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Portuguese constitutional history from the old iberian liberties to the carnation revolution

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PORTUGUESE CONSTITUTIONAL HISTORY FROM THE OLD IBERIAN LIBERTIES TO THE CARNATION REVOLUTION

I. CONSTITUTIONALISM BEFORE AND AFTER MONARCHIC LIBERALISM (1143–1910)

Constitutionalism did not begin with the English, the American or the French Revolutions.¹ If we believe in Lassalle's ideas (which became classical), as exposed in his conference on Constitution – *Ueber Verfassungswesen*² – every time and place are a stage for the “passionate history of mankind” (as Baumlin qualifies constitutional history). Constitutionalism, in a broad sense, and Constitution *proprio sensu* are always near us. No matter how far the land and how distant the time, a constitution is a must of politics. It is the *juridical statute of politics*, so it must always exist, “by nature” or “by definition”...

Being one of the most ancient countries in Europe (with one of the oldest definitions of continental frontiers, at the extreme west of the continent), Portugal has, according to the “historic-universal concept of constitution”, a very long and complex constitutional history, from its independence from the kingdom of Leon (not from Spain as some people think, as that country did not even exist at the time), in 1143 (more precisely, 5 October 1143, the date of Zamora's treaty). Indeed, some historians take the view that Portugal existed even before 5 October 1143, if not as a State then at least as a recognised political community.

It is not easy to cast a glimpse at so many centuries of constitutional texts and constitutional realities. Maybe the best way to catch the spirit of the Constitution is to understand the borders of its rationality. And one of the ways to do that would be to see the curious stories that any constitution may create in practice. Not law in the books, but law in action – we might say.

The Portuguese Constitutional History is full of delightful episodes and picturesque adventures. Even without speaking about the seven informal constitutions of the monarchy before the liberalism of the 19th century (as Diogo Freitas do Amaral interprets

¹ K. Loewenstein, *Verfassungslehre*, 4th ed., Tuebingen, Mohr Siebeck, 2000, p. 132 *et seq.*; B. Constant, *De la Liberté chez les Modernes*, antolog. org. par M. Gauchet, Hachette, Paris 1980; Ch.H. Mc Ilwain, *Constitutionalism – ancient and modern*, revised ed., Ithaca, Cornell Univ. Press, New York 1974. See also our book *La Constitution naturelle*, Buenos Books International, Paris 2014.

² F. Lassalle, *Über Verfassungswesen* : <[Http://Www.Gewaltenteilung.De/Lassalle.Htm](http://Www.Gewaltenteilung.De/Lassalle.Htm)>

the natural or historical constitution in Portugal³), only this classical liberal constitutionalism would be a matter for an entire book in itself.

Let us just give a small introduction, beginning with three examples.

A “judge of the people” (*juiz do povo*), in a moment of constitutional crisis at the beginning of the nineteenth century, came to a balcony and before the mob acclaimed the “Cortes” (the traditional assembly, such as the French *États Généraux*) of the town of Lamego, which would have occurred in the XII century. However, those Cortes really never existed. He was evoking an old myth that, centuries before, had been important to preserve independence, and was created with that purpose in mind. This story shows how old constitutional lies carry on, creating deep roots on people’s souls, and go on making their way.

In the XVIII century, Mello Freire, a scholar from Coimbra’s University, answered to the invitation of Queen D. Maria I for the revision of old law compilations (the *Ordenações*) with a constitutional project⁴ that imposed, among other originalities, a marriage licence: the couple of *fiancés* should pass an examination before teachers of grammar, who should interrogate them about religion, morality and criminal law. Sometimes Constitutional Law wants to regulate everything, which does not seem to be a good idea.

The last example is about the liberal Constitutional Chart, written in a hurry by the Brazilian Emperor D. Pedro I (in Portugal, King D. Pedro IV) and his secretary over the Brazilian one, and brought to Portugal by the British ambassador, Stuart. Criticised in its time because it would have been made *on a banana leaf*, it took its revenge, however, and remains the most lasting: from 1926 to 1911, with a small break, in 1838.⁵ It is not always the most elaborate and well thought out constitutions that last. Sometimes, the key to constitutional longevity is political balance, not constitutional “perfection” or “purity” itself.

