in 1998) and North Korea (in 2006) became nuclear. At the same time, after a first decade of global reduction in military budgets, world military expenditure rose again, surpassing those of the Cold War period<sup>19</sup>. And the “arms races” returned, particularly in the Middle East and Asia-Pacific, with substantial changes in the ranking of the largest defence budgets, with an emphasis on the rise of China<sup>20</sup>.

US hegemony has not eliminated the aspirations of other powers, like China, Russia, India, Japan, EU, South Africa, Brazil, Turkey, Saudi Arabia or Iran. In fact, the end of the US-USSR bipolarity was seen by various powers as the possibility of succeeding in a “multipolar” system, whereby the “hegemonism” and “unilateralism” of the US were increasingly contested. Meanwhile, the “unipolar moment” (Krauthammer 1990/91) or the “unipolar interregnum” (Gaspar, 2019: 123-172) gave way to a “uni-multi-polar” structure (Tomé, 2003 and 2004) and, later on, becoming “uni-bi-multi-polar” (Tomé, 2016, 2018 and 2021), where the increasingly incomplete American supremacy coexists with several other power poles, global and regional, from which the resurgent China

<sup>18</sup> In 1990, the “advanced economies” represented a share of world GDP in purchasing power parities (PPP) of 63.25%, while that of “emerging economies” was 36.75%; the situation was completely reversed and, in 2021, this share of advanced economies dropped to 44.43% and that of emerging economies rose to 55.57% (IMF 2021). At the same time, North America's share of world GDP in PPP in 1990 was 26.53%, Western Europe was 26.13% and Asia-Pacific was 27.52%; in 2021, the shares of North America and Western Europe had fallen to 19.29% and 15.18%, respectively, while those of Asia-Pacific soared to 45.14% (ibid.). China was indeed the great winner of globalization, becoming central in the world economy and trade: its share of world GDP in PPP soared from 4.03% in 1990 to 18.78% in 2021, while in the same period, the US and EU shares decreased, respectively, from 21.64% to 15.97% and from 23.60% to 14.74% (ibid.). The PRC tends to become the world's largest economy also in nominal terms within a few years, being already the world's largest exporter and importer and the largest trading partner of the US, EU27, ASEAN10 and more than 100 countries throughout the world (WTO statistics).

<sup>19</sup> In 1990, the world spent globally 1,372 Billion USD, an amount, at constant prices, was surpassed from 2004, reaching 1,960 Billion USD in 2020 (SIPRI 2021).

<sup>20</sup> While always remaining prominent in the top of this ranking, the US began to see its share reduce; the European powers were dropping positions and losing shares; while maintaining nuclear parity with the US, Russia saw the gap widen with the US and, meanwhile, was overtaken by China and, in some years, also by India and Saudi Arabia; and China rose to the second place in this ranking, gradually approaching the US and increasingly distancing itself from the other powers (see SIPRI 2021).



stands out. Furthermore, the view on the “international order” and, in particular, on the putative universal benefits of the liberal order were never shared by many outside the “West” nor by all Westerners.

China has been the main beneficiary of the post-Cold War world order, but the CCP regime has never ceased to criticize the “hegemonism” of the United States, to demand “multipolarity” and to vociferate against the interference of Western countries in its affairs internal (China, 2019a and 2019b). In reality, the Beijing regime does not hide a *«distinction between three elements of the “U.S.-led world order”: “the American value system”, “the U.S. military alignment system”; and “the international institutions including the UN system»* (Fu Ying 2016). So when Chinese leaders talk about “supporting the international order” they are referring to a “rules-based order”, but not a system based on Western values or *Pax Americana*. In one way and another, this is what Beijing repeats to exhaustion, including through the voice of the President of the PRC and Secretary General of the CCP:

*we should stay committed to international law and international rules instead of seeking one’s own supremacy... China will continue to promote a new type of international relations... Let us all join hands and let multilateralism light our way toward a community with a shared future for mankind.* (Xi Jinping, 2021).

The truth is that the Chinese regime violates many of the rules, including those it formally subscribes to: for example, despite being a party to the United Nations Convention on the Law of the Sea (UNCLOS), Beijing has failed to comply with the Court of Arbitration’s decision on the South China Sea, which, in 2016, ruled that *«China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention [UNCLOS] and without lawful effect»* (PCA, 2016: 473, X.B.2). It also continued to militarize and reinforce its positions in the South China Sea, trying to establish a kind of *mare nostrum* or *mare clausum*. Indeed, the CCP appears committed to restoring China’s centrality, expanding its sphere of influence and taking a leading role in reforming the global governance system:

*China moving closer to center stage... new era of great power diplomacy with Chinese characteristics... take an active part in leading the reform of the global governance system... a leading position in terms of economic and technological strength, defense capabilities, and composite national strength... crossed the threshold into a New Era* (Xi Jinping, 2017).

This is largely the meaning of the “Chinese dream” and the “New Era” of a more self-confident and increasingly assertive China in its claims, especially since the rise of Xi Jinping to the leadership of the CCP and the PRC in 2012 (Shambaugh, 2020; Markey, 2020). However, its growing economic power has made China an extraordinary alternative partner to the “West”, undermining the efforts of Europeans and Americans to promote democracy, human rights and the rule of law.



For its part, Russia considers itself the main victim of the end of the Cold War, having long been opposed to the enlargement of NATO and the expansion of the influence of Western “extra-regional actors” (US, NATO and EU) in the post-Soviet space, understood as a threat, interference in its “near neighbourhood” and a re-edition of the «*infamous policy of containment*» (Putin, 2014). The Russian President even considers that «*the collapse of the Soviet Union was a major geopolitical disaster*» (Putin, 2005), for two fundamental reasons: on the one hand, because Russia has lost much of what is “its”<sup>21</sup>; on the other, because it caused an imbalance of power in the world that the US took advantage of to force its unilateralism and the West to impose its values and interests, triggering chaos and instability<sup>22</sup>.

Like Beijing, Moscow defends multipolarity, willing to use all means to safeguard its interests and strategic objectives. This included, for example, developing strategic partnerships with China and India; invading Georgia and unilaterally recognizing the independence of Abkhazia and South Ossetia in 2008; annexing Ukrainian Crimea in 2014 and “divide” what remains of Ukraine by controlling separatism in the Donbas region; or intervening militarily in Syria since 2015 in support of Bashar al-Assad's regime. Russia is not the Soviet Union, but Putin acts as if it were (Tomé 2018/19), insisting on a return to an agreement between great powers and sharing of influence zones similar to the 1945 Yalta and Potsdam conferences. In addition, the Russian President now considers that «*the liberal idea has become obsolete*» (Putin, 2019).

The views of China and Russia on the world order are not entirely coincident, but this does not affect their strategic articulation, which has intensified since Russia's annexation of Crimea (Lukin, 2018; Gaspar, 2019; Tomé, 2018 and 2019; Sutter, 2019; Lo, 2020; Markey, 2020; Stent, 2020). Not because they are members of an “autocratic international”, but because they consider it to serve their respective geopolitical, strategic and economic purposes - including containing US supremacy, dividing the West and the democratic powers, and suppressing liberal political influences on international organizations and conventions and on the world order. Both share the assumption that great powers have certain “natural rights”, including regional spheres of influence; they have a traditional notion of security and sovereignty, instrumentally absolutizing the principle of “non-interference in internal affairs”; and they agree on ideas like the “sovereign internet”. At the same time, Moscow and Beijing have supported certain autocratic regimes, such as North Korea, Venezuela, Iran, Cuba, Syria, Belarus, Myanmar and several African leaders – with political support and halting sanctions on the UNSC (using its right of veto), breaking international sanctions and blockades, selling them arms and doing business.

This deconstruction of the liberal order also involves international organizations. Moscow and Beijing promote, each in its own way, a kind of “embedded revisionism” in the

<sup>21</sup> «After the collapse of the USSR, Russia, which was known as the Soviet Union or Soviet Russia abroad, lost 23.8 percent of its national territory, 48.5 percent of its population, 41 of the gdp, 39.4 percent of its industrial potential (nearly half of our potential, I would underscore), as well as 44.6 percent of its military capability due to the division of the Soviet Armed Forces among the former Soviet republics» (Putin 2018).

<sup>22</sup> «What is happening in today's world... is a tentative to introduce precisely this concept into international affairs, the concept of a unipolar world... first and foremost the United States, has overstepped its national borders in every way» (Putin 2007); «After the dissolution of bipolarity on the planet, we no longer have stability... instead of democracy and freedom, there was chaos, outbreaks in violence and a series of upheavals» (Putin 2014).



institutions that they integrate together with the Western powers, from the UN to the WTO. On the other hand, they institutionalize “parallel realities”. Indeed, China and Russia are among the main great powers and “intermediate powers” that have launched new institutions and new mechanisms for bilateral, trilateral and multilateral dialogue and cooperation, creating what Barma, Ratner and Weber (2007) called *«a world without the West»*. Examples of this include the Strategic Triangle Russia, India and China, since 2003<sup>23</sup>, or the trilateral dialogue China-Japan-South Korea, since 2008; groups of countries such as IBSA (India, Brazil and South Africa, created in 2003), BRICS (Brazil, Russia, India and China) in 2006<sup>24</sup> or MIKTA (Mexico, Indonesia, South Korea, Turkey and Australia, since 2013); and institutions such as the Shanghai Cooperation Organization (SCO), since 2001. The list also includes the New Development Bank (NDB) created by the BRICS in 2014 and the Asian Infrastructure Investment Bank (AIIB), established by 57 founding countries in 2015. Russia also created the Eurasian Economic Community-Eurasian Economic Union (the first was created in 2000, and was replaced by the second in 2014) and the Collective Security Treaty Organization (CSTO) in 2002. In the case of China, the “Sino-centric order” also involves the many bilateral agreements on free trade and investment, the granting of credits and loans, the “Beijing consensus” alternative to the “Washington consensus” (see Ramo, 2004 and Halper, 2012) and of course the Belt and Road Initiative (BRI) or “New Silk Road” launched by President Xi Jinping in 2013 (Leandro and Duarte, 2020). In addition to these, there are other frameworks such as the Belt and Road Forum for International Cooperation, the China International Import Expo, Hongqiao International Economic Forum, China-Africa Cooperation Forum, China-Arab States Cooperation Forum, China Forum and Community of Latin American and Caribbean States, Boao Forum for Asia, Conference on Dialogue of Asian Civilizations, World Internet Conference, Macau Forum of China with Portuguese-speaking Countries or the mechanism China + 17 Central and Eastern European countries and Greece.

Several Western governments have also contributed to the deconstruction of the globalized liberal order. From the outset, the US and its allies showed their willingness to “break the rules” of the security order, with emphasis on NATO's military interventions against Serbia, in 1999 and the Anglo-American one against Saddam's Iraq, in 2003 - although none involved the annexation of territory - or certain abuses in the “Global War on Terrorism”, undermining the moral authority of the “West” as a defender of “a rule-based order”. Furthermore, the US withdrew hastily from Iraq and Afghanistan in 2011 and 2021, respectively, favouring the rise of ISIS (see Tomé, 2015) and the return of the Taliban to power in Kabul. Also in other interventions, such as in Haiti, Somalia, Libya or Syria, the results were not democracy and rule of law, “abandoning”, in fact, their local democratic allies. On the other hand, the US has not ratified certain international conventions to which most countries adhere (such as the Kyoto Protocol on the reduction of greenhouse gases or the International Labour Organization Convention on Forced Labour), as it has never joined the United Nations Convention on the Law of the Sea

<sup>23</sup> This date refers to the first meeting of RIC Foreign Ministers on the sidelines of a UNGA session in New York, following a proposal by former Russian Prime Minister Yevgeny Primakov in the late 1990s.

<sup>24</sup> The Foreign Ministers of Brazil, Russia, India and China first met as BRIC in September 2006 on the sidelines of a UNGA meeting in New York. The first BRIC Summit took place in June 2009 in Yekaterinburg, Russia. South Africa joined the group from 2011, the acronym becoming “BRICS”.





(UNCLOS). The US and several of its allies and partners have also failed to join the ICC and often seem to instrumentalize the right to humanitarian interference, the principle of responsibility to protect, "human security" and certain "color revolutions" not to promote democracy, rule of law and human rights, but rather to project their interests and influence. Furthermore, Americans and Europeans have preferred to promote collective security through NATO, the EU and "coalitions of will" missions rather than providing more peacekeepers for UN missions. All these aspects illustrate that there can be tension between "liberalism" and "order", or as Geor Sorensen (2006) Stated, between "restriction liberalism and imposition liberalism".

Likewise, the "West", the main architect of the liberal economic order and the rules and institutions associated with it, is primarily responsible for the insufficient regulation of the world economy and trade or for the comparative disadvantages of the "West" itself in the era of hyper-globalization. And it was in the US that, in 2007-08, the economic-financial crisis that spread the world began. On the other hand, all too often, the US and its Western partners play down democracy, rule of law and human rights in favour of economic interests, as exemplified by China's entry into the WTO in 2001. This also illustrates the tensions between the pillars of the liberal order. In reality, Americans and Europeans tend to identify their values and interests with those of the "international community" and, in order to make the world order more liberal, they have been undermining and distorting the foundations of that order.

Two other factors add to the deconstruction of the liberal order: the polarization of the "West" and the retreat of Democracy. Both transatlantic and intra-European divergences and divisions have been growing since the turn of the century, regarding the recognition of Kosovo's independence, the American doctrine of "preventive war", intervention in Iraq, the sovereign debt crisis, management the migration crisis, Brexit process, tensions with Turkey and disputes in the Eastern Mediterranean, "burden sharing", the situation in Palestine, relations with Russia and China or the management of the pandemic crisis. On the other hand, authoritarianism, nationalism, protectionism and populism grew in the "West" - sometimes violating fundamentals of political liberalism, such as rule of law, press freedom and the separation of powers; tampering with "universal values" to safeguard the rights of minorities, migrants and refugees; and attacking multilateralism and international institutions. The reality is that Democracy is indeed in retreat: for example, *Freedom House's* latest "Freedom in the World" (2021) marks the 15th consecutive year of decline in global freedom, and the last "Democracy Index" by The Economist Intelligence Unit (2021) shows the worst result ever since the Index was first published in 2006.

These aspects were aggravated during the Presidency of Donald Trump, whose "America First" was the antithesis of the liberal order. Trump's stance is based on the idea that liberal internationalism is detrimental to the US global position and that it only favours its enemies and adversaries. Accordingly, he has broken many of the rules and institutions to take an ostensibly nationalist and confrontational position in a "competitive world" (see The White House, 2017), and not just against China. Trump took a nationalist, populist and protectionist stance that did not place democracy and human rights among the priorities of American foreign policy. It was also antagonistic to free trade and international institutions and conventions. For example, with Trump, the US undid NAFTA (recreating it as the United-States-Mexico-Canada Agreement or USMCA)





and withdrew from the Paris Agreement on Climate Change, the Nuclear Agreement with Iran, the INF Treaty, the UN Human Rights Council, UNESCO, the International Court of Justice, the Global Compact on Migration and Refugees, the UN Arms Trade Treaty (ATT), the Open Skies Treaty and the World Health Organization (WHO).

At the same time, in addition to the “trade war” with China, Trump's protectionism targeted the US traditional allies and partners, including new tariffs imposed on Japan and the European Union and the US withdrawal from the TPP and TTIP negotiations. Trump also attacked central institutions like the UN and the WTO, and as a result of his choices, the US allies and partners were often on the opposite side of the US (and on the same side of China and Russia). In addition, its allies and partners maintained the line of “free trade” and deepened their ties among them – as reflected in the maintenance of the TPP, reconverted into a Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP11) and established the EU-Japan Strategic Partnership Agreement, the EU-Japan Economic Partnership Agreement and the EU-Japan area of safe data flow) – and also with China: on 15 November 2020, the 10 ASEAN countries, Japan, South Korea, Australia and New Zealand jointly signed with China the Regional Comprehensive Economic Partnership (RCEP) and, on 30 December 2020, the EU and China reached an agreement in principle on the Comprehensive Agreement on Investment (CAI).

