

# Tradition and Modernity in Portuguese Liberal Political Culture – on the Topic of the Constitution

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## Abstract

How did the first waves of Liberalism in Portugal relate to tradition and modernity? The focus of this article is on a topic that had much currency in the 1810s and 1820s, in Portugal as well as in Spain, being prominent both in Liberal discourse and public opinion, namely the Constitution. It was a concept used both within Liberal culture and by supporters of the Ancien Régime. It was a cause that mobilized public opinion towards political transformation, but it also embodied traditional values. To what extent were constitutions seen as instruments for framing politics? And what was the political function of historical constitutionalism?

## Keywords

Tradition, modernity, Constitution, historical constitutionalism, liberalism

## Resumo

Como se relacionaram tradição e a modernidade nas primeiras vagas do liberalismo em Portugal? Este artigo centra-se num tema que teve larga recepção nos decénios de 1810 e de 1820, em Portugal bem como em Espanha, proeminente no discurso liberal e na opinião pública da época: a Constituição. Foi um conceito usado pela cultura liberal e pelos partidários do antigo regime e uma causa que mobilizou a opinião pública no sentido da transformação política, mas que também corporizou valores tradicionais. Em que medida foram as constituições instrumentos de enquadramento político? Qual foi a função política do chamado constitucionalismo histórico?

## Palavras-chave

Tradição, modernidade, Constituição, constitucionalismo histórico, liberalismo

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The problem I wish to address can be formulated in the following way: how did mythical tradition and modernity coexist in the early phases of the liberal political experiment? The focus of this article is on a topic that had much currency in the 1810s and 1820s, in Portugal as well as in Spain, being prominent both in liberal discourse and public opinion, the Constitution.

Let us take two examples of the engagement of tradition and modernity in the most important constitutional texts in nineteenth-century Portugal, the 1822 Constitution and the 1826 Constitutional Charter. In the first, we read in the Preamble that “In the name of the holy and indivisible trinity,” the Constitutional *Cortes* express the conviction that “the public misfortunes that have so greatly been oppressing and still oppress it [the nation], had their origin in the disdain for the rights of the Citizen, and in forgetting the fundamental laws of the Monarchy” (Miranda, 2001: 66).<sup>2</sup> The neglect of these fundamental laws – the former Portuguese Constitution – was thus taken to be the cause of the decline of the nation. However, these fundamental laws were partly related to a foundational myth, the bogus *Cortes* of Lamego, a tradition invented in the seventeenth century and popularized in 1632 in the context of resistance to Iberian union, during which representatives of the Three Estates were alleged to have legitimized the first king of Portugal.

The second example is from the highly significant Preamble to the Constitutional Charter granted by Dom Pedro IV in 1826. In the opening words, the monarch “By the grace of God. King of Portugal and the Algarves etc.” – that is, by divine impulse, like Louis XVIII, “souverain par la grâce de Dieu” in the French charter of 1814 – makes it known “to all My Portuguese Subjects that I am Pleased to Decree Give and Order to be sworn immediately by the *Three Orders of the State*, the Constitutional Charter [...] which henceforth shall govern my Kingdoms and Dominions” (*Idem*: 115). So, this Preamble still invokes providential legitimacy and the juridical status of the Ancien Régime – the Three Orders of the State – while the very first article defines the Kingdom of Portugal as a “Political Association of all the Portuguese citizens” (Art. 1).

## Tradition and Modernity

I start from the principle that modernity is only affirmed in relation to a particular tradition. As a Mexican historian rightly observed, “without tradition there is no modernity” (Zermeño, 2010: 67). We find many signs of an awareness of this necessary

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<sup>2</sup> About the engagement of tradition and modernity, see also António Manuel Hespanha (2015).

relationship. Gumersindo Laverde, a liberal intellectual and Spanish romantic, wrote in 1860: “It is principally tradition that gives us our sense of greatness and progress.”<sup>3</sup> For nineteenth-century liberals, tradition was the bearer of a view of the future and of progress. However, since the beginning of the twentieth century, aesthetic and political vanguards have made it their intention to extinguish tradition. A well-known example is Futurism, which nursed the idea that cultural and aesthetic creativity set out from zero, from a rupture with everything that is past and with all the world’s memory (including libraries, archives and academies). But obviously that break is meaningless without whatever was behind it – the very profundity (or superficiality) of the rupture can only be understood by knowing what went before. There is an excellent example of this relationship between the appeal of innovation and the entrenchment of tradition in the modernist magazine *Contemporânea* (1922-26), on which Portuguese and Spanish modernists and traditionalists collaborated, including Fernando Pessoa, António Sardinha, Gomez de la Serna, etc. On the one hand, it aimed to be modern and cosmopolitan, open to new arts and aesthetics; on the other hand, its contributors included Lusitanian Integralists, traditionalist Catholics, and supporters of the organic monarchy.