We cannot resist giving a last example, further to the three promised ones: the preliminary report of the 1933 constitution imposed by the dictator António de Oliveira Salazar, which was approved by a plebiscite where abstentions counted as “yes” votes, which seems to be an example of the liberal and democratic DNA of the Constitutional *literary genre*.⁶ Because the Constitution may be seen like that: not a fairy tale, but certainly a utopia, written in articles.⁷

³ D. Freitas do Amaral, *As Sete Constituições Informais da Monarquia Portuguesa antes do Liberalismo*, estudos em homenagem ao Prof. Doutor Martim de Albuquerque, Coimbra editora, Coimbra 2010.

⁴ See our book *Constitution et Mythe*, Les Presses de l’Université Laval, Quebec 2014, max.p. 32 *et seq.*; A. Ribeiro dos Santos, *Notas ao Plano do Novo Código de Direito Público de Portugal, do D.or Paschoal José de Mello, feitas e apresentadas na junta da censura e revisão pelo D.or António Ribeiro em 1789*, na Imprensa da Universidade, Coimbra 1884; V.A. Duarte Faveiro, *Melo Freire e a Formação do Direito Público Nacional*, “Ciência e Técnica Fiscal”, Boletim da Direcção-Geral das Contribuições e Impostos, Ministério das Finanças, No 109, Lisbon 1968, p. 73 *et seq.*; B. Bravo Lira, *Melo Freire y la Ilustración Católica y Nacional en el Mundo de Habla Castellana y Portuguesa*, “Revista de Derecho de la Universidad Católica de Valparaíso”, Publicaciones de la Escuela de Derecho, vol. VIII, Valparaíso 1984, pp. 93 *et seq.*

⁵ See our book *Constitution et Mythe*, cit., p. 305 *et seq.*; E.V. Jaffeux, Eugene, *Les Deux Chartes portugaises*, Gustave Barbo, Lib., Paris 1837; F.P. de Almeida Langhans, *Constituição de 1838*, in *Dicionário de História de Portugal*, Dir. J. Serrão, Iniciativas Editoriais, vol. I, Lisboa 1963, pp. 677–678.

⁶ See, for example, G.A. Doerdelein, Schwartz, *A Constituição, a Literatura e o Direito*, Livraria do Advogado Editora, Porto Alegre 2006.

⁷ See our book *Constituição, Direito e Utopia. Do Jurídico-Constitucional nas Utopias Políticas*, “Studia Iuridica”, Boletim da Faculdade de Direito, Universidade de Coimbra / Coimbra Editora, Coimbra 1996.

Although the constitution, according to the “New State” (*Estado Novo*) ideology, should be anti-democratic, anti-liberal and anti-parliamentary,⁸ it would not escape, on its facade, to some democratic, liberal and parliamentary real presences: such as elections, fundamental rights, and even the existence of a parliament – although not a single representative was seated there without the consent of the government. That was a kind of a semantic or eventually nominal Constitution⁹... though it still had the *style* of a modern one.

And no more picturesque aspects for now.

With more or less rights and freedoms, pre-liberal constitutions (in the XII, XIII, XIV, XVI, XIV, XVI, XVII, XVII–XVIII, and XIX centuries – before 1822) are monarchical constitutions ranging from a more centralised and absolutist monarchy and a monarchy of the King *primus inter pares*,¹⁰ with more freedoms and municipal autonomy, which strictly speaking should convene the Cortes (the old Parliament) each year.¹¹ However, sometimes it took too long to assemble, exactly as it happened with the French *États Généraux* and for the same reasons.

The most salient constitutional aspects during this long pre-liberal period (until 1820, the year of the liberal revolution) are actually some aspects of freedom, perhaps common to the Spanish territory today, normally called the “old Iberian freedoms”.¹² Unfortunately, these are a very unknown form of protecting the people, but they made their way through the Iberian Peninsula and were also exported to the former colonial possessions of both Portugal and Spain.¹³ The rights of prisoners, of consumers, of soldiers, pilgrims, and women (in later times), along with the protection of the inviolability of private mail, namely very specific freedoms and guarantees, become even more amazing if we realise that some of them date from the VII century, not from modern constitutional revolutions, and are in certain cases prior to the *Magna Charta* itself...