On the other hand, the Trump Administration abdicated from leading the world in a global crisis such as the Covid-19 pandemic, which, added to the disastrous domestic management of the pandemic, once again called into question the position of the US in the international order. And as if that wasn't enough, Trump accentuated divisions in US society and politics and challenged American democracy itself, trying to stop his defeat and the victory of Joe Biden-Kamala Harris by inventing “frauds” and encouraging the attack on the Capitol.

The Biden Administration is seeking to reverse much of Trump's legacy and restore the traditional foundations of American foreign policy based on the slogan “America is Back”. Maintaining and even aggravating the competitive and confrontational tone towards China and Russia as well (Tomé, 2021), Biden intends to *«lead and sustain a stable and open international system, underwritten by strong democratic alliances, partnerships, multilateral institutions, and rules»* (The White House, 2021: 9). In this sense, for example, he brought the US back to the Paris Agreement and the WHO, shows himself available to recover the “nuclear agreement” with Iran, renewed the US commitment to NATO and the UN, extended the New START Treaty with Russia for five years, promoted the first Summit between Heads of State and Government of the Quad, organized a “World Summit of Leaders on Climate” (with the participation of Xi Jinping and Putin), encouraged invitations to Australia, India, South Korea and South Africa to participate in the G7 Summit and convened, for December 2021, a “summit for democracy” bringing together political leaders and civil society. Biden has indeed sought to regain a certain liberal order, but he has not removed certain Trump-era tariffs or returned the US to the TPP or TTIP.

The issue is that neither the US nor the “West” have the power, centrality and cohesion to determine the course of the world order. As the Biden Administration also acknowledges, *The distribution of power across the world is changing... China is the only*



*competitor potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system»* (The White House, 2021: 7-8). So, another of its objectives, perhaps the main one, is *«To promote a favourable distribution of power»* (ibid: 9). In order to maintain supremacy and leadership in the world, the US may have to sacrifice certain premises of the liberal order. In fact, Biden admits the reconstruction of the world order with others, namely China, in a mixture of competition and cooperation: *«We cannot and must not return to the reflexive opposition and rigid blocs of the Cold War»*, adding that

*we cannot focus only on the competition among countries that threaten to divide the world, or only on global challenges that threaten to sink us all together if we fail to cooperate. We must do both... Competition must not lock out cooperation on issues that affect us all* (Biden 2021).

For their part, US allies and partners will be more interested in cultivating a certain "order" involving China, Russia or Iran than simply accepting all of Washington's dictates or insisting on an "exclusively" liberal order. Hence, by inability and by choice, the "West" affirms, above all, that *«We are committed to the rules-based international order»* (NATO, 2021), which does not necessarily mean a liberal order. In fact, on top of the deconstructed liberal world order, a new world order "based on rules" is already being built, but with "new rules", many of them "Chinese style".

## Final Remarks

It is justified to affirm the existence of "order" in international relations, as is justified by referring to a "liberal international order", but this does not necessarily mean the same as "world order". International order does not equate to power structure either, although it reflects the values, interests and power of its main units. The construction of the liberal order is associated with US hegemony and the Western worldview, but it is characterized by a set of constitutive elements distinct from those of other international orders, based on political and economic liberalism and inalienable human rights, and embodied in certain rules and international institutions.

The first attempt to build a liberal order came after World War I, in order to prevent the terrible consequences of the traditional anarchic system. However, it was quickly deconstructed by the lack of commitment of the main democratic powers and undone by the great anti-liberal powers. In the midst of World War II, the reconstruction of the liberal order began, but it would come to be established only in the "Free World" and in the broader framework of the Cold War. It was only when it ended that the liberal order became "worldwide", which is verifiable in terms of ideas and values and also in new waves of democratization, in the broadening and deepening of organizations that came from the Western liberal order and in the proliferation of new multilateral institutions, expansion of the *Pax Americana*, multiplication of international rules and conventions, reinforcement of collective security and acceleration of economic "globalization".

However, the many paradoxes and ambivalences of the globalized liberal order led to its deconstruction. Economic hyper-globalization seemed to subvert democracy and "legitimize" certain autocracies, while at the same time removing influence from the



"West" and favouring the growth of China's all-encompassing national power. China and Russia are two of the main opponents of the liberal order, which they confuse with the "hegemonism" of the US and the "arrogance" of the West: threatening their neighbours, exporting authoritarianism, absolutizing the principle of "non-interference in internal affairs", binding themselves to a limited number of international rules that in no way harm their sovereignty, shaping existing international institutions and conventions to their interests and creating, in parallel, new institutions and mechanisms. For its part, whether in an attempt to make the world order more liberal or to maintain its primacy, the US and its European allies have shown their willingness to "break the rules", which illustrates that there can be tension between "liberalism" and "order" and between the liberal pillars of security, the economy and human rights. Added to this is the polarization of the "West", the retreat of Democracy and the impacts of the Trump Presidency. The Biden Administration has reintroduced normality into US foreign policy, but that means another way of trying to maintain American primacy and leadership in the international system and not that the world order can go back to what it once was.

As always, the international order depends on what the main actors make of it. Apparently, the liberal order is in an irreversible deconstruction, with the world order being recreated in an intense simultaneous dynamic of competition and cooperation, fundamentally between the US and China, but not only. What this means for sure, and what will remain liberal in the new world order, is still too early to see.

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## **THE CONSTITUTIONAL CHARTER OF 1826 AND THE DISSOLUTION OF THE CHAMBER OF DEPUTIES. LEGAL RULES, POLITICAL PRACTICES AND FUNCTIONING OF THE 19<sup>th</sup> CENTURY MONARCHICAL-LIBERAL REGIME (1834-1865)**

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### **Abstract**

The right to dissolve the elected chambers of parliaments was generally enshrined in the European liberal constitutions of the 19th century as one of the prerogatives of the heads of state in exercising the executive power assigned to them. In Portugal, the Constitutional Charter of 1826 instituted a fourth power – the Moderating Power – which added to the traditional legislative, executive and judicial powers and belonged exclusively to the monarch, in addition to the executive power, of which he was the head. Under the influence of Benjamin Constant, one of the royal powers within the scope of the moderating power was the dissolution of the Chamber of Deputies, which the monarch could decree whenever “the salvation of the State” required it. It was an exceptional measure that should only be used in extreme cases of national political life. However, this royal prerogative became trivialized, becoming a political means used by governments to obtain parliamentary majorities through the use of fraudulent elections. Political practices departed significantly from the constitutional norm and dissolutions of the elective chamber would come to play an important role in the functioning of the regime.

This paper examines the constitutional norms and analyses the ten dissolutions of the Chamber of Deputies decreed between 1834 and 1865, highlighting the enormous gap that separates the *formal constitution* from the *real constitution*, resulting from the political practices of the agents of power and of the institutions themselves.

### **Keywords**

Liberalism, Constitutional Charter, Parliament, Chamber of Deputies, Dissolution

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## THE CONSTITUTIONAL CHARTER OF 1826 AND THE DISSOLUTION OF THE CHAMBER OF DEPUTIES. LEGAL RULES, POLITICAL PRACTICES AND FUNCTIONING OF THE 19<sup>th</sup> CENTURY MONARCHICAL-LIBERAL REGIME (1834-1865)<sup>1</sup>

ANTÓNIO PEDRO MANIQUE

### Introduction

The history of parliaments is of the utmost importance for understanding liberal political systems. Constituting the legislative bodies par excellence, they were located at the centre of complex networks of power relations established around the production of laws. They were involved in processes of political conflict with other state bodies, especially governments, which faced, to a greater or lesser extent, the inspection of elective assemblies representing national sovereignty.

In Portugal, there are some studies on the organization of the nineteenth century parliament, but the history of political practices related to it is still poorly known, which is of crucial importance for understanding the role played by the legislative body in the set of political institutions of the liberal state. While knowledge of the constitutional norms that regulate the organization and functioning of state bodies is essential, the gap that always exists between them and the *real constitution* cannot be forgotten. The political practices that ultimately shape institutions and the regime itself do not always coincide absolutely with the norms prescribed by the *formal constitution*. It is important to understand how the architecture of the state outlined by the Constitutional Charter of 1826 was shaped by the political practices of the agents of power and the institutions themselves. It is also important to know the result of these practices in political communication and in the interaction between parliament and government and between them and the head of state. Did it give "parliamentary sovereignty" an autonomy of the legislative power vis-à-vis the government or, on the contrary, did it allow the nineteenth century parliament to legitimize governments and their policies?<sup>2</sup>

The answers to these questions involve addressing a particular aspect related to the functioning of parliament: the dissolution of the Chamber of Deputies and the way the royal prerogative of dissolution enshrined in the Constitutional Charter of 1826 was used. This paper analyses the period between 1834 and 1865, seeking to establish relationships

<sup>1</sup> Article translated by Carolina Peralta.

<sup>2</sup> For an approach to this problem in the English case, see Judge, David (1993). *The Parliamentary State*. London: Sage Publications.



between the constitutional norms and the political practices that conditioned the 10 dissolutions decreed in that period.

The dissolution of the Chamber of Deputies became a fundamental political tool for the functioning of the nineteenth-century liberal-monarchist regime<sup>3</sup>. Between the beginning of the construction of the liberal state, in 1834, and the end of the monarchy, the dissolution mechanism was used 31 times. This means that, of the 41 legislatures in the same period, only 15 were completed. The remainder being interrupted before the full time constitutionally established (four years until 1885, three years after that date; the 1838 Constitution also established three-year legislatures). The frequent resort to the dissolution of the Chamber of Deputies meant that, instead of the 21 or 22 electoral acts that, under normal conditions, should have taken place between 1834 and 1910, 42 were held. This situation was only paralleled in liberal Europe in the last decades of the 19th century in Greece and, to a lesser extent, in Spain (Almeida, 1991: 82).

Thus, it is important to analyse not only the constitutional norms, but also the practices that conditioned this important political phenomenon of Portugal's nineteenth century.

### **The Constitutional Charter of 1826 and the right to dissolve the Chamber of Deputies**

The Constitutional Charter of 1826, granted by D. Pedro IV following the death of D. João VI, had as its main sources the French Constitutional Charter of 1814, donated to France by Louis XVIII, and the Brazilian Constitution of 1824. It was also inspired by the Portuguese 1822 constitution. From a doctrinal point of view, a marked influence is evident of the ideas of Benjamin Constant, expressed in his *Esquisse de Constitution*, published in France in 1814. One of the novelties of the 1822 Constitutional Charter in relation to the Constitution and other constitutions of the time is the institution of four distinct powers: to the traditional legislative, executive and judicial powers, the moderating power was added, considered "the key to any political organization"<sup>4</sup>. The conception and theorization of this fourth power belonged to Benjamin Constant, for whom, to the three powers enunciated by Montesquieu, it was necessary to add another one - the real power - neutral, which ensured the regular and independent functioning of the first three, through a regulatory action that would maintain harmony and balance between them<sup>5</sup>. The moderating power belongs exclusively to the monarch and grants him typical attributions as head of state (the king is the Supreme Head of the Nation). It allows him to actively intervene in the legislative power, by convening, extending or postponing the *Cortes* (Parliament), by appointing the members of one of the chambers that compose it (*Câmara dos Pares-Peers*), or by dissolving the Chamber of Deputies. The king was able to sanction laws and had the right of absolute veto over them<sup>6</sup>.

<sup>3</sup> For the period between 1852 and 1865, see Manique, António Pedro (1992). O direito de dissolução em Portugal. Normas e práticas constitucionais (1852-1865). In *Constituição da Europa, Constituições da Europa. Europeísmo e Nacionalismo na História Constitucional Europeia*. Lisbon: Assembleia da República.

<sup>4</sup> *Carta Constitucional da Monarchia Portuguesa*. Lisbon: Imprensa Régia, 1826. Articles 11 and 71.

<sup>5</sup> Constant, Benjamin – *Cours de politique constitutionnelle ou collection des ouvrages publiés sur le gouvernement représentatif* (1872). Paris: Librairie de Guillaumin. 2 vols.

<sup>6</sup> For a broader view of constitutional regulations and the functioning of Parliament, see: Manique, António Pedro (2020). Parlamento, Governo e produção legislativa na primeira fase da Regeneração. Normas legais e práticas políticas (1851-1865). In *Cadernos do Arquivo Municipal*, 2nd series, no. 14. Lisbon: CML.





In his *Principes de Politique* (1815), Constant devotes a chapter to the “right to dissolve representative assemblies”<sup>7</sup>, where he considers, on the one hand, their indispensability in constitutional monarchies and, on the other, the need for control of their activity by the Head of State. “In a great country there can be no freedom without strong, numerous and independent assemblies; but these assemblies do not exist without dangers and, in the interest of their own freedom, it is necessary to prepare infallible means to prevent their deviations” (Constant, 1815: 30). Constant considered that the multiplicity of laws passed by the chambers at certain periods, under the impulses of political passion, could turn into oppression for the people, perverting the fundamental role of parliaments. While the veto could prevent such excesses, its frequent use caused political friction and did not completely disarm the assemblies, so resorting to dissolution was the only way to limit the “representative authority”.

Without limitations, the representatives of the people “would not be defenders of liberty, but candidates to tyranny”; for this reason, the right of dissolution did not constitute an insult to the rights of the people. On the contrary, it was a guarantee of the exercise of those rights because it allowed them to choose representatives to defend their interests. It was, therefore, absolutely necessary that the representative assemblies be “free and powerful”, but it was equally indispensable that “their deviations could be repressed” (Constant, 1815: 31). Considering also the hypothesis that the assemblies do not produce legislation sufficient or adequate to national problems, and in a final justification of the right of dissolution, Benjamin Constant asked: “Between an assembly that insisted on not producing any law, not providing for any need, and a government that did not have the right to dissolve it, what means of administration would there be left?” (Constant, 1872: 189-190). However, he did not fail to warn of a fundamental problem: the mechanism he defended would work well if elections were free; because if they were not, there would be, purely and simply, no representative system.

The principle of the royal prerogative of dissolution of the elective chambers was enshrined, in general, in the fundamental European laws of the 19th century. In most cases, it was the competence of the executive power, of which the monarch was the head. The French Constitutional Charters of 1814 and 1830 included it in their articles, imposing on the monarch the obligation to convene a new assembly within three months of dissolution<sup>8</sup>. In Spain, the Royal Statute of 1834 established a period of one year, after dissolution, for a new parliamentary meeting<sup>9</sup>, but the constitutions of 1837 and 1845 adopted and specified the French rule of three months as the maximum period for the convocation and meeting of the congress of the deputies, after the royal decree of its dissolution<sup>10</sup>.

The Brazilian Constitution of 1824 also stipulated the imperial prerogative of dissolving the Chamber of Deputies, imposing on the moderating power the obligation to

<sup>7</sup> *Principes de Politique*, chap. III. In *Cours de Politique...* cit.

<sup>8</sup> See Godechot, Jacques (1979). *Les Constitutions de la France depuis 1789*. Paris: Garnier-Flammarion, pp. 217 and 247.

<sup>9</sup> Esteban, Jorge (1988). *Las Constituciones de España*. Madrid: Taurus, p. 97.

<sup>10</sup> Idem, pp. 105 and 119.



"immediately summon" another one to replace it<sup>11</sup>, without indicating a deadline for the meeting of the new Chamber.

