



EUROPALIA  
  
PORTUGAL



synthesis of portuguese culture

PORTUGAL  
INSTITUTIONS AND FACTS

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## 1.

### INTRODUCTION

*«O tempo que se renova  
e desempoça,  
é o tempo de mãos à obra.»*

ALEXANDRE O'NEILL, *A Saca de Orelhas*, 1979

#### *1. Portugal*

1. Present-day Portugal? At a time when the importance of national identities is once more a topic of discussion, it is desirable to point out that the «art of being Portuguese» does not lie in inward-looking, nor in self-worship. The Portuguese are often held to be a tolerant and open-minded people. Such features do exist, but are not sufficient to define his complex relation to the world. World, what sort of world? A world which came in successive waves of invaders, nomads or peoples who, once they set foot on Portuguese soil, settled in this «garden-by-the-sea». From Rome to Islam, in the least, it is not easy to define accurately the weight of the legacy of those peoples. Furthermore, there were those eyes facing the deep sea which beckoned them to venture into the unknown, to go ahead . . .

2. How could the Portuguese be contented with what he had, what surrounded him? Diversity was his daily lot, distance was the constant call of transcendence and novelty. And one must guard against assuming that it was dream or illusion that made possible the undertaking of the Discoveries; nor was it the evil eye or *fate* that kept us aloof from material progress and riches. We would not have achieved what we did best without the existence of an alliance between institutions (State, Church, religious orders) and experience, scientific knowledge, craftsmanship, economic capacity. The loss of influence resulted, for the most part, from shortage of the means

necessary to properly govern a too big empire — leaving thus the field clear for the North-European economies, for which there was no difficulty in wasting efforts and whose commercial and financial powers were generally recognised.

Thus, what distinguished the Portuguese, rather than openness or tolerance, unquestionably important qualities, was his ability, at one moment, to combine experience, scientific innovation and craftsmanship and the institutions' self-assertiveness as factors for the unity and mobilisation of energies. Mobilisation of moral and material energies, which could be effective owing to a learned complementarity between centralism and plurality, between ascendancy of real power and influence of ancient boroughs.

Therefore, it can be easily understood why, traditionally, public institutions have constantly had a significant bearing on Portuguese life, in the same way as has been clear the society's hostile attitude to whatever comes from the capital. The State was anterior to the Nation. Centralism has been a permanent imprint since the 12th century. Accordingly, Eça de Queirós had one of his characters say «Lisbon is Portugal», where everything was decided between «Arcada and S. Bento» — in other words, between the seats of central power.

3. All over the centuries, throughout the agrarian monarchy and in imperial times, the real power felt the need to concentrate powers to secure its self-assertiveness and influence — and the unbroken alliance with the people of the boroughs against the members of nobility and the high clergy was in the end a sign of that centralising requirement. The outcome is visible to the eye: a nation with a homogeneous culture stands up, a fact, despite the complex influences and the diversity of the peoples which the ages have brought to this small territory on the western edge of the Iberian Peninsula. The Portuguese are distinct among them, but, wherever they may be, they are held together by cultural, religious, and linguistic ties, by values and mentalities — to such an extent that it is difficult to develop consensual and unchallenged criteria for drawing the administrative boundaries of the regions, in the mainland.

Moreover, should any doubts be raised on the outgrowth of the centralising tradition of the State, there it lies in South America, testifying to it, that giant moulded upon a pattern that sought to reconcile unity and diversity — Brazil.

4. Built under the auspices of a «father-State», the Portuguese nation relies too much and too little on public institutions. Too much, since she turns for nearly everything to the Messiah-State<sup>(1)</sup>, as her saviour and scapegoat, her guardian and tyrant alike. Too little, since she takes excessively to an obstinate individualism, resisting to the spontaneous solidarity that finds its expression in public spaces in participation and supervision of powers. Thus, her relation to the institutions is dramatic — worship and distrust, dependence and repulse. State, Armed Forces, Church — they all are targets of such a relationship, cyclical and taken to extremes. Hence, anticlericalism and religiousness are not antagonistic, surprising as it may seem — and this was evident in times of most acute political and social conflict. As far as the Armed Forces are concerned, we need only to recall their opposite attitudes in the course of time: deliverer or hindrance? Nevertheless, nobody questions the prominence of the institution and the need not to consign it to oblivion. As to the State, there was a time, namely last century, when tax officials were expelled out of away-from-it-all hamlets, even by the force of stones thrown at them by their inhabitants, for bringing the pestilent «papers for the robbery» — that is to say, the mere forms necessary to the effect of drawing up the cadastral register<sup>(2)</sup>.

But there has always been the other side of the coin — if some catastrophe knocked at the door, or if an «influential protector» was necessary to have either a new road serving such or such a village or a bridge repaired, there it was, inevitably, the appeal to the Messiah-State, there invariably came to mind that rulers could not help having the final say.

Consequently, in the liberal and democratic long tradition which Portugal has behind it, and which Jaime Cortesão sought to bring to daylight by inquiring into its origins — although one needs only to look back over the working and life of its institutions over the past two hundred years —, we can find a constant appeal to «the Country to rule the country itself», in Herculano's words.

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(1) Cf. Joel Serrão, *Do Sebastianismo ao Socialismo em Portugal*, Lisbon, 1969, *passim*.

(2) Cf. Guilherme d'Oliveira Martins, *O Ministério das Finanças — Subsídios para a Sua História no Bicentenário da Criação da Secretaria de Estado dos Negócios da Fazenda*, Lisbon, 1988, pp. 279 ff.

5. There is a struggle to temper the excessive reliance on the State and to bring decision-making process nearer the citizens and the small villages. And the truth is that, little by little, modern Portugal is getting rid of the worn-out atavism of centralism and bureaucracy. It frees itself — in the name of democracy and efficiency, freedom and economy public institutions adapt, accommodate, modernise. One can realise again that, rather than operating as a factor of resistance, institutions must act as modernising forces. Municipal tradition ceases to be simply a banner to become an effective space of assertion of local power. Decentralisation can, and must, be complemented by devolution of powers, competences and resources . . . Centralised power is no longer the best response.

Nowadays, identity and autonomy are preserved by diversified but cohesive networks, as long as what unites them is quite clear and aims are properly defined.