The liberal times¹⁴ desired to recover precisely these old freedoms (both in Portugal and, for example, in France and Spain). Mingled in the first liberal revolutions was the longing to return to a traditional order, even with republican aspirations. Thus, the re-

⁸ Q. Avelino de Jesus, *Nacionalismo Português*, Empresa Industrial Gráfica Do Pôrto, Porto 1932.

⁹ K. Loewenstein, *Verfassungslehre*, cit., p. 151 *et seq.*

¹⁰ A. Botelho, *Monarquia, Poder Conjugado*, “Nomos. Revista Portuguesa de Filosofia do Direito e do Estado”, n.º 2, Lisbon 1986, p. 38 *et seq.*; F.P. de Almeida Langhans, *Fundamentos Jurídicos da Monarquia Portuguesa*, “Estudos de Direito”, Acta Universitatis Conimbrigensis, Coimbra 1957, p. 225–355; H. Barilaro Ruas, *A Liberdade e o Rei*, s.e., Lisbon 1971.

¹¹ A. Sardinha, *A Teoria das Cortes Gerais*, 2nd ed., qp, Lisbon 1975; A. de Sousa, *As Cortes Medievais Portuguesas (1385–1490)*, INIC, Centro de História da Universidade do Porto, Porto 1990.

¹² J. Cortesão, *Os Factores Democráticos na Formação de Portugal*, 4th ed., Livros Horizonte, Lisbon 1984; J.G. de Barros e Cunha, *História da Liberdade em Portugal*, Typographia Universal, Lisbon 1869; F. Elias de Tejada, *A Tradição Portuguesa. Os Orígenes (1140–1521)*, Actas, Madrid 1999; Also see (specially the second part of) P. Ferreira da Cunha, J. Aguiar e Silva, A. Lemos Soares, *História do Direito. Do Direito Romano à Constituição Europeia*, Almedina, Coimbra 2005.

¹³ For example, see M.A. Figueroa Quinteros, *Apuntes sobre el Origen de las Garantías a los Derecho Humanos en la Legislación Hispano-chilena*, [in:] *Estudios de Historia de las Instituciones Políticas y Sociales*, 2, Santiago 1967. See also M. Herrero de Miñon, *Idea de los Derechos Históricos*, Espasa-Calpe, Madrid 1991.

¹⁴ For the first period of liberal times, v.g., F. de Castro Brandão, *O Liberalismo e a Reacção. 1820–1836. Uma Cronologia*, Heuris, Europress, Odivelas 1990. Sources for all the liberal period: A.M. Hespanha, C. Nogueira da Silva, *Fontes para a História Constitucional Portuguesa (c. 1800–1910)*, Faculdade de Direito da Universidade Nova de Lisboa, Lisboa 2004, cd rom.

volution of 1820 and the constitution of 1822 almost established a crowned republic, with the first, normal liberal rights. Those were called the first generation rights, and now are first dimension rights: political ones.

The absolutist reaction would lead to a civil war, and when the new liberalism triumphed again, its constitution, granted, as we have seen, by the emperor of Brazil (now king of Portugal) D. Pedro, would be more moderate. And the liberal constitution – another curious aspect, or a wise political wisdom after a civil war? – was solemnly sworn by the three estates of the kingdom according to the old absolutist rules. We can see in Portugal a certain legalism in constitutional transitions: the constituent assembly in 1911 also felt the need to abolish the monarchy and proclaim it from the palace balcony; at the carnation revolution, the deposed ruler, the President of the Cabinet (“Conselho de Ministros”) Marcelo Caetano, “gave” power to the leader of the insurgents, General António de Spínola, adding that he did so in order to ensure that the power did not fall on the street.

There would be new adventures, but in general liberal constitutions are primarily political constitutions that eventually set up a rotating democracy in Portugal, with two main parties or groups replacing one another in power, one after the other. It is not very different to what happened after the constitutional institutionalisation of the carnation revolution: we have two main parties that, alone or, in the case of the right wing party, with the help of others, alternated in power, controlled by a parliament where, in addition to these three political forces, there is still a Communist Party along more or less classic lines as well as a party that comes from the revolutionary left. This one never knew the chairs of government, and the communists were only there at the first national unity coalitions, along with right wing moderates and democratic socialists, immediately after the 25 April revolution in 1974. Will the present terrible crisis change the Portuguese political spectrum, as it did in Greece recently (2015)? Only the future can tell... In the meantime, some new parties are preparing to replace the traditional forces in the chairs of power.