Although the Portuguese constitution of 1822 did not enshrine such a possibility, the Constitutional Charter of 1826 granted the king, in the exercise of the moderating power, the right to dissolve the Chamber of Deputies, but only "in cases where the salvation of the State requires it" (Article 74). As for the convening of a new chamber to replace the dissolved one, the vague formula modelled on the Brazilian constitution prevailed, imposing on the monarch the obligation to convene "immediately another one to replace it", without however setting any deadline for the new meeting of the *Cortes* after the dissolution. In fact, the distinction between the act of convening the *Cortes* and their effective meeting is of utmost importance. The absence of clear regulations allowed the sovereign, when exercising the prerogative, to use the dissolution decree itself to convene the new Chamber of Deputies, thus fulfilling the constitutional precept, but setting its meeting for a date that could be several months after the dissolution. This caused disturbances to the regularity of national political life and favoured the occurrence of dictatorships. The Additional Act of 1852 did not introduce any change to the constitutional provisions relating to this matter. Only the second Additional Act of 1885 would stipulate that, in case of dissolution of the Chamber of Deputies, the new *Cortes* would be obligatorily convened within three months. Thus, the discretion relating to the time interval elapsed between two meetings of the Parliament separated by the act of dissolution was limited.

Since there was no strictness in the constitutionally established deadlines, it was the circumstantial circumstances that determined the greater or lesser urgency in the meeting of the *Cortes* after the dissolution. While in the first half of the nineteenth century the intervals separating dissolutions from new meetings of the *Cortes* were relatively long, from 1852 onwards the general trend was towards reducing these intervals to about three months. Thus, political practices brought the functioning of the regime closer to its foreign counterparts.

The general understanding of the right to dissolution and the positions taken in relation to its exercise depended, of course, on the political-ideological position of the personalities who spoke on the matter. For Consiglieri Pedroso, activist and republican theorist, the right to dissolution enshrined in the Constitution was "an attack on national representation" and the way in which the moderating power abused it, with the acquiescence of the monarchic parties, constituted "an attack on popular sovereignty" (Pedroso, 1887: 9). In his opinion, such a right was reprehensible because it allowed a power that did not legitimately represent the nation to annihilate the national will expressed through voting; and as in conflicts between the Chamber of Deputies and governments, the latter were always the winners, the dissolution right had become a "simple weapon used by the executive power to dominate the Chamber of Deputies and with it the nation" (Idem: 16-17).

The position taken by José Tavares, professor of Law in the last years of the monarchy, was different. Analysing the right of dissolution in several European countries and in Portugal, he was doctrinally close to Benjamin Constant in considering that such

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<sup>11</sup> Miranda, Jorge (1990). *Textos Históricos do Direito Constitucional*. Lisbon: INCM, pp.197-227.



prerogative was "an effective guarantee against the abuse or incompetence of the strongest of powers - the legislative power – thus being one of the indispensable sanctions to the principle of division of powers" (Tavares, 1909: 132-133). By allowing the resolution of conflicts between the legislative and executive powers, ensuring the convening of the electoral body to have a say on the most serious problems of the administration, the right of dissolution was "the most perfect consecration of the representative regime", constituting "one of the most concrete affirmations of the principle of national sovereignty" (Idem).

As for the political agents, naturally their decisions depended on their positions regarding the exercise of power. Nogueira Soares perspicaciously noted the variations in opinion as a result of circumstances. "When the parties are in power, the king reigns and does not govern. As head of the executive power, the king must limit himself to signing, without remarks or reflections, all the orders that ministers present to him, no matter how scandalous or more contrary to public morals (...). As a moderating power, the king must limit himself to decreeing, without examination or discussion, all dissolutions of the chamber of deputies, all preparations in the chamber of *pares*, all adjournments of the *Cortes* that the ministers deem appropriate. When they are in the opposition (...), these parties maintain that the king must refuse to sign all orders which they deem unjust or scandalous; that he must deny the ministers any dissolutions, adjournments, ministerial reshuffling; that he must oppose the veto of laws passed by both Houses of Parliament" (Soares, 1883: 152-153).

In fact, the positions adopted by the party members did not depend on the defence of doctrinal principles, only on the political pragmatism dictated by the situation. Dissolutions were justified or not according to the circumstances in which they occurred. They were always legitimate for the political forces that decreed them, just as they were invariably reprehensible for those in the opposition. However, the criticisms of the dissolution mechanism focused not so much on the prerogative itself, but mainly on the misuse that was made of it, when it was used to "create" parliamentary majorities through fraudulent elections.

Some debates held in the press clearly summarized the ideas that prevailed in the second half of the 19th century about the issue of the dissolution of the Chamber of Deputies. An article by Rodrigues Sampaio, a prominent person in journalism and politics, who frequently addressed the issue, is significant. He considered that the restrictions imposed by the Charter on the right of dissolution could not be seen from the same perspective as the legislator in 1826, since, in its original conception, such right was of little use and it should have been denied to the Crown. "The right to dissolve is not the right of the Charter as it conceived it, nor can it, consequently, be restricted to these very serious and very risky predicaments. The right to dissolve is the right to assess the country's opinion. These benchmarking operations can be carried out infrequently and can be carried out very rarely. It's not the frequency that makes them dangerous; it is the purpose, it is the situation and the way that determine its nature and influence on institutions and public tranquillity"<sup>12</sup>. Sampaio believed that it could be dissolved when legislative bodies did not keep up with changes in national opinion, when public need

<sup>12</sup> *A Revolução de Setembro*, no. 5273, 29-11-1859.



required it, when it was necessary to resolve major governance doubts that required popular consultation, when parliaments did not have authorized majorities, in short, when circumstances so advised. "Dissolution, therefore, is not in itself a principle of revolution, nor a path towards it. Dissolution is an innocent right. What makes it sometimes harmful are the rigged and violated elections"<sup>13</sup>.

In 1859, Sampaio expressed the above-mentioned doctrine, when there had been a dissolution decreed by the political forces he was part of. However, in 1858, he had written an ironic and caustic article on the same issue, in which he reviled the government of the time and concluded: "It is enough that we base ourselves on a principle on which the whole theory of the right to dissolve is based. The principle is: parliaments should never be dissolved except to save inept ministries"<sup>14</sup>. The "dissolving" government at the time led by the Marquis de Loulé, who Sampaio was fighting in the parliamentary opposition.

The dissolution of the Chamber of Deputies thus became a common political phenomenon throughout the nineteenth century. Political practices departed significantly from constitutional norms, making current and banal a measure originally conceived for exceptional use. With the aggravation of being decided by the governments and not by the monarch, due to the capture of the moderating power by the Executive since the beginning of the construction of the liberal state<sup>15</sup>, as demonstrated by the analysis of dissolutions that follows.

### **The dissolutions of the Chamber of Deputies (1834-1865)**

The Parliament was formed by two chambers (Chamber of *Pares* and Chamber of Deputies) with equal powers regarding the passing of laws. Any legislative measure required the approval of both. The former was appointed by the king, and when they did not have a majority in it, the governments resorted to *forçadas*, that is, the nomination of variable groups of new peers considered politically close to the government that proposed them to the monarch.

As for the Elected Chamber of Deputies, resorting to dissolution was the only way for governments to obtain majorities. They obtained them through manipulation and electoral fraud. Between 1834 and 1910, 31 dissolutions of the Chamber of Deputies were decreed, 10 of which during the period analysed here.

The construction of the liberal regime after the end of the civil war began with the opening of the *Cortes* on 15 August 1834. Faced with the physical weakness of D. Pedro (who would die on 24 September), the Parliament decreed the age of majority of D. Maria II, who swore the Constitutional Charter on 20 September and who, four days later, named her first government, presided over by the Duke of Palmela. Until the September Revolution, four more governments ensued, all of them coexisting with a parliament where party conflicts prevented the approval of the necessary measures to solve the

<sup>13</sup> Idem, *ibidem*.

<sup>14</sup> Idem, no. 4780, 31-03.1858.

<sup>15</sup> See Manique, *Parlamento, Governo...*, cit.



difficult financial, economic and social problems the country was struggling with after the devastating civil war.

#### Quadro 1 – Dissolutions of the Chamber of Deputies (1834-1865)

Nº.	Date (a)	President of the Council of Ministers
1	4-6-1836	Duke of Terceira
2	25-2-1840	Count of Bonfim
3	10-2-1842	Duke of Terceira
4	23-5-1846	Duke of Palmela
5	25-5-1851	Duke of Saldanha
6	26-7-1852	Duke of Saldanha
7	26-3-1858	Marquis of Loulé
8	24-11-1859	Duke of Terceira
9	27-3-1861	Marquis of Loulé
10	15-5-1865	Marquis of Sá da Bandeira

Sources: AHP: *Registo das sessões reais, prorrogação das sessões e adiamento das mesmas e da dissolução da Câmara dos Deputados*, Book 788.

Santos, Manuel Pinto dos (1986). *Monarquia Constitucional. Organização e Relações do Poder Governamental com a Câmara dos Deputados (1834-1910)*. Lisbon: A. República.

- (a) The dates of reading of the dissolution decrees in the plenary of the Chamber are considered here, from which they took effect, and which do not always coincide with the dates of their signature.

In the Chamber of Deputies, the "ministeriais"/ministerial (the most conservative faction of liberals, identified with the principles of the Constitutional Charter of 1826), and the "antiministeriais" (anti-ministry), more radical, critics of the Charter and identified with the principles of *Vintism*, fought each other. They included people such as Passos Manuel and others who would become part of the *Setembrismo* movement. Neither the conservative governments, led by Palmela, Saldanha and Terceira, nor the "left" government, presided over by José Jorge Loureiro<sup>16</sup>, managed to get the legislation they wanted passed, which led to the first dissolution of the Chamber of Deputies, decreed on 4 June 1836.

Indeed, the queen denied the dissolution to José Jorge Loureiro (Bonifácio, 2002: 34), but granted it to the Duke of Terceira, president of the Council of Ministers from 18 April 1836. Terceira dissolved the Chamber of Deputies "to have his own people", according to Oliveira Martins, that is, to obtain a parliamentary majority.

The government "held the elections, which were like all others; and as always, it won" (O. Martins, 1977, II: 53-54). These elections, held in July, resulted in a majority of "ministerial" deputies, a circumstance that did not serve the government, given that the Chamber did not meet, due to the September Revolution, which determined the downfall of the Executive.

The royal prerogative of dissolution of the Chamber of Deputies materialized through a "proposal of the Ministers", approved unanimously by the Council of State<sup>17</sup>. In other words, the initiative belongs to the government in office and the intention is to "put

<sup>16</sup> President of the Council of Ministers between 11/25/1835 and 04/19/1836.

<sup>17</sup> ANTT, Actas do Conselho de Estado, Casa Forte, Livro 77A, session of 4/6/1836.





together" a parliamentary majority to sustain it, which is achieved by resorting to various mechanisms that distort the principle of electoral representation.

The second dissolution was decreed on 25 February 1840, under the 1838 Constitution, which enshrined the royal prerogative within the executive power, of which the monarch was the head. The Chamber of Deputies elected in August 1838 supported the government of Sá da Bandeira, who organized the elections following the approval of the new Constitution<sup>18</sup>, but got along poorly with the ministry of the Count of Bonfim, appointed in November 1839, with the *Cortes* closed, and which already had Costa Cabral in the Justice department. This government, which represented the demise of the September Movement (Bonifácio, 1999: 168) and the rise of the "party of order", was faced with a strong opposition led by representatives of the September current. Accordingly, it requested its dissolution, claiming that the Chamber of Deputies no longer represented national opinion and was unable to pass the legislative measures the country needed. Interestingly, the *Diário da Câmara* reports that, after reading the dissolution decree, "there was applause in the room and galleries from the deputies and people of all opinions; and there was not an expression of even less respect for the royal prerogative exercised at that time"<sup>19</sup>.

It is clear that the government in office regained a parliamentary majority and the new Chamber survived until the restoration of the Constitutional Charter, in February 1842, following the movement carried out by Costa Cabral.

The dissolution of 10 February 1842 was a natural consequence of the restoration of the Charter and the appointment, on 9 February, of the government presided over by the Duke of Terceira, but truly led by Costa Cabral, who held the ministry of the Kingdom. The Chamber of Deputies elected in June of that year would become the support of "Cabralism" and functioned until 1845, becoming the first complete legislature since the beginning of the reign of D. Maria II.

The August 1845 elections, organized and "manipulated" by the Minister of the Kingdom, Costa Cabral, again produced a Chamber of Deputies that was mostly government supporters and would come to be dubbed "factious and prostitute" by political forces against Cabralism (Bonifácio, 2002: 45), and it did not survive. In fact, the Maria da Fonte revolt, in April 1846, precipitated the fall of the Ministry and the exile in Spain of Costa Cabral and his brother. In its replacement, on 20 May, a new government was appointed, headed by the Duke of Palmela, who dissolved the Chamber of Deputies three days later. The dissolution of 23 May 1846 was, therefore, the result of political conflicts and military movements caused by the government of Costa Cabral and culminated in the Patuleia civil war.

The Parliament did not function throughout 1847 and it was only in November that elections were held, called by the government of Saldanha, which replaced the previous one. The new Chamber of Deputies met on 2 January 1848, under constitutional terms,

<sup>18</sup> The elections of 12 August 1838 were direct, under the terms of the Constitution of 4 April of the same year. Simultaneously with the deputies, the senators who would compose the respective Chamber were also elected, under the terms of the new Constitution.

<sup>19</sup> *Diário da Câmara dos Deputados* (1840). Lisbon: I. N., 2nd vol., p. 321. The Chamber of Deputies' Diary was the main source for the study of all the dissolutions analysed here, so its constant reference is dispensed with.





and coexisted with all succeeding governments<sup>20</sup> until the military coup of the Regeneration, with four legislative sessions. On 9 April 1851, the parliamentary activity was postponed until 2 June, but the *Cortes* did not meet again, since the government of the Duke of Saldanha, resulting from the Regeneration movement and sworn in on 22 May, dissolved the Chamber of Deputies three days later.

The Decree of 25 May 1851 not only dissolved the Chamber of Deputies, but also called for elections that would give deputies extraordinary powers to revise the Constitutional Charter, promised since 1842. Elections were demanded by the more progressive political sectors that supported the regeneration movement. Thus, D. Maria II, considering herself invested with extraordinary powers, went beyond articles 140 to 143 of the Constitutional Charter, which regulate the revision, opening the door to changes that would make the Fundamental Law acceptable to all.

While the dissolutions decreed between 1836 and 1851 were conditioned, to a greater or lesser extent, by the political and military instability<sup>21</sup> that characterized the first half of the nineteenth century, the same did not happen with those that occurred from 1852 onwards. This was because the alterations to the Constitutional Charter enshrined in the first Additional Act accentuated the parliamentary aspect of the regime and established new forms of relationship between the legislative and executive powers.

Indeed, the Additional Act of 5 July 1852 introduced regulations that strengthened the powers of the Parliament, namely: measures relating to Finance matters (annual parliamentary voting on taxes, mandatory use of budget funds in previously determined expenses, strict deadlines for the presentation of the state budget by the government); mandatory parliamentary ratification of treaties signed with foreign powers; and the power of the legislative chambers, through inquiry commissions, to examine the acts of governance. This reinforcement of the Parliament's supervisory function forced the Executive to submit to a tighter parliamentary control than initially foreseen in the Basic Law. On the other hand, the end of military coups that, in the previous period, opposed the various factions of Liberalism, transferred the political struggle to parliament, which became the privileged stage for the confrontation of ideas and government strategies.

The institutionalization of the office of President of the Council of Ministers (1855)<sup>22</sup> and the character of "Cabinet" which, legally, was assumed by the Ministry, brought the regime closer to a dualist or Orléanist parliamentarism (Duverger, 1985: 139-140). This is because the government was doubly responsible: before the king, who appointed and dismissed it; and before Parliament, which, although constitutionally could not overthrow it, exercised a supervisory and critical action that strongly conditioned the existence of ministerial cabinets. An example of this was the motions of censure that, at certain times, led to the resignation of serving governments.

In addition to the new legal precepts, the practices of political agents and their understanding of the functioning of institutions also conditioned the attitude of the regime

<sup>20</sup> Governments headed by Saldanha, Costa Cabral, Duke of Terceira and again Saldanha.