For that reason, the time has come to emphasise, without complexes, the importance of what is peculiar both to the regions and the nation; only then will it be possible to think of broad-based public forums — in which ideas of complementarity and community are kept alive, upon the unequivocal acknowledgement of the right to difference. Hence, identities are preserved by power sharing and by a genuine subsidiariness, below and above the Nation-State. The Portuguese are acquainting themselves with that path.

6. Step by step, the Messiah-State gives way to a deconsecrated State — neither saviour nor scapegoat; simply an institution, an working idea or a factor in the mobilisation of material and moral energies. It is no longer the question of imposing the rigidity of a hierarchical chain or turning the State into a producer of symbols and material items; instead, there is a need to make public powers basically mediators so as to enable the establishment of a constructive, free and responsible relationship between ethico-juridical values and society, in order that unavoidable and necessary conflicts be smoothed out, while providing an opportunity for public forums, pluralist and diversified, to become factors of creativity.

What has all this to do with Portugal? Everything. It is the only way to reconcile patriotism and cosmopolitanism, self-esteem and openness, equal respect and consideration and dignity of people. As Oliveira Martins said one day, «in the lusian heroism there is a nobility which differs from the rage of our neighbours (the Spaniards); our let

ters and our thought are permeated by a deep or sentimental note, ironical or tender, that one would vainly try to find in the history of the Castilian civilisation» (3). Sentimentalism and irony — two characteristics which must be borne in mind. Certainly, there lies the origin of the peculiarly Portuguese cyclothymia that makes us oscillate between an excessive worship of our identity and our past and a severe criticism of our faults and inabilities. But it may as well be the point of departure for the mere conclusion that the Portuguese are not much better nor worse than the other peoples, being however vital to make openness of mind a strength. Such is the necessary sense of the Portuguese europeanism — universalist, resting upon diversity, pluralism, creativity of small and medium-sized units, without losing sight of the whole, of values that persist and institutions that last over time.

## 2. *An Identity in Search of Institutions*

7. What country is Portugal? This question makes us feel embarrassed. Actually, what sort of country is this territory «where land ends and sea begins»? From the outside, misperceptions are common; but for those minimally attentive the Portuguese identity is sufficiently clear not to go unnoticed. Hergé depicted the Portuguese unmistakably, by giving us the portrait of an ingenious tradesman, a nomad by profession, skilful at persuading even the most obstinate of the great advantages of his wares. Mr. Oliveira da Figueira stands in every corner of the world, a nice, open-hearted, kind man, at all times ready to give a hand. But, apart from such qualities, there were some dubious scruples when a deal was at stake . . . Naturally, this is but a caricature with all the risks of misunderstanding it may originate. Nevertheless, the Portuguese were surely not particularly shocked by such a friendly picture. There is a certain verisimilitude in it and, besides, the lusiad capacity of self-criticism can easily accept that simplistic and certainly false portrait. There is no point in examining the figure of that imaginary globe-trotter — bearing in mind that in this field Portugal has more incisive and critical caricatures (suffice it to look at *Zé Povinho*, a sort

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(3) *História de Portugal*, 16th ed., Lisbon, 1972, p. 19.

of Portuguese John Bull marked by suspicion and cunning, created by Rafael Bordalo Pinheiro); what matters, at this juncture, is to single out, by means of a picture, the clearness of the national character, its strong distinctness, and the prominence of its identity.

8. Pierre Birot, in a penetrating analysis of the Portuguese people's character, speaks of history as a continuous ripening process «in the shelter of the oldest borderlines of Europe», and refers to the «Portuguese soul's distinctive features that make it so patently singular in relation to its peninsular neighbours». Unamuno, as he travelled all over the Portuguese and Spanish lands, grasped it as few did; and, looking closely at this nation in the Iberian West, he wished, in his heart, that the acceptance of the differences would provide the basis upon which to further a reciprocal knowledge. Oliveira Martins had tried it before, when he wrote *História da Civilização Ibérica*, which is a plea for an understanding of the differences out of shared roots . . . Don Quixote does not rule over the whole Peninsula, sensibilities differ, vocations drift apart — many a time being complementary notwithstanding, as is the case today in the European context. «On the one side an arrogant and aggressive people, ready and willing to struggle and face all such sacrifices and violences as its concern for dignity may dictate; on the other, more melancholy and more indecision, more sensibility to the charm of women and children, a genuine humanity reflecting one of the jewels in the crown of our old Western Europe.» Who said that? Pierre Birot (4) again, speaking as one who studied, brilliantly and extensively, a complicated reality from the outside — without the deviations caused by the lack of impartiality on the part of one who risks to identify the positions both of observer and observed.

9. Melancholy, indecision, sensibility? It may well be so. And it is probably that which we experience, when we run into the perverse effect of complacency. Eduardo Lourenço has been wondering about such a perennial problem — intricate and disturbing, caused by alternating between images of glory and subalternation, between pre-eminency and peripheral situation, between optimism and pessimism — in his essays, particularly the *Labirinto da Saudade*

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(4) *Le Portugal: Etude de Géographie Régionale*, Paris, 1959, pp. 48-49

(Yearning's labyrinth), a title which itself may perchance confirm Birot's analysis. We could go on to speak of Teixeira de Pascoaes and his «yearningness» (*saudosismo*), of Sampaio Bruno or Leonardo Coimbra — nevertheless, we need only to invoke on the contemporaries the concerns reflected in the poetry, ironical and greatly censoring self-complacency and self-eulogies, by Jorge de Sena and Alexandre O'Neil, or in the ever-present appel to the «civilisation of affection» in Alçada Baptista's writings; not should it be forgotten Vasco Pulido Valente's continued search for wease points in society (following in the footsteps of Eça de Queirós and Ramalho Ortigão) or motives for collective severe self-criticism . . . Irony and sentimentality was after all that which Oliveira Martins disclosed as the Portuguese outstanding features. That is the reason for the changing mood and the striking capacity to simultaneously have and lack confidence in ourselves . . . «Portugal my remorse of us all», O'Neill wrote. But, as things have a flip side, there they are the epic energies of Camões and Fernando Pessoa, the archi-Camões, as well as padre António Vieira's prophetic intentionality and his 17th century *História do Futuro* (Future's History). Shortage of philosophy, abundance of poetry — that is the fruit of the enduring marriage of sentiment and irony, of yearning, sarcasm and complain.