In Portugal (not only, but very clearly there), written constitutions, either derived from the will of princes or from representative elected assemblies, are real legitimising discourses institutionalising a constitutional order previously established by more or less revolutionary means.

The Constitution of 1822 came to legitimise the liberal revolution of 1820; the Constitutional Charter of 1826 institutionally consumes the victory of the supporters of the liberal D. Pedro over the absolutist D. Miguel. The Constitution of 1938 is a result of the revolution of September, yawning “left”; the restoration of the text of 1826 is a retreat to the “right”, and after that the 1911 Constitution legalised the establishment of the Republic of the last year. The 1933 text is no exception, representing the legal stability of the revolution of 1926. And after the *Estado Novo* was overthrown in 1974, the 1976 Constitution is the legal status of the political output of the 1974 carnation revolution.¹⁵

We will concentrate mainly on the last three constitutions. The one of 1911, which was Republican and still “liberal” in the old sense, the one of 1933 – authoritarian and social, and the present one, approved in 1976, which is democratic and social, explicitly

¹⁵ M. Caetano, *História Breve das Constituições Portuguesas*, 3rd ed., Verbo, Lisbon 1971. See our books *Raízes da República. Introdução Histórica ao Direito Constitucional*, Almedina, Coimbra 2006 and *Direito Constitucional Geral*, 2nd edition, Quid Juris 2013.

creating the “Social State”, with rule of law, and democracy at all levels. At least, that is “law in the books”, whereas “law in action” is quite another thing, special in these moments of severe crisis, and submissive to “international markets” and the like.

II. THE REPUBLICAN CONSTITUTION (1910–1926)

A popular uprising in 1910, led, of course, by republican militants, toppled the weakened King D. Manuel II, not long after two snipers shot dead his father, the reigning D. Carlos, and his brother, Crown Prince, D. Louis Philippe. That year, 1910, saw the beginning of the Republic of Portugal.¹⁶

Very rich legal and constitutional debate was held in the sessions of the National Constituent Assembly of 1911. If here and there saw the almost inevitable parliamentary verbalism, much was offset and outweighed by the high quality of many debates, in general no longer garnished with vain oratorical fireworks, but grounded in documentation, doctrine and thought. As stated by Mário Soares (lawyer and historian, and twice president of the Portuguese Republic) in his detailed study of this Constitution, “The discussions preceding the adoption of the Constitution were [...] very broad, focusing primarily on the problem of the presidential regime, which was rejected, and on the question of whether to create one or two chambers.”¹⁷

The Constituent Assembly worked very quickly: from 19 June to 21 August 1911. Started, with impeccable legal rigor, by the sanction of the Republican revolution to abolish the monarchy *de jure*, and also to deploy the Republic *de jure*. The Constituent Assembly took this effort to legitimise so much to heart that in the first session members heard a decree on the abolition of the monarchy and the banishment of the dynasty of Braganza, and voted unanimously and by acclamation. However, they did more: after that, the President interrupted the session and went to the main balcony of the Parliament to announce that “the Portuguese Republic was proclaimed by the National Constituent Assembly.” After all, performing the ritualised procedures, gave legitimacy to the proceedings¹⁸.

More than a dozen draft constitutions emerged. The Commission’s draft, whose rapporteur was Sebastião de Magalhães Lima, would soon be presented to the Assembly: on 3 July. In the synthesis of Jorge Miranda, “The Congress of the Republic would have two sections or chambers – The National Council, directly elected, and the Board municipalities, elected by the councillors of municipal councils. The two Boards jointly elect the President of the Republic and could remove him by two-thirds majority. The President would appoint and dismiss ministers freely, who would not be accountable to Congress. There would be a High Court of the Republic, for the trial of crimes of responsibility. The text also contains some interesting and innovative provisions in the field of fundamental rights.”¹⁹

¹⁶ For this period, in general, F. Catroga, *O Republicanismo em Portugal. Da formação ao 5 de outubro de 1910*, 2 vols., Coimbra 1991; C. Oliveira, *O Operariado e a República Democrática, 1910–1914*, Afrontamento, Porto 1972.