The Latin word *traditio* means what is transmitted, the cultural heritage of the past. *Modernitas* is a word coined between the eleventh and the twelfth centuries, by which the present expresses its superiority over the past (Zermeño, 2010: 56). What we call modernity corresponds to multiple historical experiences – “multiple modernities,” to use the term coined by an authority on the subject (Eisenstadt, 2007). Since the middle of the nineteenth century, cultural modernity has been related to an awareness of crisis, associated with vanguards, with the appeal of the new, of speed, of attitudes critical of society and of bourgeois modernity – the latter being related to scientific and technical progress, capitalism and scientism (Calinescu, 1999). For his part, Ortega y Gasset distinguished epochs of continuity – “cumulative epochs of perfect homogeneity between what it inherits and itself” – and epochs of rupture – “eliminatory and polemical epochs” (Ortega y Gasset, 1923: 24-26). Where should we situate nineteenth-century Portugal in this regard? As in other European countries, the nineteenth century was a time of rupture and continuity. We know that history is made of both change and continuity, but there are moments when events are concentrated and accelerated, in which the speed of change increases. Liberal modernity embraces an idea and a sense of acceleration, an acceleration that can be converted into a “model of experience” in which “all history is transformed retrospectively

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<sup>3</sup> *El Mundo Pintoresco*, 4-12-1860 (Hernandez, 2015: 440).

into a temporal sequence of increasing acceleration” (Koselleck, 2003: 69). This is evidently related to the subject of technical – and moral – progress, but this acceleration also embeds itself in our accumulated experience of the past.

How did nineteenth-century intellectuals understand modernity? It was a modernity linked to their experience of change, a sense of crisis, and frequently with the idea of revolution – the French Revolution and those that followed, especially that of 1848 (though revolution could also be understood not as a rupture but as an evolution). Those Portuguese historians who had the greatest impact on the public – Herculano and Oliveira Martins –referred to the liberal revolution as a rupture in the historical tradition, but the liberal elite, and after it the republican elite, legitimized their exercise of power by invoking the historical tradition. It should be noted that the notion of what is modern involved (and still involves) ambiguities. For example, when Herculano discusses the origins of Portugal in the Middle Ages, he speaks of *a modern nation* that emerged in the twelfth century through a process of “revolution and conquest” (as opposed to a traditional and mythical conception of an ancient nation, Lusitania), a nation that since the fifteenth century had been identified – in his view erroneously – with Lusitania and the Portuguese as Lusitanians (Herculano, 1980 [1846]: 82-83). In other words, Varnhagen rejected Indianist origins of Brazil. But, if there is in Herculano an apology for liberal modernity, it is also a fact that he concerns himself with rooting that modernity in the medieval institutions in which its origins lay, the local councils (*concelhos*) and the parliaments (*Cortes*).

I wish that we could reconnect modern liberty to *ancient liberty*. I love ancient things; but I don't love worn-out things. From what I know, *from studying the institutions of our Middle Ages one finds there almost all the principles of liberty that are believed to have been discovered in our times [...]* (Herculano, s.a.: 309)

And he understood the cult of national memory as a means of reinvigorating the decayed present, a past acting on the present:

In the midst of a nation in decline but *rich in traditions*, the need to recall the past is a sort of moral magistracy, it is a type of priestly duty. Those who are able and know how should exercise those duties; because not to do so is a crime. (Herculano, s.a. [1st edn 1843]: 13-14)

For his part, Oliveira Martins in his *Portugal Contemporâneo* (1880) shows that he is well aware of the weight of the Portugal of tradition, which he calls “historical Portugal,” and of which, in the nineteenth century, Dom Miguel and *Miguelismo* would be a typical expression. This “historical nation” resisted the imported liberal system as being “foreign” (Martins, 1953, I, p. 61). But an interesting point that has not been noted is that Oliveira Martins questions the “intellectual and moral progress” of his time (namely *Fontismo* and its “material improvements”), pointing out not only profound disagreements on matters of political economy, but also a “decline in character” and the “denationalization in culture.” Himself a man of European culture, who recognized a certain cosmopolitan character in the nation, he nevertheless lamented the break in the “intellectual tradition,” the loss of literary quality in the language (he forgets here the innovative work of his friend Eça de Queiroz, amongst others), and the dominant influence of French culture (*Idem*: 23). However, is not the critical devaluation of the present and the exultation of the past a regular theme amongst traditionalist currents? Undoubtedly, but not only. A critical attitude towards the present and the mythification of a particular past run transversely through many different political orientations. The historical legitimization of the nation and its rootedness in the past necessitates enhancing the value of the vigorous days of its origins. When the nation is seen as an instrument of modernity – and that is the case up until our own times – it is understandable that an insistence on the question of “nationalization” (making Portuguese once again) versus “denationalization” was not confined to currents of opinion among the liberals, the republicans, or even many socialists. We find this concern in Eça de Queiroz, in Teixeira de Pascoaes, in Jaime Cortesão, but we also find it among the traditionalists, such as the Lusitanian Integralists. And not just in Portugal, but also in Brazil, in Spain, or in Italy, we find the call for nationalization (Matos, 2013).