Is that the Portuguese identity? Who doubts it, despite the multifarious and intricate blood which flows in its veins? The lingering problem in the Portuguese history, however, has been that of activating such a character — by bringing values and institutions, law and citizenship together.

### 3. *The Way of Democracy*

10. With undisguised passion and the enthusiasm of someone who questions the roots to understand his environmental reality, Jaime Cortesão stated in 1928: «The building of Portugal is both a consequence and a stage in the economic, social, political and religious revolution that transmuted Europe in between the 11th and the 14th centuries. Freedom, the access of people to local and public administration and its participation in the national decision-making process do not spring out of heritage or legacy; instead, they represent a revolutionary conquest. Alongside the universalist character that has shaped the Nation since her origins, we can find, underlying and

enlivening her civic liberties and national independence itself, the renewing of working conditions and a spirit of autonomy continuously striving and harassing the foreigner (').» Universality and autonomy, openness and assertion of a distinctive identity — these are the poles which guided the institutions' life along the democratic path, as it would be labelled nowadays. Thus, Cortesão's thinking is not grounded in an anachronism. Instead, it stems from the assumption that, in the course of Portuguese history, facts bear witness to the will of the people, at all times expressed, to dig their future with their own arms. Naturally, the historian was thinking particularly of the Revolution of 1383, its deep roots, its consequences and what he termed «the democratic reform of society and the organisation of the discoverer State». Yet one should not jump at a conclusion: Jaime Cortesão was careful to set the limits and draw the distinction between «openness» in the 14th century and what is meant by democracy today. Similarly, «participation by peoples» must be understood in the light of the conceptions prevailing at that age . . . Nevertheless, as the author of *Os Factores Democráticos* goes on saying, one should not forget the influence of what he calls the «striking paradox», inherent in the «liberal scholasticism»: «A good government demands that everyone should share in it», St. Thomas Aquinas said, noting that, by the end of the Middle Ages, the ground was prepared, in theory, to an understanding of openness and diversity, which produced good fruits in the Portuguese society. In fact, the State's customarily centralised powers corresponded, in parallel, with the peoples' deep-rooted will of autonomy — expressed by a remarkable ability to assert their own identity and to emancipate from many constraints imposed on them by the father-State or the Messiah-State. Admittedly, society leant too much on central power, which in a way was dictated by an instinct of self-preservation, but could as well be iconoclastic at crucial moments and sever the ties with the power that was becoming obsessive and coercive.

11. Recalling Cortesão once more: «In Portugal, the ditches of democracy can not be traced back to the depths of Roman administration; they were dug by the serfs who, after escaping from an agrat-

(') *Os Factores Democráticos na Formação de Portugal*, 3rd ed., Lisbon, 1978, p. 221.

ian and domestic economy, took to trade and industry in those boroughs enlivened by the maritime trade and the new spirit of christianity. Those universalist trends, grown throughout our Middle Ages, emerged victorious from the revolution which placed Mestre de Avis on the throne, so determining the main formation of society, the historic mission and the ideal character of the Nation <sup>(6)</sup>.»

Thus, this State of a single nation was forged out of and strengthened upon a pregnant strain between the need for autonomy, involving the centralised unity, and the force of openness and universality. It might be objected that the central State's weight and its dirigiste tendency in a sense annihilated the potentialities of such a strain. In this context, the cultural and political homogeneity, together with the fact that social struggles in Portugal have never had a virulent character, accounts for the unifying factors that have prevailed, after all. As Vasco Pulido Valente said, «unlike most of the West-European countries of the 19th and 20th centuries and present-day Third-World countries, Portugal was not bound to solve, simultaneously, the State-building and national self-consciousness issues and the problems stemming from economic development, particularly those raised by industrialisation. From the end of the traditional Monarchy onwards, the long and painstaking process of transforming society and extending political participation has developed within the universally-accepted historic framework of the Nation-State <sup>(7)</sup>.»

12. It may be said that the democratic experiences of the last two centuries were lived along the lines of assertion of autonomy and openness — linked to the State's centralising tendency. Nevertheless, in view of such a tendency, the struggles and disputes over power had greater significance than the clash of societal movements — and the longest periods of institutional and political stability were indebted to centralised arrangements to share influences and power. And this made Vasco Pulido Valente consider that «the specific tragedy of the Portuguese destiny lies in the fact that it did not reflect, basically, the dynamics congenial to a society (lacking

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<sup>(6)</sup> *Op. cit.*, p. 225.

<sup>(7)</sup> *História de Portugal — 1808-1930*, polyc., 1976-1977, p. 41.

in independence vis-à-vis the State); instead, it revealed, first of all, a mere ability to take over occupy the machinery of the latter»<sup>(8)</sup>.

Democratic factors? In the co-existence of antagonistic lines of centralisation and the need to preserve autonomy on the basis of diversity, one can discern that, again and again, the life of the institutions has shown, more and more instantly, the real need for closer and more effective ties between the State and society, between power sharing and citizen's participation. That is today's great wager, which meets positive responses both in administrative decentralisation and devolution of powers gradually effected by central government. That will take time, but a homogeneous society is involved, ready and willing to encourage the combination of efforts and the concentration of energies, which is a factor working in a positive sense.

#### 4. *Institutions — An Outlook into the Past, Looking upon the Future*

13. «To honesty, rulers must add skill and intelligence, the precise idea of the goal and the lucid comprehension of the means to accomplish the task of transforming the Portuguese society» — these are the words of Oliveira Martins, written in the far-off month of January 1885<sup>(9)</sup>. What was at stake? The need to put the institutions at work, in a constructive way — in the service of the country and its problems, not as rigid, formal, detached, hieratic, selfish structures any longer. Looking upon the future? Definitely, but guided by workable ideas, coherent projects, clearly defined aims. And by what means? «By forgetting the trifling issues of the political conventicles» or by eradicating «once and for all, the cruel illusion that by exploring the State by every means we are not exploring ourselves». A hundred years later, the need still remains for institutions to serve tangible issues and the people's problems. The State must be more than an ever-present myth. Democracy, sounder and sounder, though inevitably imperfect, always finds a way of supplanting illusions. Governability does not confine itself to central

<sup>(8)</sup> *Op. cit.*, p. 42.