¹⁷ See, for more details, M. Soares, *Constituição de 1911*, in *Dicionário de História de Portugal, Dicionário de História de Portugal*, Dir. J. Serrão, Iniciativas Editoriais, vol. I, Lisboa 1963, p. 679 ss.

¹⁸ N. Luhmann, *Legitimation durch Verfahren*. 2nd ed., Neuwid 1975.

¹⁹ See, for more details, *Manual de Direito Constitucional*, I, Coimbra Editora, Coimbra 1981.

In truth, the main discussion concerned presidentialism. Many arguments of many hues were brandished. The first Commission spokesman, Francisco Correa de Lemos, presented himself to his colleagues as just “a poor judge from the countryside.”²⁰

Given the “nays” immediately raised, he amended, “If you want to be gracious to me, tell [the Assembly] that I am a man of good will, and you will not deceive.” Thus started the parliamentary debate.

Lemos declared the objective of the proposed constitutional design as reconciling a strong government with the Republic. A terrific myth of “weak governments” was already present at that time. However, some historic research seems to allow us to conclude that the only governments that do not fall sometimes (and that alone may be not a sign of weakness) were the monarchical absolutist ones. Even some dictators very often dismiss their ministers... as Salazar did, by a simple handwritten note on a card, thanking the minister and saying “good bye”.

The politicians at that time wanted a strong government, but a republican one. However, now the speaker seemed to contradict himself, and this contradiction can be seen as the key to all the contradictions of the system (and more widely):

On the one hand, he begins by stating: “But to form a strong government is not giving the preponderance either this or to that, or to any other power.”

To simply say, surprisingly, less than a dozen lines below: “Organise the power as you wish. There must be always someone who has hegemony.”

And then he admits that the tendency of the ruling power is to make unique power.

Immediately afterwards, the aforementioned draft was criticised by Alexandre Braga: because it would minimise the figure of the president, besides not remunerating the height of his dignity. However, it was also defended for its cost containment by the voice of another committee member, José de Castro. It was evidently the spectrum of the advances to the Royal House and the myth of the Swiss president, marrying a solution called “puritan”. This problem was still the surface of the issue.

The Assembly discussed everything: the “parliamentary bullfights” of ministers in Assembly (and whether or not they should attend the parliamentary sessions), federalism, the power of the President to dissolve the Assembly or not, etc...

The draft was classified in various ways (as being both presidential and unpresidential): it was said, not without adjustment, that presidentialism was a typical American regime, less appropriate to Western European countries. Curiously, in Brazil there is an academic thesis underlining almost that perspective. In fact, political regimes sometimes work here and sometimes they do not.

At the end of everything, a system of pure parliamentarism was approved, with no safety valves. And that absence of balances would be the institutional reason for the collapse of the regime 16 years later. Although the main reason was, most probably, the fratricide wars among the various groups of republicans, and the loss of republican ethics, values and virtues.

Having been working on a presidential draft, not everything would eventually be corrected in the radical change of concept that occurred. Namely, the absence of the power to dissolve Parliament by the president. That was immediately criticised, even

²⁰ All the quotations of the debates are from *Actas da Assembleia Nacional Constituinte de 1911* (de 15 de junho a 25 de agosto), Assembleia da República, Lisboa 1986.

with fears of creating a weakening power (Alexandre Braga), and defended with fears of abuse by the head of state (Jose de Castro). The president was, at that time, almost purely a figurehead. This limitation of presidential powers would be corrected in the revision of 1919: but after already paying a high price...

This Constitution is thus parliamentary.

The powers in the Constitution of 1911 are “independent and harmonic between them” (Art. 6). However, the Assembly even brought into question the existence of any president at all.