The political vocabulary of liberal culture in its formative period also expresses this close relationship between modernity and tradition in a particularly significant way. In it, there remain certain ambiguities with regard to its most fundamental concepts: *constitution*, *parliament* (*Cortes*), *regeneration* (with the sense of rebirth). It is a historicist lexicon mobilized in order to construct a different present. The future to come should be inspired upon an idealized vision of a distant past. In liberal and republican historical culture, there still remained ancient mythical traditions, which were less consensual since they generated lively public debates: the constitutional tradition of the *Cortes* of Lamego (whose apocryphal proceedings were sometimes identified with the fundamental laws invented in the

seventeenth century), the myth of the Lusitanians, the miracle of Christ's appearance at the Battle of Ourique, the navigational school at Sagres. Some of these traditions – notably the *Cortes* of Lamego and the supposed Sagres school – were often cultivated with the intention of highlighting the pioneering and exceptional character of the Portuguese nation and its historical experience. And they were employed by authors with the most varied cultural backgrounds, whether traditionalists or liberals, or even republicans and socialists. Some of these traditions still shaped the historical conscience in the Portugal of the nineteenth century.

How did the first waves of liberalism in Portugal relate tradition and modernity, that is, a view of past experience and a vision for the future? In order to reflect on this issue, I have selected the topic of the *Constitution*. It was a cause that mobilized public opinion towards political transformation, but it also embodied traditional values. Alongside the *Cortes* – also called the ancient parliaments – it became the place for a prolonged debate on the legitimacy of power. Because of the multiplicity of meanings they could carry, the Constitution, as well as Parliaments, were concepts with a long political history that could play an important role in the age of revolution and change. The deployment of these concepts at a time of crisis for the old colonial system and the old regime secured a sense of modernity, but they were also well anchored in a political heritage that reached back to the Middle Ages. I will focus on the first one, the *Constitution*. How closely was this concept related to historical traditions and also to modernity? And what was the political function of the so-called historical constitutionalism?

Under the old regime, politics was, at least theoretically, the preserve of the monarch and of small circles of power, whether at a national (Secretaries of State, counselors, etc.) or a local level (only the leading figures took part in the election of local councils). At the time of the liberal revolutions, there was a commitment to broadening the field of political activity, with the nationals of each state suddenly becoming citizens. But, in Portugal, it has to be admitted that a liberal public opinion, in the modern sense, only appeared after 1808, growing in importance later with *vintismo* and afterwards, in the course of the debate on the succession to the king, Dom João VI (Monteiro, 2013: 65).

The first Portuguese liberal constitution, of 1822, was regarded not only as a foundational law, but, like the Cadiz Constitution, was explicitly referred to as a *Political Constitution*. In the conservative Constitutional Charter of 1826, the Kingdom of Portugal is designated as “the Political Association of all the Portuguese Citizens” (Miranda, 2001: 59

and 115).<sup>4</sup> These qualifications were formulated through a long, unending process of expanding the field of politics. In the nineteenth century, this involved fierce debates and conflicts, a slow widening of popular suffrage, and a slow growth in the schooling and literacy of the population, accompanied by an extraordinary growth in the political press and the exercise of public opinion (Tengarrinha, 2013, 322-324).

### Nationals and Citizens

The modern concept of the citizen emerged in the second half of the eighteenth century in the age of revolutions (Rosanvallon, 1992) and in the Ibero-American world, deriving especially from the French occupation of the Iberian Peninsula, although asynchronously in Spain and its former colonies (Aljovín de Losada, 2009). In the first Portuguese constitutional text (1822), all Portuguese were considered citizens (Art. 21), but not all Portuguese enjoyed the rights of citizenship. There were no property requirements affecting the right to join the electoral roll for the Chamber of Deputies, but a series of legal and practical restrictions meant that the overwhelming majority of Portuguese nationals could not exercise their right to vote in these elections. For example, the Constitution stated that, in the future, only men who were over the age of twenty-five and literate could vote. At a time when more than 80% of Portuguese could not read or write, the great majority of the population could not enter the political nation: they could neither vote nor stand for election (Art. 34, I). The 1812 Cadiz Constitution and the 1791 French Constitution had distinguished between nationals and citizens. Of these, only citizens were allowed to exercise political rights. In Spain, political rights were denied to those who were of African origin, women, foreigners, convicts, those without visible employment, domestic servants, and debtors. As had been the case with the first experiments in Portuguese Liberalism, the Cadiz deputies invoked historical traditions, which they claimed as the source of their rights and liberties. As in the Portuguese period of *vintismo* (1820-23), in Spain the nation was linked to the Catholic, Apostolic, and Roman religion, which led to limitations on the freedom of expression, and to forms of intolerance (Pérez Ledesma, 2009, and Silva, 2014).