<sup>(9)</sup> *Política e Economia Nacional*, Lisbon, 1885, p. xxx.

power — day after day, it finds new expressions in local power, in the regions, in the universities and in the initiatives of civil society. Citizenship ceases to be an abstraction to be actualised in new forms of social creativeness — despite being widely known that centralism can not be eradicated overnight . . .

14. Skill and intelligence, the precise idea of the goals, and the lucid comprehension of the means involve the perception of what is changing and what may still change. Institutions and people come together, they complement each other — they improve through a reciprocal action, they interact. But the specious glitter of unmeaning purposes does not suffice; nor does the naïve conformity of those who think that everything is conditioned by fate, for good or for evil . . . For some, all gestures are vain futile: what is the use of stemming the tide when periphery dooms to distance and to mediocrity? For others, any attempt to change invariably causes damage — hence, the natural order of things must be left to its own course. Nevertheless, either attitude tends to leave aside the capital idea that only out of imperfection can we attain the constant demand for improvement. And institutions, being rooted and representative, are crucial tools in a history viewed as a journey made up of advances and retreats, determination and surrender, approach and detachment from the truth, rather than as a process to effect the utopian reconciliation. Institutions are crucial tools, in that they are factors contributing to the combination of efforts, and forums where compromise and dialogue take place, where disputes are settled and differences clearly expressed.

15. Today's political and social constitutions tend to be, more and more, the source of the State's principles, and the origin of its statutory organisation, but also, and basically, the soundest guarantors of legitimacy and of the rule of law, the limits to power by law, the preservation of the citizens' private sphere, of the communities and their spaces of initiative and creativeness — in a word, basic laws tend to be great charters restraining the action of the State by making it play a subsidiary role at the intersection of regions and supranational spaces, in an era when, as Denis de Rougemont said and Daniel Bell recalled recently, the Nation-State is at once too small to solve some of the contemporary problems and too big to find a solution to others. People may argue, however, that the Portuguese Constitution of 1976

came into being with a publicist inclination, as it will be seen below, and the Messiah-State is still too present for the emphasis to be placed on the limits to the intervention in economy and society. They are dead wrong! The issue of the State's boundaries has a topical ring today, for reasons of equity and efficiency, but also by virtue of the enshrinement of the State based on the rule of law. What was, after all, the motive for Montesquieu's deep concern about the division of powers? His realisation that it is by setting limits to the power — in its temporary nature, though in its continuous subordination to the general and abstract law — that the moderate State grows stronger. Nowadays, the drawing of boundaries and the imposition of limits ceased to be simply negative measures and to merely rest upon checks and balances. People rather speak of civil society. It is certain that, mostly, one has a one-sided and misleading perspective of such a collective reality. At present, the improvement of fundamental rights, freedoms and safeguards, and practical expression thereof both in people's real life and in the public spaces to which they belong, generates a pregnant dialogue between the individual and solidarity, between particularity and compromise, between liberty and liability. It is no longer the individualism of days gone by, nor the traditional inexorable strength of the sacrosanct, unchallengeable, sometimes oppressive, institutions, that is in the order of the day; the relevant matter lies in the complementarity between spontaneous solidarity and the «elective affinities» on the one side, and the individual's sphere of initiative and creativity, on the other. The old jacobin illusions give thus way to the need to safeguard inviolable areas against policy-makers and the logic of the power.

16. «The lucid comprehension of the means» involves the preservation of «protective spaces». The institutions, at the various levels, can not help including such an intermediary function among their prime tasks. It is the only way to ensure that limits are not merely formal and that the citizen is not striving alone for his own rights and interests. The «illusion» is thus superseded by understanding the «ideas of work» standing in social milieux as well as by the strength of the citizen's will to change. Tradition and contractualism co-exist, indeed. Consequently, there is no danger of necessary consensus degenerating into boring standardisations or disgusting fish chowders, spoiled by the execrable mixture of antagonistic, incongruent flavours. There must be a broad consensus about basic is

sues and questions for survival — to start by the safeguard of people's rights and dignity, the defence and security of the community the external affirmation of nations and associations of states, stable and lasting. The perception of what remains or changes, the complementary relationship between historic heritage and will, the innovative strength of the differences make «the task of transforming» a society a product of skill and intelligence, which are the substitutes for the morbid vertigo inspiring the «all-or-nothing» policies.

At the threshold of the 21st century, in an age that witnesses deep changes and allocation of powers customarily vested in the State, we face the challenge of responsibility — which involves the broadening both of solidarities and private life's spaces. Rather than the individual's private interest, it is important that the community self-consciousness should be stressed — in a positive sense, eschewing the isolationist temptation. Open to Europe, Portugal is living a particular circumstance — in which the institutions are called upon to perform the task of relieving the country of its being doomed to the evils of periphery . . .

## THE CONSTITUTION

«*Numa disciplina constante procuro a lei da liberdade medindo o equilíbrio dos meus passos.*»

SOPHIA DE MELLO BREYNER ANDRESEN, *Concl.* 1950

### 1. *Evolution of the Portuguese Constitutionalism*

17. «The genesis of a State is the product of the confluence of several factors, material and human, internal and external», Jaime Cortesão said. «And, alongside the obscure geographical and economic determinants, there is a need to discriminate the extent to which mere spiritual reasons and men's conscious will exerted influence on the events», went on saying the author of *Os Factores Democráticos na Formação de Portugal*.

We find that intermingling of different influences in the institutions. Nature and will, contingencies and creative intentionality, economics and law — there is a pregnant, endless dialogue between them and, to understand facts, we must inquire into the principles, the legal rules, the rule of law — and, obviously, the Constitution, the basic law, the foundation of and the limit to political power, the pillar of the institutional life of a democracy, of a State based upon recognition of the rule of law.

In open societies, institutions are assured a free life of their own, like «ideas of work» standing in the social medium as genuine «social armistices» embodying community life — values, aspirations and interests of people that are realised and fulfilled, individually and jointly, and combine into common or contractual will to enhance man and society. Thus, tradition and development, permanence and change are complementary. One can easily understand why institutions' life holds so much attraction for scholars and ordinary

citizens — to the extent that it creates the illusion of assuming that men's history confines itself — basically — to the development of the institutions as mainstays of the *polis*. You must however guard against the reverse temptation to assume that mankind or nations can be understood without looking into the institutions and their complexity — first and foremost, the Constitution.