<sup>21</sup> On military movements in this period, see: Marques, Fernando Pereira (1999). *Exército, mudança e modernização na primeira metade do século XIX*. Lisbon: Cosmos/IDN

<sup>22</sup> Although D. Maria II appointed a president of the council of ministers in her first government, the position was only regulated in 1855 (Law of 23 June). There was, therefore, a legal vacuum for more than twenty years, which is a good example of the gap between constitutional norms and political practices.



in the second half of the 19th century. The rise of the “historical” to governance was accompanied by a clear defence of parliamentary principles, contrasting with the attitude of the regenerators, generally more limited to counting the majorities or minorities in the legislative chambers.

While Saldanha would have exclaimed to D. Pedro V, when asking him to refuse a *fornada* of peers, that “without chambers, Your Majesty and I would make Portugal happy” (Cruz, 1970: 29), *Jornal do Comércio*, an paper close to the historical, wrote in 1858: “The persons in charge of each of the departments necessarily need to give public accounts before the national representation, of the special affairs under their responsibility. (...) Just as there cannot be governments without majorities, so majorities in the absence of governments become impossible”<sup>23</sup>. In turn, *A Opinião*, a newspaper openly defending the historic ministries, considered, in 1859: “We are in full parliamentary government (...). Among us, political situations that do not originate and do not live from parliamentary conditions are impossible”. Welcoming a meeting that took place between the majority of deputies and the government, the newspaper exulted with “the beneficial effects of institutions” and with “the interpretation given to them in recent years of government”<sup>24</sup>, that is, with development from the parliamentary side, encouraged since 1856 by the government of the Marquis of Loulé. The harmony between the fundamental principles of the Constitutional Charter and the “government norm” had led to an “eminently parliamentary regime”<sup>25</sup>, which had to be preserved and defended.

The attitude of governments towards the dissolved chambers also differed between regenerators and historical, at least in the first phase of the regeneration, as we shall demonstrate below. The dissolutions of 1852 and 1859 (governments of the Dukes of Saldanha and Terceira, respectively) were abruptly decreed, while the others, under the responsibility of ministries presided over by the historical (Marquis of Loulé and Marquis of Sá da Bandeira) resulted from complex conflicting processes, in which the extreme solution appears as the only one capable of putting an end to the political situations. Although used by both dominant political forces in governance, resorting to the prerogative of dissolution seems to have aroused greater scruples on the part of the historical, which indicates a different way of looking at the relations established between the executive power and national representation.

The dissolution of the Chamber of Deputies decreed on 26 July 1852 was the result of the first great conflict between the government and the national representation after the regeneration movement that took the Duke of Saldanha to the presidency of the Council of Ministers. Although the immediate pretext was the parliament’s refusal of a financial measure decreed dictatorially by the government, its occurrence is part of a broader conflictual framework that it is important to characterize. Understanding it requires examining the governing structure and the political-ideological reality of the chamber elected in November 1851.

The Ministry headed by the Duke of Saldanha (sworn in on 22 May 1851) reflected a commitment between various political sectors opposed to *Cabralism* who supported the regeneration military movement, since Saldanha had attracted the former *Setembristas*

<sup>23</sup> *Jornal do Comércio*, no. 1350, 21-3-1858.

<sup>24</sup> *A Opinião*, no. 632, 6-2-1859.

<sup>25</sup> *Idem*, no. 635, 10-2-1859; no. 640, 16-2-1859.



and moderate Chartists to his cause, unhappy with the political situation and with the set of scandals that characterized the last period of Costa Cabral's government.

The ministerial list had a heterogeneity that sought to reconcile diverse political trends and bring them together around national objectives which the regeneration represented, seeing itself as "a coalition of different parties"<sup>26</sup> that underwent successive remodelling to move away the most radical elements and consolidate the power of Saldanha's most faithful followers. The Marquis of Loulé was removed from the Navy Ministry as early as July 1851, as well as Joaquim Filipe de Soure from Justice, while Almeida Garrett and António Luís de Seabra, from the September movement, did not resist for more than five months (March to August 1852) in the Ministries of Foreign Affairs and Justice, respectively. The Ministry of Finance had two representatives (Marino Franzini and Silva Ferrão) before the "providential" Fontes Pereira de Melo was called in; and the important Ministry of the Kingdom, first given to José Ferreira Pestana, was then conceded to the future second strongman of the new situation, Rodrigo da Fonseca Magalhães. It was not, therefore, a consolidated and stable government structure that faced the Chamber of Deputies, but a group of individuals with different ideas, where political contradictions found fertile ground for their development.

The Parliament, opened on 15 December 1851, had a Chamber of Deputies (elected in November) that did not fail to reflect government movements. The old Progressive Party dominated the overwhelming majority of the chamber, but this party structure, far from being homogeneous, had several factions, which were quickly mismatched in terms of the support to be given to the Saldanha government. The political arrangements and alignments within the chamber were complex and slow and the government itself had difficulty in counting its supporters, whose number did not settle down, varying according to the matters under discussion. The Progressive Party, in its majority, ended up supporting the government, although this support was not unconditional, with the chamber revealing a reasonable autonomy in relation to the ministerial intentions.

The relationship between the Chamber of Deputies and the government was initially guided by demanding and political conviction positions. Its "ministerialism" did not result from any blind loyalty to the government, but "from the conviction that the Ministry must be supported; this ministerialism presupposes merit in those who receive it and independence in those who give it"<sup>27</sup>, wrote Rodrigues Sampaio, summarizing the sentiments of the group of deputies who provided the government with "illustrated and conscientious support, and not unlimited and unconditional support"<sup>28</sup>.

The conflict between the government and the Chamber of Deputies, which culminated in dissolution, went through three fundamental stages: the question of the presidency, right at the beginning of the parliamentary work; the discussion of the Additional Act and the amendments introduced by the deputies to it; and, finally, the refusal to ratify the dictatorial decree of 3 December 1851. The political conflict between the two levels of power increased progressively until it reached a rupture, in July 1852, regarding the parliamentary ratification of the dictatorial measures decreed by the Executive between

<sup>26</sup> *A Revolução de Setembro*, no. 3099, 30-07-1852.

<sup>27</sup> *A Revolução de Setembro*, no. 3002, 02-04-1852.

<sup>28</sup> *Idem*, no. 3095, 27-07-1852. For the Government/Chamber of Deputies relationship in the first phase of Regeneration, see *Diário da Câmara dos Deputados*, Lisbon, I.N., 1851-1865.



May and December 1851, in the absence of work by the *Cortes*, which ended when the regeneration military movement took place<sup>29</sup>.

It was the Decree of 3 December 1851 that was directly at the origin of the conflict between the government and the deputies. Considered one of the most important measures enacted by the Executive, the decree capitalized the interest of the public debt and constituted one of the fundamental pillars of the financial policy of the Regeneration. In view of the budgetary implications of the decree, the parliamentary Finance Committee intended to suspend its enforcement until the approval of the state general budget, opposing the capitalization defended by the government with the principle of amortization of the public debt, which was promptly rejected by the Executive. The plenary, in turn, wanted a specific analysis of the decree, separating it from the set of 100 legislative measures that the government presented for ratification.

The confrontation was based on the irreducible positions of the two parties involved. The government did not admit any alteration to the Decree of 3 December 1851, requiring the ratification of the entire legislative “package”; and the Chamber of Deputies did not abdicate its rights to legislate, rejecting, simultaneously, the capitalization and amortization of the debt, hoping to create conditions for an understanding with the Executive on the financial issue, considered by all of utmost importance and urgency.

The president of the Council of Ministers, Saldanha, even declared in the Chamber of Deputies that the Executive would resign if it was defeated in the confrontation with the parliamentarians. Still, it did the opposite, dissolving the national representation as a result of its refusal of government requirements. In fact, the government's claim on 23 July having been rejected, the royal decree of dissolution of the Chamber of Deputies was signed on the 24th, although it only produced effects on the 26th<sup>30</sup>. The initiative for dissolution came from the government and reveals its inability to control a chamber it had elected, but which revealed enormous autonomy vis-à-vis the Executive, supporting it in the measures it considered correct, but without abdicating the exercise of the legislative function that constitutionally belonged to it<sup>31</sup>. In the subsequent elections, the government obtained a parliamentary majority, which would later ratify, without conflict, the dictatorial measures rejected by its predecessor's chamber. The iron fist between the government and the deputies, which conditioned this dissolution, led to a deep dissidence in the progressive political group, which would give rise to the future structuring of the Regenerator and Historical parties (Sardica, 2001: 149 and following).

The dissolution of the Chamber of Deputies on 26 March 1858 is part of a political situation of broad parliamentary contestation of the government led by the Marquis of Loulé. Elected in November 1856, a few months after the Historical Party's rise to power, the Chamber always maintained an uneasy relationship with the Executive. Its criticism of government policy was often aligned with those produced in the Chamber of *Pares*,

<sup>29</sup> For a more in-depth analysis of dictatorships and their respective parliamentary ratifications, see our work “Parlamento, Governo e produção legislativa na primeira fase da Regeneração. Normas legais e práticas políticas (1851-1865)”. *Cadernos do Arquivo Municipal*, 2nd Series, no. 14, Lisboa, CML, 2020, pp. 41-63.

<sup>30</sup> The dissolution of the Chamber of Deputies was consummated with the reading of the royal decree in the plenary, when the president closed the session, and not on the date it was signed. Hence, there may not be a coincidence of the two dates, as happened in this case.

<sup>31</sup> The debate on this issue can be followed in *Diário da Câmara dos Deputados*, 1852, sessions of 2-23 July.



where the opposition had a large group of members who did not spare the government in their assessment of the progress of public affairs.

The 1856 elections were marked by the competition of four political parties (Regenerator, Historical, Chartist and Legitimist)<sup>32</sup>, with the government presenting its own lists, but establishing electoral agreements with the first three parties. This resulted in a heterogeneous chamber "composed of several factions belonging to the old parties; with a great opposition strong in numbers and in parliamentary resources; with the majority floating, uncertain, discouraged by the present and by the future"<sup>33</sup>.

The first conflict between the chamber and the Ministry took place in mid-January 1858 and resulted in a motion of censure which, although defeated by a slim majority of six votes, resulted in the government's resignation. This request was later rejected by D. Pedro V, as he was unable to form another Executive in the terms he wanted, with the Marquis de Loulé remaining in the presidency of the Council of Ministers. The political phenomenon that opposed the Parliament against the government was the question of the functioning of the Council of State, raised in the Chamber of *Pares* in mid-February 1858 and which, for more than a month, stirred the spirits of parliamentarians and government officials. Indeed, the Upper Chamber, in an attitude of direct opposition to the Executive, questioned the functioning of the Council of State which, according to the Law of 3 May 1845, which had reorganized it, was divided into a Political Council of State and an Administrative Council of State. The former was responsible for advising the monarch and the latter acted as the supreme court which, ultimately, judged the appeals filed against administrative decisions in contentious matters that opposed administrative and judicial authorities. Most of the State Councillors were members of parliament, since the Charter exceptionally allowed accumulating both functions. However, the Chamber of *Pares* decided, in 1858, to make a restrictive interpretation of a constitutional rule that made the exercise of other public functions by parliamentarians, conditional on the authorization of the legislative chambers, which could only be granted upon government request.

By approving a resolution that prevented peer State Councillors from participating in the work of the administrative section of the Council, the hereditary chamber paralyzed that body, since the government refused to request the intended authorization, considering that the chamber's deliberation contradicted a practice of many years and had no legal basis. The government and the Chamber of *Pares* clashed violently, the Executive understanding that it could not count on any political support from that Parliament.

Intending to legally solve the problem of the Council of State, the Executive transferred it to the Chamber of Deputies by presenting, in the session of 16 March, a bill that contradicted the decision of the Upper Chamber. But the opposition of the chamber, in line with what had happened with that of *pares*, harshly criticized the government, making it feel that it was impossible to obtain approval for its proposal. Faced with the hostility of the two chambers, the Executive had two alternatives: to resign, or to dissolve

<sup>32</sup> For party evolution in this period, see Sardica, José Miguel (2001). *A Regeneração sob o signo do Consenso: a política e os partidos entre 1851 e 1861*, Lisbon, ICS.

<sup>33</sup> *Jornal do Comércio*, no. 1361, 07-04-1858.





the national representation and seek, through elections, to reach a new parliamentary majority that would support it in the policy it intended to pursue.

The path chosen was the second, with the dissolution, requested by the Government, decreed on 26 March, against the will of the majority of the Council of State (whose opinion was mandatory), which spoke out against it<sup>34</sup>. The 1858 dissolution thus had a punitive, albeit indirect, character, affecting more the Chamber of *Pares* than to the Chamber of Deputies, since the latter had not formally expressed any protest vote against the Executive. Once again, in a situation of institutional conflict, the Government used a political weapon at its disposal to defeat national representation, showing that the royal dissolution prerogative was not used autonomously by the monarch as an arbiter of political conflicts, but by the Executive, when it wanted to get rid of cumbersome chambers that were unwilling to peacefully accept ministerial policy.

The Chamber of Deputies elected in May 1858, following the aforementioned dissolution, was dissolved in November 1859, in a political context quite different from the one that presided over its election. Of all the least justified, as it did not result from any declared conflict, the dissolution of 1859 must be understood in the light of the power games in the political system, which determined the use of a measure already used in a banal way by the rulers of all parties.

The first phase of the political preponderance of the Historical Party, which began in 1856 and translated into the governing leadership of the Marquis de Loulé, ended in March 1859, with the resignation of the Cabinet several times reshuffled and its replacement by another, of a regenerating-chartist nature, headed by the Duke of Terceira. It was the Terceira government that, not fully trusting a chamber of deputies elected under the influence of political forces of the opposite side, dissolved it on 24 November 1859, justifying it with the need to put into practice the recently approved electoral law<sup>35</sup>. This law replaced multi-member circles with the principle of single-member circles. The tie in the vote of the Council of State did not prevent D. Pedro V from decreeing the dissolution, thus sympathizing with his ministers, as had happened in previous times. This dissolution fully illustrates the established practice of first appointing governments and then holding elections that give them (almost) always parliamentary majorities. This practice results from the constitutional rule that attributes to the moderating power the ability to "freely appoint and dismiss Ministers of State"<sup>36</sup>. This completely distorts the principle of national representation, given the manipulation and fraud present in electoral acts throughout the nineteenth century, in which the local chief played a prominent role<sup>37</sup>.

The return of the Historical Party to Power, in 1860, rekindled old political problems and conditioned a tense relationship between the Cabinet and the Parliament, giving rise, in 1861, to a conflict of a level equivalent to that of 1858 and which, similarly to what happened then, culminated in the dissolution of the Chamber of Deputies.

The great political problem that, at the beginning of 1861, opposed the Government to the Parliament, was that of the Sisters of Charity, French nuns who came to Portugal in

<sup>34</sup> Cf. *Actas do Conselho de Estado*, ANTT, Casa Forte, Book 77B, pages 213v-219 (session of 26-03-1858).

<sup>35</sup> Idem, pages 280v-283 (session of 23-11-1859).

<sup>36</sup> *Carta Constitucional de 1826*, art. 74, p. 5.

<sup>37</sup> For an understanding of the electoral phenomena, see Almeida, Pedro Tavares de (1991). *Eleições e Caciquismo no Portugal Oitocentista (1868-1890)*. Lisbon: Difel.





1857. Their presence in the country was strongly contested by the anticlerical political forces, who saw in the work of the nuns a form of reaction that had to be fought. The question of the Sisters of Charity took on worrying political characteristics at the beginning of 1861, triggering popular protest demonstrations in Lisbon that, in the understanding of the Government and Parliament, called into question the constitutional legality in force and threatened the security of the state and the freedom of citizens. The nuns were eventually expelled from the country by the government of Loulé, which was heavily criticized in both legislative chambers (especially in the Chamber of *Pares*), for the measures it took regarding that issue.