The concept of the citizen was also defined in relation to another identity-based point of reference, the political nation, an ideal nation that can be seen as the result of representation (Lorente, 2010, 31). In one of his law manuals, Coelho da Rocha asserts that

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<sup>4</sup> In the 1838 Constitution, the same was to be said, not of the Kingdom, but of the Nation.

the title of citizen should be restricted to the “members of the political community,” that is, those able to occupy elected public positions. In this way, we see that the liberal tradition distinguishes civil rights, which are derived from natural rights, from political rights, which are restricted to those in society who have attained a certain level of wealth and education.<sup>5</sup> Furthermore, the concept of the citizen was marked by a political conflict, as the *res publica* was not composed only of virtuous citizens. For Mouzinho da Silveira, there was also the “criminal” citizen, who asserted “his private good against the public good – either by being a courtier to the Sovereign or by being a courtier to the people” (Silveira, s.a.: 714).

Alongside the restrictions on the exercise of citizenship – also evident in the distinction between active citizen and passive citizen, introduced by Sieyès and to be found in the 1826 Constitutional Charter – we find politics as an ideal of virtue. And one of the greatest virtues was patriotism (“loving the homeland”), which was taken, alongside a respect for religion and obedience to the constitution, to be one of the principal duties of the Portuguese (Art. 19 of the 1822 Constitution). But politics was not all virtue. In the periodical press at the time of the first liberal experiments, there appeared critical references to the “deceitful politics of the Court” (*O Compilador*, 1821), to “political fanaticism” (*Punhal dos Corcundas*, 1823) or to “political vices” (*O Amigo da Ordem*, 1820) (Verdelho, 1981: 182-83).

At a time when the conflicts between revolution and counter-revolution were very heated, it is not surprising that the very concept of politics should be touched by that confrontation, in an increasing *pathos* that would lead to the harsh repression of liberals during the reigns of Dom Miguel (1828-34) in Portugal and of Fernando VII in Spain (particularly between 1823 and 1833, after the fall of the three-year-long constitutional regime), and during the civil wars that took place in both Spain and Portugal. We should note the polarized debate between the supporters of Dom Pedro and Dom Miguel, immediately prior to the Portuguese Civil War of 1832-34, on the subject of the legitimacy of each of the possible successors to Dom João VI. On both sides, the proponents were very harsh and each excluded his adversary from the field of politics. Note the terms in which the supporters of liberalism expressed themselves.

The factional politics promoted by the supporters of Dom Miguel, the *usurping faction*, were regarded very negatively, as not only were they opposed to the national interest, but they were also alien to the very nation itself and to constitutional legality. The

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<sup>5</sup> M. A. Coelho da Rocha, *Instituições do Direito Civil Português*, 1848, quoted by Ramos, 2009: 289.

ascension to the throne of Dom Miguel by illicit means was regarded in Portugal and in European circles as a “political tragedy,” since the *Miguelistas* had rebelled against their legitimate king, Dom Pedro (*Manifesto dos direitos...*: 21).

But it was also in the name of the nation – a nation that was “essentially monarchical” and identified with the Roman Catholic religion and a society composed of estates – that the legitimists rose up against the “democratic faction,”<sup>6</sup> which they reduced to a mere military faction, a group of “degenerate Portuguese’, alienated from the body of the nation. For the liberals, by contrast, the nation was a self-determined political principle conceived as a whole, having an autonomous will (Matos, 2008: 116-117). Thus, both the liberal and the absolutist camps employed a contested notion of European politics within the scope of which national politics operated.

There are four notable aspects to the prolonged controversy about the legitimate successor to Dom João VI, which took place in 1826, and is still insufficiently studied: 1) the awareness that this was a confrontation not only at a national level, but also at the European level; “European politics” was at stake; 2) for the most part, the opposing “parties” used a common political vocabulary, despite their different meanings: homeland, kingdom, nation, faction, citizen, *Cortes*, ancient constitution, etc.; 3) in either of the guidelines – the liberal and absolutist – the opponents were excluded and considered cliquish and were therefore strangers to the political unit that was the nation; and 4) they invoked not only the laws of succession as practiced throughout Portuguese history and established by the Fundamental Laws (at the mythical *Cortes* of Lamego), but also the will of the nation – the free approval of the Portuguese, through national consensus (Manique, 1872: 48 and 53).

Homeland (*patria*) and nation became the reference points of identity which tended to occupy the space until then filled by the monarch, as the basis of sovereignty. Homeland and nation were also political points of reference. In Spain, from 1812 onwards, the nation became the key concept around which the different theories of the state and the constitution were formed (Varela Carpegna, 2012: 12-13). Even before the first liberal experiment, amongst the topics discussed by the intellectual elite in opposition to the existing order, pride of place went to the Constitution and the parliament (Graça and J. S. Silva Dias, 1980: 570, 590-91).

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<sup>6</sup> “Manifesto do Senhor Dom Miguel Primeiro” (1832), Manique, 1872: 159.