Therefore, let us turn to the Portuguese Constitution, going down to its origins and antecedents. Actually, in so doing, we are trying to understand democracy by examining closely its already multi-secular roots.

18. Until early in the 19th century, Portugal was ruled by an absolute monarchy. In fact, subsequently to 1640, the Bragança dynasty claimed its legitimacy from the male succession of Afonso Henriques (1109?-1185), the founder of the realm and nationhood. The king exercised his overriding power which, although restrained in conscience by religion and morals, was freed from any constraint imposed by the division or sharing of powers.

It is certain, however, that absolutism invoked the kingdom's basic laws, particularly when the need was felt to justify its own legitimacy, as was the case of the defence of King João IV's «legitim accession» against the rights claimed by the monarch who had ruled over Portugal until 1640, Filipe III (IV of Spain); or, in the 18th century, the publication of the *Dedução Cronológica e Analítica*, by a decision of the Marquis of Pombal, when, on behalf of the «enlightened despotism», he wanted to prove how just and fair it was to expel the jesuits. The Minutes of the Cortes of Lamego (12th century), certainly apocryphal, were then invoked, which contained the provisions concerning only the monarchical form of government and the order of succession within the royal family. On the other hand, there was the adoption by the Cortes of 1674 of the regency and tutorship system that would work during the kings' minority; the Cortes of 1679 dealt with the marriage of princes, and the Cortes of 1698 provided for the rights of succession. However, no basic law could be modified until an agreement was reached by the monarch and the people assembled at the Cortes.

### The Constitution of 1822

19. The first liberal revolution in Portugal dates from 4 August 1820; it took place in Oporto, and was driven by the rising bourgeoisie and a group of prominent intellectuals attracted both by the ideals of the French Revolution and the practice of the British institutions. The Court was in Rio de Janeiro as from 1807 owing to the Napoleonic invasions. That circumstance had drastically reduced the ascendancy of the Portuguese ruling classes, whose power was in practice restrained by the growing dominating influence of the English authorities. In the neighbour country, Spain, the Constitution of Cádiz (1812) had been imposed on Fernando VII and restored by a liberal insurrection, early in 1820. The ground was thus prepared in Portugal for the liberal movement to emerge victorious and, subsequently, a Provisional Junta for the Supreme Rule of the Kingdom was established; the Junta called for elections to be held for the representatives to the Extraordinary Constituent Cortes, which convened in Lisbon. They started working in January 1821, following a debate on whether to bring the Constitution of Cádiz into effect temporarily — an idea which had no issue. After long discussions, the new Constitution was passed and signed on 23 September 1822.

It comprised six sections: 1. Of the Individual Rights and Duties of the Portuguese; 2. Of the Portuguese Nation, Territory, Religion, Government and Dynasty thereof; 3. Of the Legislative Power, or the Cortes; 4. Of the Executive Power, or the King; 5. Of the Judicial Power; 6. Of the Administrative and Economic Government (Administrators-General, the Chambers, the Treasury, the Institutions of public instruction and charity).

After setting out the fundamental rights, the respect for liberty, personal security and property, and following the provision according to which «all are equal before the law», the Constitution enshrined the principle of the sovereignty, indivisible and inalienable, of the nation [«it lies with her alone to draw up, through her representatives sitting in Cortes, her Constitution or basic law, without submission to the royal assent» (article 27)]. Furthermore, it laid down the principle of the three powers — legislative, executive and judicial; the first was vested in the Cortes, subjected to the royal assent; the second was conferred on the king and on the

State secretaries who exercised their powers under the royal authority; the third was entrusted to the judges. The *Cortes* were a unicameral body, elected every two years by direct suffrage — with the exception of women, illiterate, friars and domestic servants, among others, who were not enfranchised — and by secret ballot. The *Cortes* were assigned important tasks, such as those relating to the succession to the Crown, the approval of alliances for defence or attack purposes, the determination of taxation and public expenditure, the settlement of the national debt or the administration of the national assets. The king enjoyed a restricted veto power to be exercised only after consultation with the Council of State — the king was bound to accept the outcome of the *Cortes*' second vote if it was again in favour of the original decision. On the other side, the king had no power of legislative initiative and only representatives were entitled to initiate legislation. If a secretary of State tabled a motion, it would not become a bill until it was passed by a committee of representatives.

The Rule of the Portuguese Nation was a «constitutional hereditary monarchy with basic laws» governing the exercise of the three political powers (article 29). The Head of State was appointed according to hereditary succession within the Bragança royal family, following the rule of progeniture. The authority of the king derived from the nation was indivisible and inalienable.

As to the form of the State, there was the intention to establish a para-federal system originating in the designation United Kingdom of Portugal, Brazil and Algarves; this required the establishment of a delegation of the Executive Power that would operate in Brazil by way of a regency of five members, all appointed by the king, on the advice of the Council of State. The latter was due to act as a sort of federal senate composed of six councillors from the provinces of Europe, six from the overseas provinces and a thirteenth member who was drawn by lots from among all those provinces — it lay with the king to choose out of three-member lists voted by the *Cortes*.

The 1822 Constitution had a very short life. The developments in Spain would not have been alien to this ephemerality, bearing in mind that Fernando II repealed the Constitution in October 1823, under pressure of the Holy Alliance powers and after the French army's intervention. Such events had also their effects on Portuguese

life. Through the Vilafrancada movement (May-June 1823), the Legitimist party, under Prince Miguel, was provided with the conditions that led to the dissolution of the Cortes and the repeal of the Constitution of 1822 — notwithstanding King João VI's formal promise, made at that time, that a new basic law would be drawn up. However, on 5 June 1824, the traditional laws were restored and the Cortes of the nation met in assembly.

### The Constitutional Charter of 1826

20. Brazil had become independent in September 1822, inaugurating a period of strained relations between Portugal and its former colony, despite the emperor of the new State being King João VI's eldest son. The last years of the king's life were spent in a succession of attempts to draw both states together — the dream to rebuild the United Kingdom. To achieve this, King João oscillated between the internal pressures and concessions to the Legitimists and the endeavour to reestablish friendly relations with his son Pedro — who had never troubled to hide his undoubtedly liberal views. On 10 March 1826, when the king died — surrounded by mystery, in some people's views —, the Princess Isabel Maria, the regent, decided to declare the emperor of Brazil king of Portugal; in so doing, she was effecting the personal reconciliation, which had been the wish of the deceased monarch.