The Constitution aligns the thesis of national sovereignty (Art. 5), follows the principle of the separation of powers (Art. 6), establishes a regime of representative democracy (Arts 7 and 15) founded on universal suffrage, though the electoral laws excluded women and the illiterate, among others. The justification for this by Afonso Costa, a real symbol of the regime, is at least interesting: with an enormous level of illiteracy and the suffocating influence of fathers, husbands and brothers, and, of course, the Church, how could women or the illiterate consciously vote (or be allowed to vote)? Of course, a republican woman, Carolina Ângelo, was allowed by the court to vote, because nothing in the law initially forbade it, though the law would soon be changed. This prejudice or extreme caution is still now one of the most popular monarchist arguments against the republic and republicans.

You can say that the rights, freedoms and guarantees of the Constitution of 1911 are still liberal: freedom, understood as a guarantee against illegal measures (“No one may be compelled to do or prevented from doing something except by virtue of the Law”), equality before the law, the defence of property, and the right of resistance. The abolition of the death penalty crowned a process that began in the Additional Act from 1892.

We must register some constitutional innovations, such as the control of constitutionality (Art. 63) and the recognition of material fundamental rights, beyond the formal, explicit in the text of Constitution (Art. 4). From Brazilian sources, we must remember *habeas corpus*, hitherto unknown among us, probably because of the large French influence on our modern constitutionalism, being averse to this institution.

A hallmark of the republic would, of course, be the abolition of the monarchy, and with it, the related titles and privileges.

The Republican ideology of secularism (initially exaggerated in anti-clericalism) would naturally lead to the consecration of religious freedom in terms far more generous than the constitutional monarchy, and consequently to the idea of strict separation between church and state (Art. 3, 5).

A certain decentralising romanticism coexisted, with the prevalence of the thesis of the unitary state (Art. 1). However, as finances were centralised, the “autarchic” constitutional autonomy (art. 66) would be almost vain words.

It was interesting to note the importance given to the enforcement of minorities’ representation in local government. However, republicanism was colonialist, along with its historical “circumstance”, in a direction that would relate, in general, to independence at the proper time of preparing the populations. However, the regime insisted on the decentralisation of “overseas provinces”, “with special laws appropriate to the state of civilisation of each of them.”

The social dimension of the republic was scarce, despite several attempts by Afonso Costa, Magalhães Lima and others. There were once a minister of labour issues called

the “Portuguese Lenin” for his ideas, but it seems he was not very consistent in practice and did not, after all, last long in office.

For example, this old republic (*república velha*) did not recognise constitutional dignity to the right to strike, although legally recognised already by an ordinary Decree: from 6 December 1910.

There was a sincere educational concern, with compulsory basic or “primary” education (Art. 3, No. 11). Very few healthcare provisions were implemented, along with some about death. However, we must remember that budgets at the time were small, and republican leaders wished to have strong and safe financial results. And they succeeded at this sometimes, even reaching a surplus, which is not a small achievement, even given the context.

The Constitution of 1911 was in force from 21 August 1911 to 9 June 1926 (a revolution was made in 28 May of this year). Then, a dictatorial decree officially dissolved the Republican Parliament. The white and black photos of the time show more the tiredness of the deposed members of the Parliament than real faces of revolt. It seems the Republic gave up. In fact, some authors see, in the extinction of the idealistic flames, the main reason for the end of the regime. They are probably right.

There was a textual constitutional hiatus between 9 June 1926 and 11 April 1933, when the “New State” ratified its new constitution.

Even from 1911 to 1926 there were constitutional problems. In May 1915, the dictatorship of Pimenta de Castro suspended the Constitution of 1911, though in 1917 it would suffer a more severe blow, but not definitive.

Sidónio Pais (professor of Coimbra and the military), the only truly presidential Portuguese president, having ascended to power in a military coup (5 of December 1917), by decree No 3997, of 30 March 1918, formally consummated the modification of the Constitution of the country. Populist, he introduced a mitigated form of universal suffrage and the direct election of the President. Good looking and always in his military uniform, some say that he counted with the women’s vote. Although naturally not respecting the requirements for approval of a Constitution in the modern sense, some even call this decree the “Constitution of 1918”. Only *cum grano salis* it could be so. It was the Constitution of a dictator.

The autocrat was shot dead in the Rossio station on 14 December 1918. congress quickly hastened to restore the interrupted constitutional order: two days later, by Law No. 833.

What has become known as the *North Monarchy* was also a partial rupture of the constitutional order of 1911. There is a certain connection between the North Monarchy and the Sidónio Pais movement: firstly, the Manifesto of military junta of North Monarchy claimed the legacy of the President-King killed a year earlier.