## Old and New Constitutions

In Roman law, a constitution referred particularly to the laws of a prince. The concept was used to designate legal discipline: for example, Bluteau gives the meaning as a “statute” or a “rule” (Bluteau, 1713, 485-486), while a Castilian dictionary of the same period gives the verb “*to constitute*” the meaning of “to establish, ordain, institute [...] laws and rules for the regulation and government of a Kingdom, Republic or Community” (Hespanha, 2004: 68). And if, in Castile, in the second half of the eighteenth century, there had already built up a sense of “historical accumulation” (Portillo, 2009: 375), in the era of liberal revolutions, the word “*constitution*” gained new meanings. In the context of the work of the constituent assembly during the French Revolution, the idea of constitution corresponded, as Georges Gusdorf suggests, to a “demand for rationality,” and a collective foundational contract for a new order,” one that involved not only a real change of practice, but also “a change in the human condition” (Gusdorf, 1978: 197).

A new political order, involving a new concept of both sovereignty and political authority, required, from the viewpoint of legitimacy, a different type of reasoning. Borrowing the conceptualization of Max Weber, this new concept of national sovereignty can be seen as the replacement of the legitimate domination “of a traditional character” by a rational legitimacy (Weber, 1995 [1922]: 289). But, in the case of Portugal, and perhaps of Spain, the dichotomy between these two types of political legitimization may not be so obvious. For the liberal revolutions in the Portuguese and Brazilian world, as in the Spanish world, the relationship between tradition and modernity, between the old and the new, took on particular features. To what extent did this particularity have to do with the fact that the Portuguese revolution took place while the king Dom João VI and his court were in Brazil? François-Xavier Guerra and, more recently, Javier Fernández Sebastián have emphasized that the revolutions in the Spanish world were not made against the monarch, but rather in favor of an absent monarch, which distinguishes them from the French and American revolutions of the North Atlantic (Fernández Sebastián, 2010: 187). Something similar happened in the Portuguese case, though the absence of the monarch was voluntary rather than forced. In fact, the Portuguese liberal revolution was not made against the monarch – rather it needed the monarchy to legitimize itself by invoking a much more distant medieval past, a time when the Portuguese were allegedly happy with their monarchs, whose power was tempered by the action of the *Cortes* and the municipalities.

A point that shows the strong similarities between the Spanish revolution and the one taking place in Portugal and Brazil is evident in the recourse to a national memory of the origins of the state and the way that these were instrumental in the construction of certain ideas of the political nation. In fact, it has been noted that Spanish constitutionalism based itself specifically on its Catholic character, very obvious in its confessional nature. Although open to external influences, it based itself on an inherited political culture marked by a tradition of pacts, neo-scholasticism, and natural law (Fernández Sebastián, 2010: 214). In Portugal, this type of constitutionalism was influential in the seventeenth century, with the forging of the apocryphal acts of the *Cortes* of Lamego and the revolution of 1640, traditionally seen as a form of *restoration*. It was based on a contractualist theory that harked back to a much earlier time “without usurpation or tyranny” (Cunha, 2000/2001: 308), since it looked to a mythical tradition of foundation allegedly situated in the twelfth century at the time of Portugal’s autonomy from Leon and Castile, the *Cortes* of Lamego.

It should also be noted that, both in Portugal and in Spain, the confrontation between the liberal revolution and tradition also took the form of civil wars with a dynastic component (the existence of legitimist branches personified in Dom Miguel and Dom Carlos), giving rise to lively debates on the historical and juridical legitimacy of the contenders to the throne. The historical argument had a relevant role on both the liberal and the counter-revolutionary side.

In the liberal Manifesto to the Portuguese in August 1820, the present time is not greatly differentiated from the more distant past. If there is a distancing, it is in relation to the near past, a time when the courts and the ancient constitution had fallen into disuse. It conveys, then, the idea that to *restore* the ancient constitution, under the aegis of religion, the throne and the homeland, would equate to recovering the lost collective contentment (Tomás, 1982 [1820]). The idea was not new: it had been laid out by Rocha Loureiro in London, in 1814.<sup>7</sup>

In France, too, in the early days of the National Assembly, there were those who took the constitution to be a restoration of the earlier order, fairer than that of the *Ancien Régime* (Gusdorf, 1978: 194). But the majority of the deputies were in favor of producing a new constitution and, as we know, the dynamic behind the elaboration of the Declaration of the Rights of Man and the Citizen departed from the idea of preserving an earlier constitution. In Portugal, that same alternative of an old constitution or a new constitution presented itself. Moderate liberals such as Fernandes Tomás tended to emphasize the

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<sup>7</sup>J. B. Rocha Loureiro *O Português*, vol. I, n° 6, Oct. 1814, p. 480 (Dias, 1980: 592).

engagement between the present time of revolution and the past, in order to see the revolution as a restoration. But the acceleration in the political experiment imposed new meanings on these key concepts in the political sphere: the constitution and the parliament (*Cortes*) (Matos, 2015, 235-241). In the Constituent Assembly, radical deputies, such as Margiochi, were to signal a break with the past: the new Constitution would have nothing to do with the ancient fundamental laws. That is, it was a case of constructing a constitution from scratch.