In Rio de Janeiro, as soon as he knew of the accession, Emperor Pedro decided to grant a Constitutional Charter (29 April 1826), abdicating, three days later, his rights to the Portuguese throne in favour of his daughter Maria da Glória, on condition that she married Prince Miguel, the emperor's brother, and that the new basic law be put into effect.

The Charter is a landmark in the Portuguese constitutional history, since it was the longest-lived basic law, by several stages, owing to the substantial amendments introduced therein. It was modelled after the Brazilian Constitution of 1824, the French Constitutional Charter of 1814 and the well-known *Esquisse de Constitution* of Benjamin Constant (1814).

The Constitutional Charter contained 145 articles and was divided into eight sections: 1. Of the Kingdom of Portugal, its Territory, its Government, its Dynasty and its Religion; 2. Of the Portuguese

Citizens; 3. Of the Powers of National Representation; 4. Of the Legislative Power; 5. Of the King; 6. Of the Judicial Power; 7. Of the Administration and Economy of the Provinces; 8. Of the General Provisions and Safeguards of the Civil and Political Rights of Portuguese Citizens. The new basic law's most innovative feature was that powers were thereby allocated to four branches: the Legislature, the Moderator, the Executive and the Judiciary (article 11). Following Constant's teachings, the drafter of the Charter provided that real power should correspond with an independent authority capable of acting as the guardian of «the maintenance of independence, the balance and harmony of the remaining powers» (article 71). Thus, the Moderator was the key to the whole political organisation. The legislative power was entrusted to the Cortes, and laws received the royal assent. The executive power was exercised by the ministers of State, the executive chief being the king himself. The judicial power in turn constituted by judges and jurymen. The monarch retained thus extensive powers, ranging from the nomination and dismissal of ministers of State to the suspension of judges, after consultation with the Council of State; he had the power to grant pardons and remission of sentences and amnesties; he was entitled to convene extraordinary sessions of the Cortes, to prorogue and adjourn sessions, to dismember the Representatives Chamber, and to nominate the Peers (*Pares*), in an indeterminate number; he could exercise his veto power as well, in so far as laws and decrees were concerned.

The bi-cameral Cortes encompassed the Chamber of Peers (*Pares*) and the Chamber of Representatives (*Deputados*). Each four-year legislative period was divided into sessions, and the annually legislative session lasted three months. The Chamber of Representatives was elected by indirect and restrict suffrage, on property qualification; the Chamber of the Peers was composed of hereditary members and members for life in a number that was not fixed.

Unlike the 1822 Constitution, which started by enumerating the citizens' rights, the Charter ended by setting forth such a catalogue, so disclosing the influence of the liberal-individualist thought, but also the acknowledgement of some traditional rights, namely those concerning welfare and benefit societies; innovative rights were added too, notably the right to primary education free of charge, and the provision for the existence of colleges and universities.

Early in July 1826, Emperor Pedro's emissary landed in Lisbon, carrying the Charter. «Nobody was waiting for it, and it seems that no one wished it either, as there was some fear that it would divide the Country, as it did.» [Marcello Caetano (1).] In October, the new constitutional system was already at work. However, it soon met with opposition and the Cortes could not set in motion the process for the approval of the ordinary laws necessary to fully institutionalise the new regime. In July 1827, the Emperor Pedro made Prince Miguel his lieutenant. Influenced by Metternich, the prince came back unhurriedly to Lisbon, being received with suspicious acclaims, in February 1828. He swore the Charter at a ceremony that some termed a farce. Something was about to happen . . . On 13 March, the Chambers were dissolved — without noise, almost timidly. Times of great activity would follow. Prince Miguel summoned the traditional Cortes and . . . made himself an absolute monarch. How did people react? Feebly, haltingly. On 21 May 1828, following a popular uprising, the first constitutionally-oriented rebel ministry came into being in Oporto — it did not acknowledge other authority than King Pedro's. It was the sedition of the North. War was in sight. In October, the Terceira Island (Azores) declared its allegiance to the liberal cause.

King Miguel's reign (1828-1834) was a troubled one. During that period, the Liberal party's ideologists were forced to seek refuge in Europe — in England or France. In 1832, King Pedro, after abdicating the Crown of the Brazilian Empire, assumed the regency on behalf of his daughter, Maria da Glória, and set up his government's seat in Azores. It was then that José Xavier Mouzinho da Silveira, Minister for Justice and the Treasury, through a remarkable series of decrees, launched the dictatorial reform of the State and the Public Administration. That was, indeed, an attack delivered on the pillars of the Ancient Regime, as well as the laying of the foundations of a new liberal order. «Up to this time, there were dungeons, spies, strokes, reproaches; henceforth, freedom, straightforwardness, moderation. Until now, compulsory contributions, violent robberies, depredation; from this time forth, no more contributions, but payment at sight in money: the greatest respect for the citizen's property. Usurpation entails violent heriots, bonds, chains, gallows, and

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(1) *História Breve das Constituições Portuguesas*, Lisbon, 1965, p. 32.

scaffolds: everything is arbitrariness, nobody is master of what he owns; under a legitimate power, transfer taxes, customs duties, taxes on fish, exclusive rights over wine and vinic brandy, tenths, charters, fourths, sixths, eights, all this cease to exist», Mouzinho exclaimed, showing clearly that a change was imperative. And which model attracted him most? The Napoleonic one, which he had analysed carefully and considered to be the only one that would suit the Portuguese Administration, which he knew very well.

Still in 1832, the rebels reached the mainland Portugal, landing at Pampelido (Mindelo). The heroic resistance to the siege of Oporto started. It was from there that the liberal army left with a view to conquering the country, which terminated by the Legitimists' surrender at Évora Monte (May 1834); consequently, the Constitutional Charter was restored and freedom could be enjoyed again.

### The Constitution of 1838

21. King Pedro died soon after the victory and his daughter, Maria da Glória, could finally rule. Yet, unrest and discontent re-surfaced and set in; in September 1836, the left overthrew the Government, abolished the Charter and committed itself to reestablish the 1822 system. For the leaders of the September Revolution, the Charter contained three vital issues that could not be accepted: the principle, which was behind it, of the king's overriding power; the enshrinment of an Upper Chamber of hereditary membership, and the indirect suffrage to elect the Representatives.