The uprising was short-lived: on 19 January the monarchy was restored (symbolically) in Oporto. Five days later, the movement, strangled at birth in the south, was confined to the territory dominated by the junta of Paiva Couceiro (always loyal to his king), in the Oporto, bastion defended with severe repression.

Less than a month later, however, the Republicans again placed the green-red flag in the north capital (13 February). The blue-white flag of the monarchists would remain only the proud colours of a football club, though in a short time it would lose any political connotation.

Of the four major constitutional revisions of the Constitution of 1911, the most relevant, though without the desired effect, would undoubtedly be Law No. 891 of 22 Sep-

tember 1919, recognising the error that was not providing the President of the Republic with powers to dissolve the Congress in the constitution from the beginning. Even so, the President would have to listen to the opinion of a Parliamentary Council before deciding. This advice is certainly the first formal constitutionalisation of the role of political parties. Law No 1154 of 27 April 1921 comes in the wake of that change, and determines the vital and remaining powers of various organs (President, Congress and the Government) during the dissolution of Congress.

III. THE CONSTITUTION OF THE “NEW STATE” (1933–1974)

The most notable features of the Constitution of 1933, at an ideological level, are nationalism and corporatism (though this last aspect was very weak and rootless, which led to its classification as mere “state corporatism”), which, by interpreting their form of the Catholic Church’s social doctrine, insisted on “class collaboration”, but actually such talk merely serves to legitimise a situation of profound inequality, with some protests from Catholic priests, and even the Bishop of Oporto, D. António Ferreira Gomes,²¹ was obliged to go into exile.

At the institutional level, an almost all-powerful presidentialism looms above all with time and praxis (in which jutted the very strong figure of Salazar as President of the Council of Ministers), and the constitutional amendment was enacted after a threat in the form of the candidacy of General Humberto Delgado, later murdered by the political police, was transformed into the “presidentialism of the prime minister”.

The constitutional report condemns both monarchical liberalism and the period of the first republic. It defines the constitution as essentially nationalist – avoiding the contemporary “extremely aggressive” states (p. 7), while “substantially” retaining individual guarantees for citizens already contained in the 1911 Constitution, and all subject to a “fair harmony of the whole society” (*ibid.*).

The “New State” looked to put this doctrine into a “middle position” between individualism and liberal parliamentary democracies, on the one hand, and the “worshippers of the State”, identifying the “confining doctrines of socialism and statism” (the latter perhaps designating Nazism and fascism: to demarcate the regime itself, not always succeeding in practice) (p.10) on the other.

The institutionalised form of presidentialism is so vast that we sometimes wonder whether Salazar did not want an absolute monarchy (liberal would never be): “The Head of State is the President directly elected by heads of family.” It is the first organ of sovereignty. The president exercises his functions independently of the votes of the National Assembly. He appoints and dismisses governments, he responds directly and exclusively “before the Nation” and his political personality is inviolable. Its independence and solemnity of assignments give it a unique position among all organs of sovereignty. The Constitution sets out the true functions of a Head of State, and not simply the executive power. It is the quintessential element of the harmony of the state.

Using the classification of constitutions conceived by Karl Loewenstein,²² Adriano Moreira (a former minister and president of the Academy of Sciences) qualifies the

²¹ D.A. Ferreira Gomes, *Carta a Salazar*, new ed., Edições do Tâmega, Amarante 1993.

²² K. Loewenstein, *op. loc. cit.*

1933 Constitution as “semantics”, and draws this picture significantly, as shown in the quote: “The 1933 Constitution was a document more concerned with image than with the reality of the political system. [...]”²³

There are abundant examples of how, after the conspiracy of 1961, there were attempts not to return to the letter and spirit of the constitutional text, but rather to openly try to restore the *de facto* regime: “For both sought to deploy one charismatic leadership, the abuse of the media; proceeded to the concentration of power at the head of the government, changing up the legislative process, while the stated purpose to liberalize external image; constant popular manifestations, accompanied the proclamation of modesty in governance, confessed surprised with that [...], the announcement of the end of censorship, was accompanied by the purchase of newspapers or bodies under the State or by groups that supported the government, and the establishment of the preliminary examination that nobody distinguished from censorship; the assertion of strict legality, was compatible with the publication of the retroactive law to safeguard interests of private banking; disobedience to judgments of the Supreme Administrative Court did not cause hesitation, the enactment of legislation for intimacy, accompanied by intensive exercise of wiretapping that newspapers will disseminate, and violation of the correspondence, the state arbitration rule of private interests, fought with the imposition of friends administrations and companies with the persecution of the disaffected. [...] All of this is the political process of a semantical constitution, i.e. a collection of words intended to compose an image, but with little connection to reality.”