In the Constituent Assembly of 1821, there was a fierce debate on the ancient fundamental laws and on the medieval *Cortes*. At stake was not only the political problem of the role of parliament, but also the question of the vocabulary being used (*fundamental laws, ancient constitution, new constitution, Cortes*), and of course the historical veracity (or otherwise) of the *Cortes* of Lamego. While some deputies still saw the ancient *Cortes* as the basis for general prosperity and contentment, and associated the newly-elected Assembly with these principles, others saw clear differences between the ancient and the modern parliamentary institutions. They argued that the ancient fundamental laws did not comprise a true constitution since they did not define the sovereignty of the nation (how power should be exercised, the rights of the nation, the obligations of citizens); also that they varied a great deal (meaning that they could not shape an effective constitution); and that, according to these laws, the three branches of power – the executive, the legislature and the judiciary – were concentrated in the figure of the monarch. Besides, the *Cortes* of Lamego had merely established the rules of succession to the throne. For the deputy Inácio da Costa Brandão, in the medieval *Cortes* “there was no national representation, since you could not call the assembly of proxies of a few supplicant folk national representation’. For this reason, he underlined the modernity of what the Constituent Assembly was doing and objected to the language adopted in the Preamble:

Let us speak frankly and plainly as befits the Representatives of a free Nation [...]; let us *say that we are going to make a new Constitution, because our ancient Constitution, made at a time when the rights of man and of Nations were unknown or disdained, is insufficient to secure for us the dignity, and contentment to which we have a right.*<sup>8</sup>

Another example came from the radical deputy, Margiochi:

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<sup>8</sup> Inacio da Costa Brandão, cf. *Diário das Cortes Gerais e Extraordinárias da Nação Portuguesa*, 126, 13-07-1821: 1531-32.

*We are going to make a new Constitution, with which our fundamental laws and everything that has happened under this Monarchy have no relation. Our ancestors had no idea of this division of powers that we are going to establish today, or of many other things. Their Cortes were summoned mainly for the business of the Exchequer. As a consequence, no great importance should be given to the fundamental laws of our Monarchy. Furthermore, I judge these fundamental laws to be very questionable; I don't know if we have in the Cortes of Lamego many things by which we can make this comparison.*<sup>9</sup>

The present undertaking was thus regarded as a novelty, making a break with the past. As Fernando Catroga has noted, it was from the time of the *Manifesto do Supremo Governo do Reino aos Portugueses* (October 31, 1820) and the *Martinhada* (November 11-17, 1820) that the modern concepts of sovereignty and the principle of representation were adopted, thereby subordinating the idea of summoning the *Cortes* in the old manner (Catroga, 2013: 281) – a measure that had been proposed by the government of the Kingdom and promptly challenged by their liberal opponents.<sup>10</sup>

But there were those who were inclined to invoke the ancient Constitution, amongst them the moderate leader Fernandes Tomás, who was surprised that they should question the *Cortes* of Lamego, and came out in their defense (*Diário das Cortes...*, n° 126, 13.07.1821, 1527). What ancient constitution was it upon which the early Portuguese liberals retrospectively projected their collective contentment? It was the traditional law, the ordinations, the fundamental laws of the Kingdom, which had been approved by the supposed first *Cortes* assembled in Lamego in 1143 (which regulated the succession to the throne and had been supposedly created by the aristocracy and by representatives of the people in a foundational assembly also held in Lamego). They were, then, the product of a confluence of the aristocratic principle and the democratic principle, of the king and the people. They formed the basis for a limited monarchy, in which the royal power was tempered. For Almeida Garrett, these principles of a tempered monarchy had been inherited from the peoples of Northern Europe.

The idea of fundamental laws as the regulating mechanism of power, and as representative of the will of society, was adopted by European theoreticians, such as

<sup>9</sup> *Diário das Cortes Gerais e Extraordinárias da Nação Portuguesa*, 122, 09-07-1821: 1478.

<sup>10</sup> Cf. “Manifesto”, *Documentos para a história das Cortes Gerais da Nação Portuguesa*, t. I 1820-1816, Lisbon: Imprensa Nacional, 1883, 80-83.

Pufendorf, Burlamaqui, Woff, and Vattel (Castro, 1986: 612). Developed by Spanish political culture, they would gain favor amongst the enlightened men of the seventeenth century and later amongst the royalist and conservative liberals of the nineteenth century. They did not correspond to the formal requirements of the liberal or democratic constitution, but rather described a traditional, but unsystematic form of legislation. In this respect, they came close to the English constitutional system, to the “flexible constitution” to which English jurists refer (Miranda, 1997: 130). As a matter of fact, in England, the seventeenth-century theory of the ancient and immemorial Constitution was also turned into an instrument of resistance and a justification for the revolution of 1688 (Pocock, 1987 [1957]), and it would prevail in nineteenth-century constitutional history. But historical constitutionalism had deep roots in a medieval Church tradition, later espoused by the neo-scholastics of the seventeenth century: the doctrine of the popular origin of royal power, complemented by an idea of a *pactum subjectiones* and of the lawful resistance to unrestrained power (Merêa, 1923: 230-31).