However, the government/chamber of deputies confrontation had deeper reasons. The chamber was elected in 1860, under the influence of the Duke of Terceira's government and had successively supported three governments: the one that elected it, that of Joaquim António de Aguiar, who succeeded him, and that of the Marquis de Loulé, who politically opposed the previous ones. The government wanted, therefore, to test the confidence of the chamber, asking deputies, namely those of the regenerating opposition, for parliamentary support for legislative measures that it intended to see approved<sup>38</sup>. Faced with the opposition's refusal, the Executive decided to dissolve the Chamber of Deputies, choosing as a pretext the presentation, at the 18 March session, of a proposed budget law that the Chamber would reject by a majority. Having lost parliamentary confidence and, once again, faced with the alternatives of resignation or dissolution of the elective chamber, the Executive decided on the latter, again winning a conflict that opposed it to national representation and managing, in the subsequent elections, to obtain a majority of deputies. This allowed it to pass the legislative measures it considered necessary for the pursuit of its policy, remaining in power until 1865.

As for the strong and persistent opposition of the Upper Chamber, the Marquis of Loulé tried to overcome it with two *forçadas* of new peers, in 1861 (15 appointments) and 1862 (25 appointments), which facilitated his governance until 1865.

The dissolution of the Chamber of Deputies decreed in 1865 was part of a context of deep crisis of the political forces that have governed the country since 1851. It only acquires meaning in light of the internal dissensions that tore the Historical Party, the main responsible for governance during most of the first phase of the Regeneration. The chamber elected in 1861, following the previous dissolution, fulfilled, for the second time since the regeneration movement, the entire legislature. It was replaced in the elections held in September 1864, when the acting government (Duke of Loulé) obtained a comfortable majority of about two-thirds of the deputies.

However, the electoral results achieved by the government did not prevent the manifestation of a wide range of difficulties that it would face. They were the result of both the political wear and tear caused by nearly five years of exercising power and by the relentless combat that was waged against it by the regeneration opposition. The difficulties of the Historical Party were articulated with its internal division into two factions - the "white nail" and the "black nail". The former was the majority and was headed by Loulé. The latter grouped around Joaquim Tomás Lobo of Avila. It was the party conflicts that led to the resignation of the Loulé Cabinet, replaced in 1865 by

<sup>38</sup> *A Opinião*, no. 260, 16-03-1861.



another headed by the Marquis of Sá da Bandeira. The complex political situation translated, in the Chamber of Deputies, into a strong opposition to the Executive on the part of the regenerators who, however, did not have sufficient strength to form a government.

This circumstance brought together regenerators and historical deputies ones (in its majority faction), who established a commitment to the formation of a "fusion" coalition of the two parties, as a way of solving the political problems in the country. Although initially it did not please most of both party forces, the idea of "fusion" gained significant support, especially among deputies, who progressively distanced themselves from government policy. Under the influence of the main party leaders (Loulé, on behalf of by the historical party and Fontes Pereira de Melo for the regenerators) they even made efforts to overthrow the government of Sá da Bandeira, the main opponent of the fusion intentions.

Realizing that he could not govern with the existing chamber of deputies, Sá da Bandeira tested the confidence of parliamentarians through the presentation, at the 8 May session, of a proposal for a budget law, which motivated a motion of censure of the Executive, approved by the overwhelming majority of the chamber. Faced with parliamentary lack of confidence, and when the Cabinet was expected to resign, it decided to dissolve the Chamber of Deputies, which had been previously announced to him. It was an unprecedented attitude in Portugal and deserved parliamentary praise of the head of government, even from the opposition, for the sincerity and transparency he introduced into political life.

The dissolution of the Chamber of Deputies decreed on 15 May was an attempt by Sá da Bandeira to obtain a parliamentary majority that would avoid the fusion of the two parties. However, the government lost the elections (a rare fact in the history of Portuguese Liberalism), and resigned at the end of August, to make way for a "fusion" government between regenerators and historical members chaired by Joaquim António de Aguiar, who ruled the country until January 1868. Thus, an old, albeit mitigated, aspiration for unity of two party forces that had common roots and whose political discourses and practices were not substantially different was materialized.

When announcing, in the Chamber of Deputies, that the government had resigned (which D. Luís accepted), Sá da Bandeira declared: "This step taken by the ministers is intended to facilitate the practice of governing in the parliament (...). There needs to be a government that is supported by a sufficient majority. On my part and, certainly, on the part of my colleagues, there will not be opposition to the formation of a Ministry that can rule according to the interests of the Nation"<sup>39</sup>. In other words, respect for national representation showed that the parliamentary aspect of the regime had been consolidated and that, at least for some political agents, the contempt for parliament shown in the first half of the 19th century was no longer acceptable.

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<sup>39</sup> Session of the Chamber of Deputies of 31-8-1865. *Diário de Lisboa*, no. 197, 2-9-1865.



## Conclusion

Contrary to the constitutional norms that provided for the dissolution of the Chamber of Deputies only in extreme cases for "salvation of the State", resorting to the dissolution of the elected chamber has been used since the beginning of the construction of the liberal state and has become commonplace in the second half of the 19th century. The royal prerogative was never decided autonomously by the monarch, as the arbiter of political conflicts (although he was always responsible for signing decrees, in the exercise of the moderating power), but by governments. It was a way of imposing themselves on national representation, when they did not dominate it, and to have elections that allowed them, through fraudulent mechanisms, to elect deputies to Parliament who were willing to peacefully approve the legislative measures proposed by the ministers.

The analysis of this political tool, in the period under consideration, shows that resorting to dissolution was a way of resolving, in favour of the government, political conflict that opposed it to parliament. It reversed the basic principle of representative regimes which consists in appointing governments according to parliamentary majorities obtained in free elections. The Constitutional Charter, by allowing the head of state to freely appoint and dismiss agents of the executive power, sanctioned a political practice that became trivial and played an important role in the functioning of the nineteenth-century liberal-monarchist regime. Instead, the frequent dissolutions of the chamber demonstrate that national representations were not always entirely submissive to governments, hence governments dissolved them when they became difficult.

The dubious character of the Constitutional Charter of 1826, which allowed the practice of both simply representative monarchy, in which the monarch assumed an important role in the conduct of public affairs, and a parliamentary monarchy, in which government/parliament relations were predominant in the political system, was clarified by the Additional Act of 1852. It strongly emphasized the parliamentary component of the regime. In this context, the importance of these two state bodies made them protagonists of political conflict processes. Their resolution, generally favourable to the government, was achieved through a mechanism that highlights the existence of a significant distance between constitutional norms and political practices. This distance, if considered more broadly, can explain, at least in part, the long duration of the Constitutional Charter of 1826, one of the most enduring constitutions of nineteenth-century liberal Europe.

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## POPULAR JUDGES AND JUDGES OF LAW DURING LIBERALISM. PORTUGAL (1820-1841)

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### Abstract

The theme of justice was much discussed and considered as the most important for the new liberal regime. The political confrontation marked the boundaries between the most radical, moderate, conservative and reactionary liberal factions. The options swung between a popular model of justice and an elitist one, going through hybrid choices. The main occasions of these choices were the 1822 Constitution, the 1826 Constitutional Charter, the 1832 Mouzinho da Silveira Reform, the 1837 New Reform (*setembrista*), the 1838 Constitution and the 1841 Newest Reform (*cabralista*). This text analyzes the definition of the liberal justice model.

### Keywords

Justice, Liberalism, Judges of Law, Popular Judges

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## POPULAR JUDGES AND JUDGES OF LAW DURING LIBERALISM. PORTUGAL (1820-1841)<sup>1</sup>

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### Introduction

The debate over the choice between judges of law and elected ones took place in a new parliamentary environment, among newly elected members (Brochado, 2020).

After the revolution of 24 August 1820, the first electoral event that signalled the emergence of liberal elections took place in December 1820 to choose the members who would make up the Constituent *Cortes* (Parliament) (Vieira, 1992). This first electoral experience was regulated by two instructions (31 October and 22 November 1820) forced by the “Martinhada” counterrevolutionary coup on 11 November (Costa, 2019).

The essential of the suffrage was based on the legitimizing power of the electoral boards, presided over by a *juiz de fora* (magistrate appointed by the king) (see Almeida, 2016; Almeida, 2010). In the parishes, these boards were made up of all resident citizens. For every 200 dwellings, one voter would be elected, a citizen over 25 years of age and resident in the parish. These voters would gather at the head of the county to elect the county voter or voters so that they would elect members. The latter had to be over 25 years old, born or resident in the province for over seven years.

Overall, 100 members were elected with the following distribution: Algarve (3), Alentejo (10), Estremadura (24), Beira (29), Minho (25), and Trás-os-Montes (9).

The parliamentary year of the Constituent *Cortes* began on 24 January 1821 and ended on 31 December, starting again on 28 January 1822 and ending on 4 November. On 13 October 1822, the elections for the Lisbon City Council (councillors and attorneys)<sup>2</sup> were held according to the law of 11 July 1822, which also began to regulate the election of members to the Ordinary *Cortes*.

This electoral legislation package was completed with the Law of 27 July 1822, which defined the rules for the election of ordinary judges and chamber officials, fundamental to following up on the choices of popular judges<sup>3</sup>.

<sup>1</sup> Article translated by Carolina Peralta.

<sup>2</sup> The election of nine councillors, an attorney and, as substitutes, three councillors and an attorney, was foreseen. In each parish there was a ledger where the parish priest registered the names and professions of all the residents who had electoral capacity. Electoral assemblies (59 for the 74 parishes) met in parish churches. Each voter delivered two lists in two different ballot boxes, one with 12 councillors and the other with two attorneys. After the votes were counted, the councillor with the most votes was elected president of the constitutional chamber.

<sup>3</sup> For the sessions of the Ordinary *Cortes*, see *Diário das Cortes*, beginning on 15 November 1822, available at <http://debates.parlamento.pt/catalogo/mc>.



According to both laws, citizens over the age of 25 (or married and at least 20 years old) could vote and voters with sufficient income to support themselves, born or resident for over five years in the province where the elections were held could be voted on<sup>4</sup>. The suffrage was direct, secret and census based. "Family children", who lived with their parents, and servants, vagrants, members of monastic orders and women could not vote (Antónia, 2000).

Between the electoral model of 1820 and that of 1822, the main difference was the change from the indirect method to the direct method and the attenuation of the census character, confirming, however, the difficulties felt by the liberals in obtaining an electoral model for the choice of members (Vargas, 1993).

These difficulties had repercussions on the formulas for finding elected judges, whatever the political option, more radical or moderate. The debate focused on three aspects: the choice of judges (of law and elected, the model for selecting elected judges and the formula for holding them accountable and evaluate their roles and careers.

While this was the case during the debate in the Constituent *Cortes*, it continued after the approval of the Constitution because, in the Ordinary *Cortes*, the diplomas related to justice, the regulation of judges and the organization of courts were among the first to be approved.

The boundary that separated the members between the Constituent *Cortes* and the Ordinary *Cortes*, although there were changes in the composition of the two chambers, was the choice between judges of law and popular judges, an option that covered the entire liberal period until the Newest Reform (1841). This choice defined the boundaries between radical liberals, moderates and conservatives, despite the inhibiting factors of the elective choices. Above all, this had to do with three problems.

Firstly, the huge illiteracy rate that hindered the formation of contingents capable of interacting with courts dominated by judges of law, a situation with consequences for the autonomy of these popular judges and for the degradation of bureaucratic procedures.

Secondly, the disagreement between the political space of the *Ancien Régime* and the shaping of a rationalized system, desired by the liberals, did not facilitate the constitution of voter assemblies. This was due to the vast network with over 800 municipalities, of which 228 had less than 200 dwellings and only 177 had more than 1,000 dwellings. The municipal reform, begun with Mouzinho da Silveira (1832) and implemented by Passos Manuel (Decree of 6 November 1836), extinguished nearly five hundred municipalities, reducing them to 351. In 1855 (Decree of 24 October), they were further reduced to 256, numbers close to those at the end of the constitutional monarchy (Manique, 2020 and 2018). But this new territoriality was, on the one hand, adjusted to a broader electoral system, and, on the other hand, met with the resistance of local authorities (Manique, 1996).

Thirdly, the political and cultural framework, dominated by pluralist jurisdiction with a long tradition of autonomy and social practices, was in contradiction with a centralizing

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<sup>4</sup> This electoral framework was interrupted by the Vila-Francada Miguelist coup (27 May 1823). The *Cortes* were suspended (2 June) and the model of the old *cortes* (10 and 19 June 1823) was restored. It was maintained until the end of the civil war (1832-34).



culture.

These problems were further exacerbated by the question regarding how magistrates should be held responsible for their acts, which criteria should guide careers and the imposition, or not, of mandatory mobility or one depending solely on the will of each person.

It is therefore important to draw the general lines of the legacy of the traditional monarchy, compare the liberal proposals and identify the moments of reform in the period between the validity of constitutional texts until the definitive imposition of the Constitutional Charter, that is, between the beginning of the revolution (1820) and the Newest Reform (1841)<sup>5</sup>.

## I. The organization of justice in the Ancien Régime

### I.1. The educated justice

According to most members of parliament, aligned with the most inflamed or moderate political discourse, justice was considered central to changing the regime, therefore, one of the greatest emblems of the revolution. For this reason, the magistrates of the Ancien Régime were accused of despotism and protectionist practices. The laws were considered abusive and discretionary because they had no popular basis and did not arise out of an elected body. The courts were seen as an elitist resource for those who had money, could pay lawyers, and bear the financial burden of the lawsuits.

The target of the liberal members was the cultivated justice (*juízes de fora*, senior magistrates, court judges and also ombudsmen involved in the control of the royal accounts), which dominated the courts of first instance and second instance and which judged, decided on appeals, pleas and grievances (Hespanha, 1994; Subtil, 2011; Camarinhas, 2010)<sup>6</sup>. However, this criticism was paradoxical insofar as the majority of the Congress members were, precisely, graduates in Law, who practiced or not their profession. The most notable liberal leaders were almost all magistrates.

The courts of first instance, located in the town halls, could be presided over by *juízes de fora*, in about two hundred halls, or by elected judges, in over six hundred municipalities. The courtroom and the court registry office were almost always next to the council meeting room where the councillors, the council attorney and the mayor sat. The latter was, at the same time, president of the court. In municipalities with a larger population, there could be other judges of law and/or elected judges, like judges for the orphans, judges for the deceased and absent persons, who were in charge of the supervision and tutoring of minors, absent and deceased, widows and orphans.

There were only two courts of second instance. The most important, based in the city of Lisbon, was the *Casa da Suplicação* (House of Appeals) with jurisdiction for the territory below the Mondego river line. The other court, the *Relação do Norte*, or *Casa do Porto*,

<sup>5</sup> By using the expression "popular judges" we want to identify the categories of judges who did not obtain a degree in law and were elected, in different ways, by the people: ordinary judges, village judges, elected judges from parishes, justices of the peace and jurors. Exception for conciliatory judges, who were chosen by the parties.

<sup>6</sup> On the legal framework, see *Ordenações Filipinas*, Book I, Lisbon, Calouste Gulbenkian Foundation, 1985.



based in Porto, had jurisdiction over the region above the Mondego. These two higher courts were governed by a Chancellor and composed of judges, special magistrates who were no longer dependent on the transfer from places and were permanently appointed, no longer requiring residence documents.

There was not a supreme court of justice, but a superior court of "favour", the *Desembargo do Paço* (Subtil, 2011), which did not consider cases in court, but could waive laws and suppress or shorten sentences at the request of the petitioners. The judges of this court constituted, therefore, the elite of magistrates, and were considered as the extension of the hands, ears and eyes of the monarch. Offenses practiced against them were considered as if against the king.

This court was also in charge of managing the career of judges of law and approving the electoral lists of each municipality for the election of councillors, attorneys and, if applicable, ordinary judges.

Whenever the appointment of a judge of law was made for the first time, the *Desembargo do Paço* court took into account the grade obtained in the degree taken at the University of Coimbra and the grade obtained in the "Leitura de Bacharel" examination held in the court itself. This examination was fundamental for their careers, and was preceded by a set of questions about the social and family quality of the candidates (to ascertain "purity" of blood).