The text of the 1933 Constitution, the facade of an order that was not a rule of law, remains an example of a contrast with constitutional reality, a divergence between the norm and life, between theory and practice, between the mask and the face.

One aspect that is immediately striking today to anyone who reads the 1933 Constitution is its style: not entirely of its time, still sharing something with a previous time.

The symbol of political representation and fundamental rights in the Portuguese Constitution of 1933 is apparently just an article: the sole paragraph of Art. 7, about the reciprocal treatment of foreign nationals between Portugal and other countries. However, about Portuguese people it says nothing less than “Portuguese subjects.” “Súbdito”, in Portuguese language is more or less a servant. So, the Portuguese people were conceived as little more than a people of vassals.

In terms of representation, everything initially depended on the president. The Constitution expressly cautioned that the fate of government initiatives in the National Assembly would determine nothing in the maintenance of the Government or its downfall, noting that it only depended on the president. It is symptomatic that there is an article expressly stating this (Art. 111). After General Delgado frightened (and some say that he really defeated) the regime candidate, Admiral Tomás, in general elections, the constitution changed and the president was no longer elected by the people.

The practice also deepens the illusory nature of constitutional rights.

Article 8 is a parade of numerous rights, freedoms and guarantees that we used to see in the literary genre “constitution”, from the classical liberal constitutions. However, curiously from No 6 there start to be restrictions in the text. Thus, the inviolability of the home and the secrecy of correspondence suffer a modulation by what the law may determine (6), the same occurring with the freedom to choose a profession (7).

²³ A. Moreira, *O Novíssimo Príncipe. Análise da Revolução, Intervenção*, Braga-Lisboa 1977.

Symptomatic is paragraph 2, which subverts everything else, with its reference to special laws regulating the freedom of expression of thought, education, assembly and association.

The concern expressed by the constituent assembly is to protect the purity of the people, seeking to repressively prevent what it sees as a “perversion of public opinion.” This paves the way for political police, censorship, etc., and always with the best intentions, of course. The worst dictators are those who sincerely want the people to be pure...

IV. THE FALL OF THE “NEW STATE”: THE CARNATION REVOLUTION

After 48 years of the “New State” it was obvious that it had become not only old, but that from the beginning it had been a bad medicine to the troubles of the democratic republic. So in April 1974, the Armed Forces Movement (*Movimento das Forças Armadas* – MFA), an organisation created mainly by democratic young captains, in a surgical *coup d'état*, deposed the president and the government, while a popular revolution occupied the streets, acclaiming the soldiers and placing carnations in their guns. Portugal was a Democracy again, with rule of law²⁴ and social concern... And in 1976 this democracy would be crowned with the promulgation of a new Constitution, drawn up by a Constituent assembly elected the previous year.

The new Constitution is a very progressive and democratic text, and may be the best fruit to have grown out of the Revolution.²⁵

²⁴ J.J. Gomes Canotilho, *Estado de Direito*, Fundação Mário Soares / Gradiva, Lisbon 1999.

²⁵ About the Constitution, v.g., A. Thomashausen, *Constituição e Realidade Constitucional*, “Revista da Ordem dos Advogados”, ano 37, Lisbon 1977, p. 471 *et seq*; M. de Lucena, *O Estado da Revolução. A Constituição de 1976*, Sojornal, Edições Jornal Expresso, Lisbon 1978; J. Miranda, *Manual...*, cit., various volumes; J.J. Gomes Canotilho, *Direito Constitucional e Teoria da Constituição*, 7th ed., Almedina, Coimbra 2003. And our books *Direito Constitucional Geral* and *Raízes da República*, cit.