In France, too, the topic of Fundamental Laws was invoked in vague terms to designate ancient political laws that placed obligations upon subjects, but also represented moral limits to the royal power. They were described as the ancient French constitution, at times used to combat the new constitution which was to be adopted in 1791, for example, by the traditionalist Joseph de Maistre (Gusdorf, 1978: 193). In Portugal and Brazil, at the end of the eighteenth century and in the first half of the nineteenth century, an analysis of the concept of a constitution reveals the absence of a rupture with the world of pre-modern tradition (Neves, 2009: 345). In Portugal, this idea of an ancient constitution was rather consensual, while the 1822 Constitution was far from being so. It became a key topic in the political confrontation between its supporters and its detractors. In the months following the military coup in Porto, in August 1820, groups of people held demonstrations in the main square, demanding a Constitution (Alves, 2014: 50). The metaphors associated with it – such as “the majestic edifice of the liberal constitution” – clearly show the relevance it acquired. We could also see this relevance in monuments, prints, toponymy, etc. The same happened with the Cadiz Constitution, and, even in Italy, where it was compared to a “majestic pyramid” (*Obras constitucionais...*: 7). Equally significant was the fact that, on the triumphal arch created in the Rossio, in Lisbon, there should be inscribed the word “Constitution”, and there was a project to erect a monument celebrating the fundamental law in the place where today there is a column topped by a statue of Dom Pedro IV (Pinheiro, 2000: 18). Criticisms of the constitution mostly appeared after the

heyday of the 1820 revolution (Verdelho 1981: 288). And, in early 1823, in the anti-liberal armed rebellion that he led in the north of the country, the Count of Amarante shouted “Death to the Constitution” (Lousada and Ferreira, 2006: 37).

As we have seen, modern Constitutionalism was not seen as being above politics; rather, it was a central topic in the political debate between liberals and *Miguelistas* (absolutists) and, of course, in political culture in general. Nor should it be forgotten that, in the political culture of early liberalism in Portugal and Spain, the elites were well informed about the European and American constitutions, which they read attentively. For example, in an anonymous text dated 1821, alongside a defense of the interests noted in the political regime of the United States, there was interwoven a criticism of mixed monarchical governments in which there coexisted both the aristocratic element and the democratic element, in confrontation with one another. This was true of England, in which the oligarchic interests of the great landowners and capitalists came to dominate (*Reflexões sobre o pacto social...* 1821, pp. 73-74). However, this radical democratic criticism of the English system did not prevent this author from judging that the system of national representation adopted in Europe had its origins in its northern peoples, “enthusiastic lovers of liberty and equality,” who had then spread across the continent. Another critic of the 1822 Portuguese Constitution was Garrett, for whom it had erased the aristocratic principle, which seemed to him a mistake that had led to democracy degenerating into “illegal demagogy” (Garrett, s.a. [1830]: 208-09). And, for Herculano, it was democratic and “very nearly republican, but completely inapplicable to the country” (Herculano, s.a.: 296). Herculano had a very negative view of democracy, which he identified with the “tyranny of the plebs,” *plebs* standing in contrast to the *people* (Saraiva, 1953: 144).

The moderate Constitutional Charter, however, at least at the time of the fight against the regime of Dom Miguel and the Civil War, was more consensual. Across liberal Europe the idea that the Portuguese case was a good example of a constitutional monarchy gained currency. But evidently the Charter also had its critics, more vocal in times of crisis, who included republicans such as Teófilo Braga, and other figures such as Eça de Queiroz and Oliveira Martins.

Coming back to the initial questions: though they excluded the large majority of the nationals from political rights, the two most relevant constitutional texts in Portugal, the 1822 Constitution and the 1826 Constitutional Charter, became fundamental political points of reference. When the 1822 Constitution was restored, in 1836, the two were claimed by opposing political currents, that is, by radical liberals (and later republicans) and

by moderate liberals, respectively. They were totems that, throughout the nineteenth century, represented the separation between the supporters of constitutional monarchy and its more radical critics.

Can we say of historical constitutionalism – the “ancient constitution” – that it was seen as being above politics? It is true that it was “nationalized”, that it belonged to historical memory, and also to a mythical tradition. But it had been instrumentalized by political opponents for their own ends, in order to legitimize their claim to power. While the radicals tended towards a break with the ancient constitution, the moderate liberals tried to legitimize their political program of a temperate monarchy by referring to the antecedent of the “ancient constitution.” However, there was a large consensus on the topic at the Extraordinary *Cortes* in 1821, which led to the approval of the preamble of the 1822 Constitution. Even by the end of the nineteenth century, some republican intellectuals such as Teófilo Braga still referred to the “fundamental laws” as a root of Portuguese democracy.