If, however, the appointment was followed by the exercise of functions, the result of the "residence document", for which a magistrate of a higher rank than the candidate was responsible, was included in the evaluation of the new members. These records contained opinions and testimonials of the magistrate's performance. Therefore, they constituted an important occasion in the consultation of local elites and the people in general and recorded, in an open hearing, the most relevant events that happened during the three-year term of the magistrate.

Appointments to first instance posts were for a period of three years, after which, as a rule, the magistrates were transferred. Sometimes, at the request of the residents and the judge himself, the mandate was extended, possibly reaching six consecutive years or even more.

The ambition of these judges was to be appointed to a senior magistrate position or ombudsman, positions that covered the jurisdiction of the counties and offices that grouped together several municipalities. In these functions, they had to go through all the town halls in the district throughout the year, conducting hearings and inspections, using their "correction" power. They were, therefore, travelling magistrates, although they had a desk in the main hall, (the most important council) and a provisional seat in the offices of the councils. As the correspondence they had with the *Desembargo do Paço* and other councils and courts of the Crown was done on a mobile basis, there are no local archives, only municipal ones and, naturally, those of the central administration where the cases, reports and letters were kept.

However, a large part of the municipalities was governed by ordinary judges elected by the residents. The vast majority were illiterate, so, in these councils, the behaviour and jurisdiction of the magistrates was different. They could not consider claims or requests for review of sentences made by their graduate colleagues, as they were the remit of the



second instance courts. However, they could review and assess the complaints and claims of the popular judges, the ordinary judges.

The ombudsmen, in the territory under their administration, generally coincident with the territory of the counties (number that varied between 50 and 70) or close to their limits, exercised the same "correction" power, but within a financial scope. They audited the accounts of councils and other corporations with royal jurisdiction, such as charities, fraternities and brotherhoods.

The magistrates and ombudsmen were also appointed for three-year periods, subject to residence documents, and the place was a springboard to access the category of judge and take a definitive position in the courts of second instance, starting in the Court of Appeal in Porto and ending at the *Casa da Suplicação* (House of Appeal).

In the whole of the municipal and district network and in the Courts of Appeal, the global contingent of graduate magistrates was around four to five hundred. At the end of the 18th century, this number was insufficient to absorb the increase in graduates from the University of Coimbra after the reform of the Statutes (1772). Alternatively, these magistrates started to apply to posts overseas, embraced other professions such as lawyers, solicitors and attorneys of the parties, for example, or entered politics as councillors or council advisors.

This mismatch between the Crown's offer and candidates for the magistrate positions constituted a factor of discomfort that fuelled the dissatisfaction of these graduates and motivated the support of many to liberal doctrines and the Enlightenment culture. To some extent, this explains the large participation of magistrates in the 1820 revolution.

## **I.2. Popular justice**

The first instance graduate magistrates were a minority in the set of judges and, consequently, in the government of the municipalities. Of the eight hundred municipalities, only about 20% had *juízes de fora*. In over 80% of the municipalities, the position of first instance judge was held by a popular judge, the so-called ordinary judge, who had no academic training, often did not even know how to read and write and depended on the court clerks for bureaucratic procedures. There were also tipstaff officials, called *vintena* judges who worked in villages with a very small population (between 20 and 50 dwellings), also elected by the residents and confirmed by the senate of the councils.

Let us examine the election model of these ordinary judges to get a sense of the level of political and social representation and voter involvement.

The electoral process coincided with the electoral tabulation of councilors, attorneys and council officials. In a way, the model inspired the one adopted in the liberal regime elections, with a difference regarding the recruitment base of elected officials and voters (see Subtil, 1998).

The start of the elections began with a provision by the *Desembargo do Paço* for the magistrate (judge, ombudsman or *juíz de fora*) who oversaw the elections and checked the lists and those elected for the three-year period in question.





When he arrived at the council, the magistrate would choose two to three people from the notables of the land, known as "*arruadores*", to draw up a list of the nobility they with those considered capable of performing government positions. Those called to vote for these lists, the noble and good men, natives of the land, without any race and with zeal for the common good, were summoned by street call to come to the council.

The first six most voted for formed the set of voters, or "*pauteiros*", and were grouped in pairs, forming three sets of two voters. Each pair then drew up a list with nine councilors (three for each year of the triennium), three attorneys, one for each year of the triennium and, according to tradition, other positions to elect, in this case, three ordinary judges, one for each year of the triennium. The three lists were crossed so that, according to the votes added together, the magistrate in charge of the elections could define the final list for the three-year period.

These lists were then sent to *Desembargo do Paço* for the court to make the appointments, removing from them possible conflicts of kinship, behavioural incapacities or political inconvenience. The court could even withdraw names and replace some, although this procedure occurred rarely. To make these decisions, the court used its own file and the information left on the side lines of each elected person, obtained, by inquiry and 'hearing', by the magistrate responsible for the election records. The process included the records, the lists, the "secret" information and also a report describing the social environment in which the elections took place.

As can be seen from what has been said, the choice of ordinary judges was highly participated and allowed the local notable men to exert influence in the appointments, even though the magistrate presiding over the elections could also influence the decision of the *Desembargo do Paço* Court. In any case, the people were called to the county seat to participate in the voting and, according to the testimonials in the records, they represented the village's various professions and sensibilities. The ritual inherent to the process itself triggered social contacts that tended to ensure the occupation of places by oligarchic and family lineages.

From what has been said, especially due to the plurality of jurisdictions, territories, appointments and elections, we can draw some conclusions (Hespanha, 2019b).

With regard to graduate judges, the permanent evaluation of their competences was a fact, allowing, in principle, the career progression of the most capable, although the group of these judges was small.

As for popular judges (ordinary judges), what the indirect elections reveal is that popular representation was residual. Their jurisdictions were very limited, both for civil and criminal cases, which allowed, on a deferred basis, the intervention of or appeal to graduate magistrates. However, the cases taken by the ordinary judges were the majority and covered what most frequently happened in the communities, whose sentences were without ifs or buts. Unfortunately, we do not know, in a systematic way, the meaning of their actions and interventions because the municipal files did not keep these cases as the records and sentences were carried out orally.

In addition to the appeals, pleas and grievances under the responsibility of the Porto Court of Appeal or the *Casa da Suplicação*, the system also allowed a last appeal, called



"graça", through which the *Desembargo do Paço* could consult the monarch for law waiving or the granting of favours and privileges.

In the ombudsmen offices, whose royal jurisdiction had been transferred to the noble or ecclesiastical donee, it was up to the landlords to give the election process to the ordinary judges, very similar to the royal model, but with the supervision of the graduate ombudsman appointed by the donee.

## II. The organization of justice in the first period of Liberalism

### II.1. The debate in the Constituent *Cortes* and the constitutional text of 1822

The *Cortes* approved the constitutional text on 23 September 1822 and the royal oath of King João VI took place on 1 October, followed by that of the city councils and other entities. But, even among the defenders of the Constitution, the idea that there were no conditions for its enforcement grew more and more, and in the first debates of the Ordinary *Cortes*, people began to talk about its revision.

Shortly thereafter, the Constitution was suspended, after the "Vila-Francada" coup (May 1823), and the Ordinary *Cortes* were eventually closed (see Hespanha, 2012a, 2009, 2004).

To get a sense of the dimension of the debate on the judiciary that liberals believed to be the guarantee for compliance with the laws, but about which they had a very critical, corrupt and worn image, let us compare the draft constitution with the constitutional text (Moreira, 2018; Pereira, 2018).

First, let us briefly review the categories of judges referred to in the text of the 1822 Constitution (Title V, "On the Judiciary").

One of the innovations of the new liberal regime were the "de facto judges", who dealt with criminal and civil cases and also crimes of abuse of press freedom. These judges would be elected, in each district, through the constitution of lists of persons with the legal qualities for this purpose. One could only appeal against the decisions of these judges to the Court of Appeal so that it could take "knowledge and decide about the same or a different council of *de facto* judges" in cases where the law so determines.

Then, the "judges of law" exercised jurisdiction in each district. There was a first instance judge of law in each to judge by law the cases in which there were *de facto* judges and, to judge *de facto* and *de jure*, in those where there were not any. The jurisdiction of these judges, whose decision was final, both in civil and criminal cases, was determined by law and the appeal to the second instance would cover cases that exceed these limits. In Lisbon, Porto and in the most populous cities, there would be as many graduate judges as necessary. To be a judge of law, it was necessary to be a Portuguese citizen, be 35 years old and have a bachelor degree in Law from the University of Coimbra, which had the monopoly on the education of jurists.

It was also established that judges of law would be permanent, subject to transfer of place at the end of each three-year period and that promotion would follow the rule of seniority.



The "elected judges", chosen for the subdivisions of the districts, would be elected by the citizens in the same way as the councillors of the town halls. These magistrates judged without recourse civil cases of minor importance and minor crimes, whose limits would be established by law. The sentence would be made verbally, listening to the parties and noting the sentence in a public record. They could also be conciliation judges and assume the safety and keeping of public order.

The "arbitrating judges", who could be appointed by the parties to decide "on civil cases and penalties", depended, therefore, on the success of those involved in each case.

Finally, there were the "conciliation judges", who could be used by the elected judges in the cases and in the manner that the law would determine<sup>7</sup>.

This typology of judges listed in the Constitution did not correspond, at all, to the text of the constitutional project, presented to the Courts on 25 June 1821. It was discussed on 9 June<sup>8</sup>, although the part referring to the judiciary began to be debated only at the beginning of 1822 and took close to two months to be approved (Subtil, 1986).

On the contrary, the constitutional project defended the choice of judges of law, in line with the tradition of *juízes de fora*. This political option was taken by parliament members Sarmiento, Borges Carneiro and Pinto de Magalhães, who justified the option due to the complexity of liberal societies guaranteeing freedom, increasing laws and defending the social pact. According to them, "to be free, it is essential that we are slaves of the law: a Nation that is free and constitutional must have more laws"<sup>9</sup>.

Therefore, the constitutional project did not provide for ordinary judges and admitted *de facto* judges (council of jurors) only in criminal cases, always presided over by a judge of law. Regarding conciliatory judges, the project provided for them as long as they were judges of law.

As for the careers of judges of law, the principle of perpetuity of the job and the principle of seniority as a criterion for progression were affirmed. No control and inspection mechanism was foreseen.

The constitutional project on the judiciary was, therefore, a traditional and conservative text, not in line with the criticisms of the "damned spirit of the body" of the magistracy which, as parliament member Girão said, "in the *Cortes* the magistrates have always predominated, and for that reason they will make the Nation their slave".

The defence of the constitutional project was conducted, in large part, by the undersigning parliament member José de Moura and two of his colleagues, Borges Carneiro and Castelo Branco, who would eventually, during the debate, distance themselves from it. The former, opposing the seniority criterion for career progression, defended a supervising system to hold judges accountable. The latter, more radical,

<sup>7</sup> The Courts of Appeal would judge in the second and last instance and a Supreme Court of Justice, based in Lisbon, composed of judges of law appointed by the king, would recognize the errors of office of ministers, appeal officials, secretaries of state, diplomats, and regents of the kingdom. They had the power to grant or deny appeals, except for *de facto* judges.

<sup>8</sup> The subscribers of the constitutional project were José Joaquim Ferreiras de Moura (Beira), Luís, Bishop of Beja (Beira), João Maria Soares de Castelo Branco (Extremadura), Francisco Soares Franco (Extremadura), Bento Pereira do Carmo (Extremadura), António Pinheiro de Azevedo e Silva (Beira), Manoel Fernandes Thomaz (Beira), Manuel Borges Carneiro (Extremadura) and Joaquim Pereira Annes de Carvalho (Alentejo).

<sup>9</sup> Intervention of Pinto de Magalhães, 11 January 1822, *Diário das Cortes*, volume IV, p. 3.665.



defended the prevalence of ordinary judges and the practice of elections to legitimize the job of judge. The other signatories of the Committee took a more moderate option, as was the case of Fernandes Thomaz, Pereira do Carmo and Pinheiro de Azevedo.

In the opposite field, the political fight against the constitutional project was assumed by José Joaquim Rodrigues de Basto (Minho), who defended, exclusively, the ordinary judges, chosen by electoral suffrage, with removable positions and valid for one year. He was backed by Martins Ramos, Vilela, Barrata and Barreto Feio.

These two positions, the option for judges of law and the defence of ordinary/elected judges, were joined by a third tendency, with a conciliatory predisposition. The latter defended the continuation of judges of law, accepted to review the principle of seniority, permanency, the intervention of *de facto* judges and the accountability of the post, provided that it was framed in a law that covered more public administration offices. This would happen on 13 January 1823, for some the most important day after the revolution (Subtil, 1988).

At the end of the debate, the constitutional text would completely change the text of the constitutional project regarding the jury and ordinary and conciliatory judges. *De facto* judges (jurors) were devoted to criminal and civil cases, ordinary judges would try small criminal and civil claims, without plea or appeal, and conciliatory judges were assigned the important task in filtering disputes for courts.

The pattern that prevailed in the constitutional text, with the enshrinement of *de facto* judges, elected judges<sup>10</sup> and conciliatory judges, aimed to legitimize the new regime regarding popular support and to reduce the flow of cases in court. This would limit the intervention power of judges of law in the courts of first and second instance.

In conclusion, it was a victory for the most radical wing of Congress, well expressed in the words of the moderate and prestigious congressman Fernandes Tomás, who stated, at the end of the approval of the constitutional text, that the intention had been "to cut short the nails" of the magistracy<sup>11</sup>.

In any case, with this heated political debate, the motto and arguments for the discussion on liberal models for justice, the choice of types of judges, the role and autonomy of judges of law and the breadth of direct or indirect elections in the choice of popular judges were established for the future.

This will be examined next, focusing on the Reform of Mouzinho da Silveira (1832), the New Reform (1838) and the Newest Reform (1841).

## II.2. The reform of Mouzinho da Silveira (1832)

With the repeal of the 1822 Constitution, in an attempt to limit the offensive of the "ultra-realists" and radical liberals, King D. João VI appointed a board formed by moderate personalities of great political and academic prestige, to propose a new Constitution.

<sup>10</sup> The election model was regulated by the decrees of 20 July and 9 August 1822.

<sup>11</sup> Session of 5 October 1822, *Diário das Cortes*, volume VII, p. 695.



Some constitutional projects of several citizens were also sent to the board to be included in the new constitutional text (Hespanha, 2004: 128-152).

However, it was the Constitutional Charter, influenced by the political-constitutional theory of Benjamin Constant, granted by King D. Pedro IV, in Rio de Janeiro (29 April 1826), that became the great alternative to a Constitution. This was because it served the interests of various liberal factions, including the more traditional ones. The first period of the Constitutional Charter was in the 1826-1828 legislature and, after the Miguelite defeat in the civil war, when the *Cortes* met again on 15 August 1834.

Regarding judges, the most emblematic feature of the Constitutional Charter was, arguably, the elimination of elected judges within the framework of the organization of justice and the association of the judiciary with the judges of law. The latter came to hold permanent positions, although capable of changing place or be suspended by the king, after hearing the Council of State or following a bribe, corruption, embezzlement or receiving undue advantage.

Despite the adoption of this model, the Constitutional Charter granted the intervention of jurors in civil and crime cases to investigate the facts in accordance with what the laws would determine<sup>12</sup>. It also recognized the justices of the peace, elected in the same way as the councillors, to attempt conciliation before any legal process. The Constitution also admitted arbitration judges in civil and criminal cases by appointment of the parties, and the sentences could be definitive, by agreement between them.

But neither the Constitution nor the Constitutional Charter provided for the regulation of the justice system, leaving this organization to future laws. Thus, the first reform of justice, aiming to replace the model of the Ancien Régime that was still in force, more than ten years after the revolution, was the Decree of 16 May 1832 (Decree no. 23). It was part of a vast legislative package, authored by Mouzinho da Silveira (Manique, 1989; Pereira, 2009). However, the reform was so complex that it was doomed to failure, as happened after the short period between the end of the civil war between liberals and absolutists (1834) and the September revolution (1836)<sup>13</sup>.