Who led the way in the new situation? A politician of astonishing intelligence — Passos Manuel, who, coherent as he was, never disguised his intent to «have the throne surrounded by republican institutions». It was the old logic of 1822 — borrowed from the Constitution of Cádiz. Despite having been formally restored, the old 1822 Constitution could not be observed. Difficulties arising from its doctrinaire and theoretical nature, as well as its inadequacy to the prevailing situation, resulted in a change in the mandate of the constituent Cortes, initially designed to amend the former basic law; accordingly, a new law was to be drawn up, based upon a synthesis of the older Constitution and the Charter.

The new law was adopted in March 1838, being in its structure similar to the 1822 Constitution, although it received the royal as-

sent, unlike the latter. The 1838 Constitution comprised 139 articles, and was divided into eleven sections: 1. Of the Portuguese Nation, Territory, Religion, Government and Dynasty thereof; 2. Of the Portuguese Citizens; 3. Of the Rights and Safeguards of the Portuguese; 4. Of the Political Powers; 5. Of the Legislative Power; 6. Of the Executive Power; 7. Of the Judicial Power; 8. Of the Administrative and Municipal Government; 9. Of the National Treasury; 10. Of the Overseas Provinces; 11. Of the Reform of the Constitution.

It re-affirmed that sovereignty lies in the nation and restored the traditional conception of the three powers. The Cortes comprised two chambers: the Senate and the Chamber of Representatives (*Deputados*) — it was incumbent upon the latter to pass the laws; both chambers were elected by direct and restrict suffrage on an income qualification. To be elected senator, it was necessary to be on a list of notables previously drawn up; a candidate for the election of Representatives was required to have an annual income of no less than 400\$000 *rêis*. The Representatives' term of office was set at three years, whilst half of the Senators' Chamber should be renewed, whenever an election for Representatives was held. The issue of appointing senators was never decided — notwithstanding the tendency towards a process whereby it would lie with the king to choose from among the names on a three-member list for each vacancy. The electorate would make its choice out of such a list.

The king was the Executive chief: he was free to appoint and dismiss the ministers, and possessed the absolute power of veto as far as laws were concerned; he was entitled to dissolve the Chamber of Representatives, whenever the salvation of the State so required.

The 1838 Constitution resulted from an expedient arrangement among the different liberal trends. The European trend towards an open and conciliatory liberalism, illustrated by the French «bourgeois monarchy» of July (1830), the 1831 Belgian and the 1837 Spanish Constitutions, naturally played a major part in this *modus vivendi*, ephemeral though. The new basic law remained in force from 4 April 1838 to 10 February 1842, and its life was not a peaceful one. The easily-made concessions to the populist demagogy, on the one side, and the growing difficulties in finding a solution to economic and social problems, on the other, discredited the more radical trends and disillusioned men like Passos Manuel. Under these

conditions, a moderate current gained influence —the Orderly Party—, which demanded more stability for governance and more accountability for politics. The figure of Rodrigo da Fonseca Magalhães came to prominence, then. But, profiting by the new circumstances, the real master of the situation would soon prove to be António Bernardo Costa Cabral, a former radical Septembrist, who appeared as the genuine symbol for the new Chartism.

What views did the new protagonist sustain? The «order solely as a tool for the enhancement of the Country» or «that which was later to be labelled *material improvements*», in the words of Oliveira Martins <sup>(2)</sup>.

### The Charter Again

22. On 14 January 1842, Costa Cabral left for Oporto upon the presence of some family affairs and, although he was a minister on active duty, rebelled against the government which he integrated, by adhering to the Chartist sedition and the military coup . . . The Charter was thereby restored. Word went round that the queen had aided and abetted therein.

After the *coup de théâtre*, between 1842 and 1846, Costa Cabral embarked on a vast programme of reforms either in the administrative and judicial spheres or in the field of facilities necessary for the country. Economic difficulties, financial speculation, popular objection to a new fiscal system and new taxes prepared the ground for a powerful surge of dissatisfaction. The reactions were so violent that they led to civil war (Patuleia, 1846-1847), fuelled by the Northern revolt, particularly of the people of Minho (where a woman, Maria da Fonte, led a celebrated rising, so it has been said). The war was brought to an end by foreign intervention at the Gramido Convention. However, instability went on; Cabral was bound to leave the country, and went to Madrid at an earlier stage; he resumed his office (1849-1851) for a short while, yet not so brilliantly as before.

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<sup>(2)</sup> *Portugal Contemporâneo*, Lisbon, ed. 1977, II, p. 134.

### The Supplementary Act to the 1852 Charter

23. In 1852, the Regeneration movement broke out, under the leadership of Marshal Saldanha; it was inspired by a prestigious group of intellectuals, among which Alexandre Herculano stood out, and had the support of a fierce public opinion that denounced the abuses and Cabral's authoritarianism. A long period of uncertainty and latent war between Constitutionnalists and Chartists came to an end. Costa Cabral had had the merit of uniting in a common front Chartists and moderate Septembrists . . .

The problem was solved by reforming the Charter on the basis of a compromise between the antagonists of the day before, which enabled the sharing of the power, the alternation in government, and the filling of the prominent posts in Administration by the main political clienteles of the liberal cause. In fact, in 1851, the triumph of the revolt led the queen to dissolve the Chamber of Representatives, to call for new elections and, afterwards, to convene an extraordinary session of the Cortes, which were granted constituent powers, exceptionally. The ordinary amending process provided for in the Constitution was not observed. It was in the end the means of reinforcing the legitimacy of the Charter, not only by the revolutionary *via*, but also, and consequently, by vesting the Cortes with the necessary constituent powers. Then, the Government submitted to the Cortes (24 January 1852) a proposal for amendment, drafted by Almeida Garrett, that would come to be the Supplementary Act to the Constitutional Charter (5 July 1852) — this would allow the renewed Charter to be in force for a long time, as it was (until 1910).

The Act contained sixteen articles, which provided for the direct election of Representatives, extended the franchise, although at first the income requirement was retained; the Act gave the Cortes the control over Public Administration through inquiry committees; abolished the death penalty for political offences; enshrined the principle whereby the colonies could be governed by special laws enacted by the government or governor in emergency cases, when it was impossible to resort to the Cortes.