But the theme of a constitution also had an undeniably forward-looking and utopian meaning. One example was Sinibaldo de Mas’s idea that Portugal and Spain should negotiate a constitution for a future Iberian state. Certainly, some republicans accepted the authenticity of a mythical tradition that formed part of constitutionalism, historically; José de Arriaga, for example, accepted the *Cortes* of Lamego. However, was that tradition not a retrospective utopia?

A final example of the close relationship between tradition and modernity, of the presence of the past in the present, is the theory of an ancient democratic origin to the Iberian monarchies. Discussion of the egalitarian idiosyncrasy of the nation was very frequent in nineteenth-century Spanish historiography, among liberals as well as among conservatives. As Guizot noted, the concept of democracy was common to all political factions: “It is the sovereign word, all the parties invoke it and want to appropriate it as a talisman” (Guizot, 1849: 7). Juan Donoso Cortés and Menendez Pelayo wrote about the Spanish monarchy as being a democratic one. For instance, Menendez Pelayo saw Spain as “the most egalitarian land in Europe [...] the only country in which [the rights of the people] have never been negated” (Fernández Sebastián, 2002: 221). The first liberals invoked an ancient and virtuous constitution, by which the people supposedly enjoyed agency through the *Cortes*, which functioned as a national pact between the monarchs and the common people. In French liberal political culture, Portugal was often seen as a good example of a constitutional, liberal and modern state in nineteenth-century Europe.

The notion that the Portuguese monarchy had been representative and constitutional, with some elected kings (Afonso Henriques, Dom João I, Dom João IV), along with the idea that democracy had ancient roots in Portugal, became commonplace over the course of the nineteenth century. As in Spain, these *topoi* formed part of a popular theory of history that was widely employed by republican historians and politicians. Let us take two examples. For Teófilo Braga, “the fundamental bases of modern democracy” were laid at the *Cortes* of 1641, with the “principle that only the *Cortes* could deprive the kings of their authority or invest it in them, because sovereignty was a delegation subordinated to the tacit requirement for the exercise of justice” (Braga, 1983 [1880]:19). And for the Senator Carneiro de Moura, in 1919,

In Portugal, apart from the seventeenth century, when a central power was established, the people always governed. [...] Everyone remembers that the Portuguese people (...) always reserved the right to choose the king, or head of state that best pleased them<sup>11</sup>.

What meaning had this democratic and contractualist theory assumed? It guaranteed that the present prolonged the past. And while history seemed to head in the direction of democracy, the idea had already been found in the remote past, in the mythical times of origins. This was also the social function of historical constitutionalism: the assurance of temporal continuity.

In the political vocabulary of early liberal culture, before and immediately after the liberal proclamation of August 24, 1820, there remained an ambiguity in the way of referring of the constitution and the *Cortes*, although this ambiguity tended to resolve itself with time. Take, for example, the debate on the preamble to the 1822 Constitution, between a legitimacy that was providential and traditional, and a rational legitimacy. Even so, the term *Cortes* as used to describe the parliament, did not disappear until 1910, while in Spain the parliament is still called by this name to this day.

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<sup>11</sup> *Diário do Senado*, 24, 14-02-1919: 6. By the second half of the twentieth century, historians influenced by a Marxist training or by material from the *Annales* movement emphasized a reading of the liberal revolutions as bourgeois revolutions, a break with the past. And some entertained the idea that, at decisive moments, when the groups in power weakened, it was the people who held firm and secured national independence. In this respect, they were the heirs to a contractualist and republican narrative.

## Conclusion

In the dominant historical narratives of the nineteenth century, the liberal revolution was frequently understood as a break with tradition. Republicanism inherited this reading, making 1820 a significant moment in establishing modern democracy, although, in reality the concept of democracy was little used at that time. However, as we have seen, in the political vocabulary of early Portuguese liberalism the term *constitution*, while having the power to mobilize, with a firm eye on the future, also carried with it a historical and mythical tradition – historical constitutionalism in the Iberian Peninsula and in Latin America—which was associated with a centuries-old historical experience. Obviously not with the immediate past—the centuries of the absolutist state – but with a distant past, in which the *Cortes* and the *concelhos* represented the nation and tempered royal power; a past in which an assumed Gothic constitution consecrated, as the basis of government, the power of an assembly, including the election of moderated royal power, limited by the *Cortes*.<sup>12</sup> For practical and pragmatic reasons, liberal modernity was, in the end, tied to the heritage of a political culture profoundly rooted in the political ideology of the second scholasticism, with restrictions on royal absolutism. The rational legitimacy that dominated the liberal system was still tied to a traditionalist (or even providential) legitimacy. The present was tied to the past.

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<sup>12</sup> It was from the second half of the seventeenth century onwards that a “democratic” reading of the first Gothic constitution became widespread (Álvarez Alonso, 2000: 6).

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