The programme approved on Terceira Island adopted, for the entire Kingdom, first and second instance judges, permanent, graduates and appointed by the government. They would enforce the law with complete autonomy, except in criminal cases whose facts were investigated by the jury and on which the judges of law would enforce the law<sup>14</sup>.

<sup>12</sup> The 1822 Constitution, in article 191, created a Supreme Court of Justice in Lisbon. The Constitutional Charter, in article 130, and the 1838 Constitution, in article 126, confirmed the Supreme Court of Justice.

<sup>13</sup> The Mouzinho da Silveira diploma has 293 articles and the judicial apparatus is divided into judicial circles, which in turn were divided into counties. The counties were split into hearing houses and the latter into parishes. By decree of 28 June 1833, the division of the territory was established as follows: four judicial districts (Lisbon, Porto, Lamego and Castelo Branco). The Lisbon one would have 15 counties and 200 municipalities; Castelo Branco would have four counties and 135 municipalities; that of Lamego, eight counties and 232 municipalities; Porto had 13 counties and 230 municipalities. The total accounted for 40 counties and 796 municipalities and 47 judges of law and four courts of appeal.

<sup>14</sup> *Collecção de Decretos e Regulamentos mandados publicar por Sua Magestade Imperial o Regente do Reino desde que assumiu a Regência em 3 de março de 1832 até á sua Entrada em Lisboa em 28 de julho de 1833*, Lisbon, Imprensa Nacional, 1836 (second series), pp. 102-147.



The remaining categories of judges represented a huge panoply, including the justices of the peace, ordinary judges, village judges, arbitration judges and the jurors (Subtil, 2021).

The justices of the peace would be elected by the peoples and their functions, conducted without pay, would consist of reconciling the parties, as already indicated in the constitutional texts. The election, annual and by secret ballot, took place in the assembly of the heads of families of each parish, gathered in the parish church (parish assembly) on the last Sunday of June of each year and presided over by a councillor. The one who obtained the majority of votes would be elected and, in case of a tie, the eldest would be chosen<sup>15</sup>. The appointment of the secretary and scrutinizers was made by acclamation at the meeting.

In the same assembly, three citizens were elected to form the group of standing up judges<sup>16</sup> and also two representatives per parish to ensure representation in the municipality. These deputies (members of the municipality and representatives from the parishes) later elected three people to form the list of the ordinary judges.

After the lists of ordinary judges had been made, the records were sent to the judge of law of the county, who submitted them to the president of the second instance court, who then chose an ordinary judge and a standing up judge and gave them the respective letter of appointment for a year.

This model shared many features practiced in the corporate monarchy, with the difference, in this case, that the universe of voters was broader. However, this model by Mouzinho de Silveira required an inordinate recruitment of citizens elected for short periods, thus forcing repeated elections and trivializing the exercise of positions (Domingues, 2018).

Let us now examine the typology of judges, roles and competencies, some of which were potentially conflicting.

Ordinary judges could deal with cases that did not exceed 12,000 *reis* in real estate and 24,000 *reis* in movable property, while standing up judges dealt with cases involving damage caused by people or cattle in "crops, vineyards, gardens, orchards, pastures and groves", with a special intervention in the rural world where the multiplication of conflicts was great, with the advantage of these judges knowing the territory and the population (Domingues, 2018).

The cases these standing up judges dealt with were verbal and could involve pledges, valuation and sale at auction, write records for crimes, avoid brawls, riots and mutinies, arrest in *flagrante delicto* and have the offenders presented to the ordinary or judge of law, and deal with the requests of these first instance judges. As they were appointed by the presiding judge of the second instance court, they could also be suspended by him.

<sup>15</sup> The eligibility conditions for the justices of the peace were to have Portuguese citizenship, the full exercise of political rights, a mandatory address in the parish and an annual income of 200 thousand *reis* (in the cities) and 50 thousand in the villages.

<sup>16</sup> Eligibility followed the same criteria as the justices of the peace, but with income limits ranging between 50 thousand *reis* for cities and 20 thousand *reis* for towns and villages.





As for the arbitrators, they were chosen by the parties to exercise arbitration and could not refuse the mission.

Finally, the jurors (those who “swear to judge”) are removed from a ledger book belonging to the councils’ archives and updated in May every year. Registration was done individually and belonged to each citizen who met the conditions for registration. Non-registration entailed sanctions, fines and loss of rights.

The annual list of the jurors was determined in the council on the first day of January every year, in a meeting with the judge of law and the delegate of the royal attorney or with the ordinary judge and the royal sub-delegate. From the ledger book, lists were formed. A jury list for the first quarter, another for indictment jurors for criminal cases, and another for sentences regarding civil and criminal cases. When the lists had been made, individual tickets were placed in a box from which the jurors were drawn by a boy under 10 years of age. Then, again, the tickets were placed in another box to make the lists for the following quarters. It was up to the judge of law or the ordinary judge, after tabulation, to notify the jurors of the days they would have to serve the jury court.

In addition to the variety of jurisdictions, Mouzinho da Silveira’s reform required a huge contingent of jurors, ordinary judges, justices of the peace and standing judges with an annual rotation. This implied repeated meetings in the municipal councils, elections, and notifications that disrupted the daily life of local political and social life for acts that were not aimed at the true practice of justice.

Whereas this reform was, in itself, impracticable, it remained as an illustration of a pamphlet-letting intention in the context of the civil war and as a speculative example, because it was designed without taking into account the reality of an illiterate country encrusted by oligarchic practices.

### **II.3. The New Reform (1836) and the Newest Reform (1841)**

With the end of the civil war and the victory of the liberals (1834), the fight between the liberal factions returned. Its outcome brought to power the group identified with the most radical options (revolution of 9 September 1836). The 1822 Constitutional text was recovered and a new would be approved in 1838 (Gomes, 2013; Hespanha, 2019a; 2018; 2012a; 2012b).

However, one of the first measures of the new September government was to decree the judicial reform and organize the justice system through the Decree of 29 November 1836, authored by the Viscount of Sá da Bandeira, Manuel da Silva Passos, and António Manuel Lopes Vieira de Castro. This New Reform detailed, in the report that supported it, two objectives: bringing justice closer to the citizens, hence the concentration of efforts in a new administrative territorialisation and clearer procedures due to the legislative confusion.



The division of the new political space, which had not been implemented with the legislation of Mouzinho da Silveira, was defined in the Decree of 13 January 1837<sup>17</sup> with maps of the 48 counties and municipalities, 351 *julgados* (hearing houses) and parishes, three second instance courts, one in Lisbon (with 21 judges), one in Porto (with 21 judges) and one in Ponta Delgada (with seven). The reform of the civil, ordinary, summary, and criminal procedures was also promised.

In this new orientation, very close to Terceira's legislation, practically the same model of justice was maintained, with clear simplifications.

Judges of law, royally appointed and serving for life, would judge in first instance courts in each district and preside over the Correctional Police courts and the Family Councils.

The counties were divided, in turn, into *julgados*, under the jurisdiction of an ordinary judge, elected by the people, with the exception of Lisbon and Porto, where there would be no ordinary judge<sup>18</sup>. These ordinary judges dealt with minor cases, knew about the result of the appeals made to judges elected from the parishes and prepared the cases for the judge of law. The *julgados* were divided into parishes where an elected judge would address minor cases.

There was also a justice of the peace (elected) who could intervene in a single parish or more, depending on the population. There was at least one justice of the peace for 200 dwellings, and it was mandatory for him to try to reach an understanding between the parties before the cases reached the courts<sup>19</sup>. And, finally, the jurors who followed the established guidelines.

The 1838 Constitution<sup>20</sup> addressed justice in a very short title (Title VII) where it identified only judges and jurors, both in civil and criminal matters. The judges of law were to be appointed by the king, the ordinary judges elected by the people, the same applying to the justices of the peace, who always intervened before the cases became contentious. It included Courts of Appeal and a Supreme Court of Justice. The judges of law maintained the immovability of positions, although first instance judges could be moved every three years.

The Newest Reform, implemented by the Decree of 21 May 1841, during the government of the Count of Bonfim with Costa Cabral as Minister of Justice, preceded, in a few months, the definitive restoration of the Constitutional Charter (1842) that established the constitutional monarchy until the establishment of the Republic (1910)<sup>21</sup>. The novelties of this reform were, however, very few and did not solve the intricate problem of multiple jurisdictions, the complicated network of popular judges and the intense calendar of elections.

<sup>17</sup> *Reforma judiciária aprovada pelos Decretos de 29 de novembro de 1836 e 13 de janeiro de 1837*, Lisbon, Imprensa Nacional, 1837. The Decree-Law of 13 January 1837 established the civil and criminal procedure rules.

<sup>18</sup> They were elected by the people, for two years, and could be reelected. The election was made according to lists defined by the judge of law.

<sup>19</sup> The justices of the peace, ordinary and elected judges of the parishes did not need royal confirmation. The election was the same as that of the councillors.

<sup>20</sup> *Diário do Governo*, of 24 April 1838, No. 98.

<sup>21</sup> *Decreto de 21 de Maio de 1841, que contém a Novíssima Reforma Judiciaria com os Mappas da Divisão do Território, e as Tabellas dos Emolumentos Reformadas em virtude da Carta de Lei de 28 de julho de 1848*, Coimbra, Imprensa da Universidade, 1857.



With regard to the organization of the jurisdictional territory, the hierarchy levels started to include the district, the county, the *juizado* and the parish. Each district would have the right to supervise a court of appeal that would deal with second and last instance cases. The district of Lisbon had 21 judges, the district of Porto had the same number and the district of Ponta Delgada had seven judges.

The second level was formed by the county, where there would be a judge of law and, on the third level, a *juizado* with an ordinary judge and one or more justices of the peace who would exercise conciliation jurisdiction in their own homes: "No case will begin in litigation, without its object having been previously submitted to the Conciliation Court, by order of the Justice of the Peace, or by voluntary action of the parties (Article 210.) Finally, at parish level, it would be up to an elected judge to decide verbally, after hearing the witnesses and ascertaining the facts.

In line with previous reforms, the parties could appoint arbitrator judges, who could be any citizen.

Among the few novelties of the Newest Reform, we can mention the new institutional outline of the jury. The council of jurors, which ruled on civil and criminal cases, was now dismissed whenever the facts could be proved by documents, inspection, or examination, or when one of the parties did not consent to have a jury trial. These judges were further divided into indictment jurors and sentencing jurors.

Another novelty was the creation of a correctional police court in each county and the intervention of the Public Prosecutor's Office with ordinary judges. The main one was the reduction in popular participation in the administration of justice.

## Conclusion

One of the political flags of the first years of liberalism (1820-1841) was the scathing criticism of the justice system of the Ancien Régime. The model adopted by the new regime could not dispense with two legacies: the system of judges of law, similar to the role of *juizes de fora*, and the replication of ordinary judges to affirm the popular character of justice as a support for the independence of the judiciary, the defence of freedom and the enforcement of the law.

Therefore, the various reforms shared four principles: the independence of the courts as a guarantee of the enforcement of the laws, the defence of the permanent nature of positions, hearings with a jury and the representation of the various types of elected judges. The last two principles were considered fundamental to freedom and the defence of the division of powers.

The case of the jury attests to this conviction and highlights the political changes of the new regime. Admitted since the 1822 Constitution to certify the verification of the facts, they left to the judges of law the simple enforcement of the law, while they had merely bureaucratic roles. However, this intervention of the jurors will vary, later, in criminal and civil cases, regarding the limits and in the relationships maintained with the judges of law. In fact, these were the signs that marked the political direction of the reforms, starting with the 1836 one in which the jury lost some relevance in civil cases, which was the most substantive political and social matter for consideration in the courts. And with



the Newest Reform (1841), they were subject to the agreement of both parties, removing the mandatory nature that had been imposed since the reform of Mouzinho da Silveira.

As for the ordinary judges, the liberal regime realized, very early on, that it could not dispense with an organization that operated and intervened in more than 700 municipalities, and had a great weight in the life of the communities. And it also realized that it could not do without them to reinforce the popular nature it wanted to give to the liberal justice system.

But this choice of the liberal regime met with a huge setback, the fact that ordinary judges were accustomed to autonomous practices associated with micro-municipal powers, contrary to the centralization desired by the Liberal State. It would prove these intentions with the drastic reduction of municipalities and the removal of fiscal benefits, in a clear offensive against the municipality inherited from the Ancien Régime.

Regarding non-judicial ways to resolve conflicts and disputes, with recourse to elected judges of parishes, justices of the peace, arbitrators and standing up judges, the liberal regime softened the obligation of its interventions from the New Reform with the support of the judges of law. For the latter, these popular judges were politically and socially inconvenient due to popular radicalization, insignificant legal practice and low cultural level.

But, paradoxically, these popular institutions represented contradictory alternatives to the liberal legal dogma, that is, a two-way situation, positive for the popular affirmation of the system, and negative for the State's centralizing construction.

The independence of magistrates and the safeguard for their effectiveness also ended up giving rise to a certain "government" oriented courts and judges. They progressively saw themselves as important actors in the construction of the State, mixing the sphere of justice with administrative intervention, even after the approval of the September administrative code (6 November 1836) and the Cabralista administrative code (16 March 1842).

The debate systematized here around the choices between judges of law and popular judges shows how the definition of the judicial system was central to asserting the domain of Law in liberal political doctrine. This was so even if the vicissitudes of political choices have heightened the resistance of local authorities, especially after the new jurisdictional and administrative territoriality.

In conclusion, between continuities and singularities, four structuring ideas can be advanced.

The first, of an institutional nature, refers to the importance of the "assemblies", from community and municipal meetings to parliamentary assemblies. Both in the Ancien Régime and in liberalism, it was believed that citizens' meetings, more or less enlarged and legitimated, had the power to "create power" and the right to order society.

The second associates law with the culture of common sense, to readjust and conjugate both legislative and traditional norms with social and political realities. In a way, culture has shaped the construction of law, including unwritten practices based on community



forms of justice. More than just laws, there were “judges to do justice”, as Bartolomé Clavero stated in an exemplary manner<sup>22</sup>.

As a third idea, we would highlight the educated *iustitia*, the network of judges and courts known as the “knowledgeable” of law, to show how liberalism, after the pamphlet stage of the revolution, began to trace the path of a tendential professional justice, to develop jurisprudence as *corpus iuris*, contrasting *ius commune* with *ius proprium*.

And, finally, to emphasize the absolute need, in this new liberal society, for a political right, substantively an administrative law, particular to the executive power, neither parliamentary nor judicial, insofar as parliamentary legislation and the intervention of popular and judges of law proved insufficient to support the government's field of involvement.

This new administrative law would henceforth be entrusted to the executive power, which defined the areas of its control, organizing its own administrative and non-judicial jurisdiction, increasingly closing the field of intervention of popular judges in civil matters, referring them to the sphere of crime and, even so, residually.

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<sup>22</sup> Clavero, Bartolomé, *Instituição Histórica do Direito*, Rio de Janeiro, Lumen Juris, 2018.



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## THE LIBERAL VIEWS AND THE PROGRESS ON THE UNDERSTANDING OF SECURITY

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### Abstract

Over the last two centuries, the progress on the understanding of war determined the evolution of the concept of security. The ideas related to liberalism were influential for that purpose. Over that period, it was possible to examine the notions of war, strategy, and security, and to deepen the understanding of their models. In what concerns security, there has been an evolution from national security to collective security and to the current model of cooperative security, attentive to the human dimension and containing the ideas of liberty, democracy and liberalism.

### Keywords

War, Security, Liberalism, People, Cooperation

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## THE LIBERAL VIEWS AND THE PROGRESS ON THE UNDERSTANDING OF SECURITY<sup>1</sup>

LUÍS VALENÇA PINTO

*"... if anyone ever proclaimed the most absolute of truths,  
he couldn't do it,  
everything is interwoven in supposition"*

Aristophanes, quoted by Karl Popper in *In Search of a Better World*

### Introduction

It is never correct or realistic to reduce manifestly transcendent ideas to a single concept, nor to enclose them in this insufficient and reductive perspective.

Even so, and seeking to identify what is at the heart of the issue examined here, it will be acceptable to simplify the attempt to understand liberal ideas as having Man as their first cause and ultimate objective.

Also and quite rightly, today we see that people are, or are intended to be, at the centre of the contemporary understanding of security. Even if they are not their only references.

The question that motivates this text is rooted in this double understanding: what influence did the liberal views have and still have on the evolution of the understanding of security?

### A foundation for the relationship between Liberalism and Security?

A first observation is that the concepts of liberalism and security have not always been intertwined. Nor could it be otherwise.

It is not disputed that the imperative of security and the corresponding notion long preceded the liberal drive, as it has manifested itself in recent centuries.

One could make very interesting considerations relating to historically more remote times, but the objective of this essay is focused on the two most recent centuries.

This paper does not take into account the relevant contributions of cultures different from those of the Western World, since the liberalism movement occurs in the Western world.

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<sup>1</sup> \Article translated by Carolina Peralta.



In a closer historical way, it is reasonable to identify two fundamental references for the progress of the liberal ideas.

The first is to recognize that, although the idea of liberalism dates back to the dawn of the Enlightenment, it was fundamentally with the ideas of John Locke that liberal theories gained substance and support. This is why John Locke (1632-1704) is seen by many as the father of liberalism. The theses he wrote greatly contribute to this interpretation, namely regarding the social contract and tolerance. It is Locke's idea, so central to this reflection, that peace must be based on free and equal men (Locke, 1689)<sup>2</sup>.

For him, men are born in possession of natural rights, in a state of nature characterized by peace and harmony. The realities of collective life, however, lead to the need for regulatory practices. So, the political organization of society and therefore the state, based on the free choice of men, translates into a social pact (Mello, 2000: 85).

Without ignoring the Glorious Revolution and the American Revolution, the second great reference for the affirmation and expansion of liberal ideas is found in the French Revolution. It was this revolution, in particular with the thinking that inspired it and marked its initial phase, that, in terms of significant impact on society, consolidated and expanded a particularly strong source of liberal ideas. Consistent and repeated, these ideas were winds of history and blew through many geographies.

That is why the post-French Revolution period, the Contemporary Age, is the time when, with more propriety, one can try to identify and understand the relationship between liberal ideas and security.

## Understanding Security

The idea of security is as old as man, first from the perspective of mere individual survival and then progressively extending its scope to the protection of family, clan and tribe.

Within its scope, security corresponds to a political and public practice arising from the need to regulate collective life. In its nature, it is an indispensable condition for social life. Barry Buzan understood security as *a special kind of politics or above politics* (Buzan et al, 1997: 23).

However, it is less important to define precisely the concept of security than to realize its need and identify the ways that build, promote and sustain it.

Naturally, the various security formulas arise from and meet the moral, historical, political and strategic contexts in which they are inscribed (Pinto, 2013: 806). As a regulatory practice of a collective nature, security was structured from the perspective of the other, the one seen and feared as a potential aggressor.

When the tribe evolved to the nation, the security building model continued to be basically that. From a more collective and therefore more political perspective, the aggressor, or simply the potential aggressor, began to be seen as the enemy. The model, starting to be associated with the state, was called national security.

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<sup>2</sup> Locke, John. Second Treatise on Civil Government, ed. Abril Cultural, São Paulo, 1978.



The objectives of this security, now of a state centred nature, remained essentially the same, only extended to the dimension of the nation and politically translated by the values of defending national independence, asserting sovereignty and preserving territorial integrity.

It was a binary formula. Us and others. The understanding of power that centuries later was conceptually expounded and that continues to maintain pertinence and legitimacy, although no longer exclusively, has its foundation here. Power was perceived as the ability to impose one's own will on the will of others.

### **Security, war and strategy**

If there is an enemy, even if only a potential one, war is presupposed. At least the risk and probability of war. And if this equation contains two opposing wills, both intelligent and both political in nature, the picture is that of a characteristic exercise of strategy.

The correlation between the ideas of war, strategy and security is based on this, in its genesis and, in particular, with regard to the evolution of the understanding that, in relation to each one of them, has been asserted.

Historically, it was more than a correlation. It had aspects of manifest syncretism. In fact, for many centuries, basically since Ancient Greece, war and strategy were ideas that were hardly dissociable. This also means that throughout this long journey, strategy was perceived as something only related to the military context.

It was only in the first half of the 19th century that war in the Western World was viewed as something much more vast and complex than an exclusively military process. This tremendous conceptual leap was linked to the ideas of Carl von Clausewitz, made public in 1832 with the publication of his monumental treatise "On War".

It would not be appropriate to relate Clausewitz directly to liberal ideas. Still, in his work, Clausewitz reflected his experience and observation as an active participant in the European campaigns of the Napoleonic period and immediately afterwards. The book shows an understanding of the organization of society and the state marked by the influence of the liberal ideas.

For the first time in the Western world, the war, despite the presence of violence and its dramatic consequences, lost its character of a "chess game in an indefinite and almost abstract environment", linked to will of the sovereign. War became seen as an integral phenomenon of a political, economic and social context. War became a public thing, concerning the nation and society as a whole, not just the military.

Clausewitz was adamant in subordinating war to politics. In this light, he made explicit precepts hitherto never clearly formulated.

Taken together, these precepts defined and regulated war in new and radically different ways, emphasizing that war is an instrument of politics, which does not have its own objectives or logic, but rather seeks to satisfy the purposes of politics in obedience and coherence with the logic of that same politics. A logic that must therefore guide strategic action, understood as merely military, and that must have peace as its purpose, thus evidencing peace as the true objective of war (Clausewitz, 1976).





This unprecedented and so different vision marked an extraordinary moment of rupture.

However, despite this new and challenging approach, the concepts of strategy and security remained intertwined for a long time.

Both have fully gained the dimension of public practices, concerning the social group and the state and governed by the superior value and responsibility of politics.

The foundation of this situation of interpenetration of the two concepts is found in the convergence and even the overlapping of two main aspects. Security was based on and almost exclusively confined to the military dimension, and the means available for strategic action were fundamentally military.

It took time for the two concepts to become separated. As a reference, human beings were present and decisively important in both evolutions.

It was only in the first half of the 20th century that it was better understood that, in order to serve the objectives of politics well, strategy needed to use all available resources. Those of a material nature, of which the military were only a few, and also the intangible ones, of a moral nature (Hart, 1991: 322).

When strategy opened up to dimensions such as economic, social, cultural and psychological, society as a whole, and with it people, were brought to the heart of strategic action.

The consequent need to ensure the good and useful use of all these dimensions in conjunction and simultaneously with the use of the military dimension, made the tutelary and regulatory function of politics much more salient, both as a definition of purposes, but also as a guide and as an indispensable instrument for controlling action. And it is worth noting the obligatory human intervention in the domain of politics.

On the other hand, the call, both for the axis and for the praxis of the strategy, of intangible resources, such as morality, will or patriotism, all values with origin and repercussion on human beings, accentuated the new importance that from the first half of the 20th century onwards, was given to the value and role of man.

### **Recent evolution of Security models**

It was only later that the trajectory of the idea of security had a new significant development, towards the human. This resulted from the natural and obligatory dependence of security regarding the political and strategic context where it belongs and should serve.

Basically, the classic paradigm of security oriented towards issues relating to independence, sovereignty and the maintenance of territory remained unchanged until the end of the Cold War. Only modified by very demanding circumstances that were revealed and confirmed, it was understood that national security would be better ensured in a collective framework, bringing together allies and partners around common values, objectives and mutual commitments. However, it was a basically an instrumental change.

In its foundations, the idea of collective security, which in some way was tried after World War I and which had a clear consecration after World War II, did not and does not differ



from the national security model. This is with regard to its objectives, the identification of threats and the type of resources it mobilizes.

In both national security and collective security, man is a reference, albeit only implicit. In both, the concern with affirming and preserving freedom is present, an indispensable condition for the dignified and responsible existence of people.

In the post-Cold War environment, all this held up. Both within the framework of states and within the framework of international organizations that include security into their responsibilities. It would be strange if it were not so. But many of the defining parameters of security underwent and still undergo a considerable evolution.

It is no longer focused on a potential enemy and cooperation was identified as inestimable. It was realized that, in addition to the classic expression of coercion, which is more and more difficult to affirm, power also expressed itself through influence and even attractiveness. Insecurity was related to exclusion. To the military vector as a pillar of security and now of equivalent importance, others were added, such as the diplomatic, economic, social and cultural aspects. All of them are the remit of political action, as a way to guarantee that their action, although different in nature, is convergent with the objectives and equally coherent and coordinated.

It was also perceived that it was not possible to ignore the intensely communicational character of the current time. It was understood that it was even positive to use it in the identification and construction of solutions likely to receive a favourable reception when exposed to political and public scrutiny, thus becoming more in line with ethics and, from a pragmatic viewpoint, more sustainable.

The classical objectives remained unchanged and maintained their natural and outstanding consecration in the multiple constitutional frameworks, but to them were added concerns with the safeguarding of people's lives, values, rights and goods.

This new notion, fundamentally characterized by the multidimensionality of actions and the search for cooperation, is called cooperative security (Pinto, 2013: 808).

This formula, now and explicitly, has people at its centre, both as active subjects and as an object of security.

That is why we often see this security model being also referred to as human security. However, it would be more appropriate to call it cooperative security and give it a strong human dimension, attentive to the imperatives of people, whether in terms of their inherent dignity, or in the multiple aspects of their material conditions of life, such as nutrition, education, health or basic infrastructure. There is a clear articulation of security with development and well-being, a link between these two primary and permanent goals.

Once again, the paths of liberal ideas and security cross, inviting an interpretation that is based on the recognition that, also with regard to security, "Man is seen as an end and not as a means", like in Immanuel Kant's idea (1724-1804)<sup>3</sup>.

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<sup>3</sup> Immanuel Kant, *Critique of Pure Reason* (9th edition), published by the Calouste Gulbenkian Foundation, Lisbon, 2013.



The focus on man also means that the ultimate goal of cooperative security is of the win-win type, thus moving away from the logic of national and collective security which, quite naturally, is win-lose (Mihalka, 2001: 3).

This latest formula is not binary, but composite, involving multiple actors. It is also a formula whose management is not intended to be hierarchical, sectorial or segmented, but rather through a network, giving operational meaning to the interconnectedness that characterizes today's world and which is expected to be strengthened in the future.

### **Security models today**

What is happening in the world today is the natural coexistence of the three basic models of security: national, collective and cooperative.

The requirements of national security are not disposable and the most effective way to observe them is collectively. Hence, the cooperative formula is progressively asserting itself, either because the political and strategic circumstances so recommend and allow it, or because its foundations are gaining increasing support.

Never losing sight of national security, this "broadband" security corresponds to the view that what is most widely practiced today corresponds to collective security against nobody and cooperative security with all who want to promote and practice it (Pinto; 2013: 808).

As it is natural, the dependence on the political and strategic context determines that the content and intensity of this triple understanding of security differs according to the different geopolitical spaces.

### **Liberal vision multilateralism and security validation**

It is also worth remembering that, regardless of the model followed, security objectives have a reinforced validity when they emanate from political wills whose legitimizing matrix is liberal, is constitutionally enshrined and benefits from public scrutiny. Under this more demanding framework, visions and decisions, even if perhaps more difficult to affirm, become particularly robust.

At international level, this observation invites reflection on the type of regulatory instruments that can best stimulate a legitimate, adequate and understood security agenda.

From this perspective, the liberal vision that has influenced multilateralism appears again as a privileged potentiating factor. Especially if we refer to the vision that prevailed in the post-Cold War and if we remove the so-called neo-liberal and economic perspectives that, particularly at the beginning of this period, were also asserted.

However, it is necessary to work on a renewed and deeper multilateralism that emphasizes the focus on people and which, without failing to recognize competition, opposition and political and strategic disturbances, tries to move away from the geopolitics of power, centred on competition or on political and strategic antagonism.



The renewal and deepening of the multilateralism that we know so far must include the recognition of the existence of other relevant actors, in addition to states and international organizations. The presence on the present international political and strategic scene of large transnational corporations, churches, media operators, regions, city networks, NGOs and people is an undeniable fact. However, so far these other actors have not been sufficiently called upon to constructively contribute to global agendas and to commit to them.

In addition to opening up to new actors, it will also be important for a renewed multilateralism to recognize and observe the scope of security, thus taking as a fundamental norm that security cannot be promoted and built against people and without people. This is a principle that power geopolitics theories do not follow nor wish to follow.

If the lucidity and determination to follow this path of refreshing and deepening multilateralism with correct liberal inspiration prevails in the world, it will be easier to find solutions that better satisfy such essential values as freedom and democracy. And they will better support a more humane, more equitable and more legitimate security (Guterres, 2020).

It will not be a simple exercise.

From an immediate perspective, the mental constructions linked to power geopolitics suggest that they contain great evidence, served by many indicators and abundant statistics that seek to extract unquestionable trends and conclusions.

However, a closer, more ambitious and more demanding look points out that we need to bear in mind that the world agenda faces very important challenges. They include those related to the environment, climate change, pandemic control, risk of proliferation of weapons of mass destruction, in particular nuclear weapons, cyberspace, technological progress and the possibilities and risks that are anticipated from it, unregulated migratory movements, crises of representative democracy and of the market economy, hunger, systemic scarcity of resources, poverty and the persistence of broad underdeveloped areas.

These are challenges that, due to their nature, go beyond the simple scale of priorities and that should be labelled as existential.

It is impossible not to recognize that all of this calls for more cooperation and less competition, and for an agenda for promoting, building and sustaining local, regional and global security as an individual and collective value.

The relevance and urgency of these challenges outweighs the considerations made about the risks underlying both models, power geopolitics and multilateral cooperation.

The approaches that have informed the United Nations Human Development Reports are based on these lines and on the identification of possibilities and limitations found in the political, economic and social fields, with a view to making it possible to promote and sustain security that matters to people (Rezende, 2016: 307)<sup>4</sup>.

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<sup>4</sup> In the United Nations Development Plan (UNDP), seven dimensions of human security are considered: economic, food, health, environmental, personal, political, and community.



Proposals and the construction of political and practical solutions are expected. They should cover the plurality of contemporary life, including new threats and risks, and be able to bring together all the actors of the international society.

The multilateral approach, renewed, valued, and certainly much more demanding, is the only one whose nature and inherent objective will allow us to follow this path and thus serve the common and superior purposes of humanity. It is a multilateralism that brings results to the people it aims to serve (Guterres, 2020).

### Final considerations

Although it is not realistic to establish direct causal relationships between the values and proposals of liberalism and the understanding of security, it is a fact that the notion of security, and in particular its more recent evolution, has been inspired and influenced by values intrinsic to the liberal view.

Two circumstances define the matrix of this relationship. On the one hand, the increasingly liberal nature of the political and strategic context and, on the other, the growing correlation and subordination of security to this context. There are also two aspects where this is particularly manifest and decisive.

One concerns the modern centrality of people in the security framework, either as actors or as an object. The second has to do with understanding security as an indispensable, permanent and very relevant public policy which, as such and to be entirely legitimate, lacks validation, regulation, scrutiny and inspection by society. The contemporary purposes of a security attentive to the human dimension, particularly oriented towards the political, economic and social dimensions of life, which in recent decades have been promoted, namely by the United Nations, are a clear paradigm. This paradigm will be better served by a renewed multilateralism, associating all the actors of international society and covering the plurality of today's threats and risks.

Understanding, building and maintaining global security from this human perspective means choosing to have people at the centre of the action, to encourage freedom and inclusion and, consequently, to promote a fair and true peace.

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