The first of such measures was unquestionably of crucial importance, as it made it possible to strengthen the legitimacy of the power and to lay the foundations of a liberal parliamentary system — resting upon an agreement reached by the main political and social existing forces. The two-party system was inaugurated, in which the

Regenerator Party (first, under the *de facto* leadership of Rodrigo da Fonseca, and then led by António Maria Fontes Pereira de Melo, the main artisan of the modernisation of the Country and the establishment of the Regeneration substructures) and the Historical Party (led by the Duke of Loulé and, later, by Anselmo José Braamcamp, a noble figure, widely known for his great competence in administrative and financial matters). The two parties, with the royal assent as required, agreed to alternate in government and to have recourse to elections to legitimate that alternation. This phase was going to last from 1851 until 1891 and it was certainly one of the periods that produced the fairest fruits in the Portuguese constitutional history.

### The Supplementary Act of 1855

24. Early in the 1870s, the strong winds of change that blew over Europe made themselves felt on Portugal. It was vital to respond to the aspirations for a change and the need to accelerate the democratic process. In this spirit, the Charter was amended in 1871. All the political parties sitting in Parliament tabled their proposals for amendments, among which the proposals put forward by the Historicals deserve a special mention, in that José Luciano de Castro thereby advocated the extension of the individual rights and safeguards, the universal suffrage and the replacement of the Chamber of the Peers with an elective Senate. Despite the Regenerators being receptive to an electoral reform, the latter would not come to fruition, owing to the course of the events in Spain that ushered in the ephemeral republic. Not until 1885 was a second Supplementary Act adopted, upon the initiative of Fontes Pereira de Melo. The Act contained the following main provisions: the lowering of the term of the legislative period from four to three years; abolition of the hereditary peerage and the unlimited number of members of the Upper Chamber — thenceforth the Upper Chamber would number 100 life members by appointment of the king, 50 members elected for a term of six years by indirect suffrage from among certain ranks, the peers *ex officio* and the peers by hereditary title still existing who would remain temporarily; restriction on the powers of the Moderator that were to be exercised under the ministers' responsibility; regulation and restriction of the powers to dissolve Parliament. Furthermore, it contained an express provision ensuring the rights of petition and assembly.

### The Supplementary Act of 1895-1896

25. In 1895, when alternation in government was no longer at work and the regime experienced a dramatic period under the impact of the financial crisis and the effects of bankruptcy, Hintze Ribeiro-João Franco's dictatorial government, by a Decree of 25 September 1895, introduced a modification into the Act of 1885, conferring on the king the duty to settle, by legislative decree, the disputes between the two chambers over the law-making process. The year that followed witnessed the Cortes vested with constituent powers, without compliance with the ordinary amending process. The Third Supplementary Act to the Charter was adopted, containing the following provisions: abolition of the elective peers of the realm, the Upper Chamber thenceforth being composed of both peers *ex officio* and the members by appointment of the king numbering at most 90 — apart from the hereditary peers as set forth in the Act of 1885; ministers were granted leave to appoint special delegates to participate in Chambers' debates on certain bills, on behalf of the Government; where the two chambers disagreed about a bill or motion and where the joint committee did not reach a consensus, either chamber was entitled to ask that a joint meeting of the General «Cortes» should be held, the arbitrator power provided for in the 1895 Decree being this way abolished. The king was further empowered to dissolve the Chamber of Representatives and to order elections to be held, freed from the restraints imposed by the 1885 Act.

The last period of the constitutional monarchy (1891-1910) was marked by countless difficulties, which gave rise to social unrest and decline in the prestige of the institutions — particularly in view of the dictatorial and exceptional measures that were adopted. The regicide (1 February 1908), which caused the death of the King Carlos, together with his Heir Prince Luís Filipe, predicted the collapse of the monarchy, which would occur two years later (5 October 1910). Truly, the financial crisis was not worrying the Country any longer, but powerful reasons, social and political, weighed heavily in favour of the establishment of the republican regime.

### The Constitution of 1911

26. After the proclamation of the Republic, the provisional government then appointed gathered in the powers of the State until the

drawing up of the new basic law. On 28 May 1911, the National Constituent Assembly was elected by secret ballot by direct and optional suffrage out of an incomplete list representing the constituencies. All the nominations were republican and in the constituencies where only one list had been put forward that list was declared elected without being voted. Debates in the Constituent Assembly definitely refused any presidentialist pattern, while deciding to draw up the new basic law in line with the tradition of the Constitutions of 1822 and 1838, notwithstanding that in some respects inspiration was retained from the Brazilian Constitution of 1891.

The 1911 Constitution contained no more than 87 articles, divided into seven sections: 1. Form of Government and Territory of the Portuguese Nation; 2. Individual Rights and Safeguards; 3. Sovereignty and Powers of the State; 4. Local and Administrative Institutions; 5. Administration of Overseas Provinces; 6. General provisions; 7. Revision of the Constitution.

The first article read: «The Portuguese Nation, organised in a unitary State, adopts the Republic as a form of government, in harmony with the Constitution.» The new basic law started by setting out the rights and safeguards of the individual citizen, in line with the constitutional laws pertaining to the monarchical liberalism — references to social equality, laity, secularisation of cemeteries, lay education, or compulsory birth registration were innovative.

It re-affirmed the principle whereby «sovereignty rests basically with the Nation» (article 5) and enshrined three powers. The legislative power was vested in the Congress of the Republic, a bicameral parliament comprising the Chamber of Representatives (*Deputados*) and the Senate, both elected by direct suffrage — there could be held plenary sittings of both chambers. The Chamber of Representatives was composed of representatives aged over 25, elected for a three-year term of office, and possessed the exclusive initiative in relevant matters (taxation, organisation of military forces on land and sea, the amendment of the Constitution). The Senate was constituted by senators aged over 35, representing the administrative districts and the overseas provinces. They held office for a six-year mandate, and half of the Senate should be renewed whenever an election for representatives took place. It was the Congress that elected the President of the Republic, and could remove him from office by a decision taken by two-thirds of its members meeting together. Ministers were due to attend the Congress meetings to account for their policies.

The President of the Republic had only largely ceremonial powers in the State's internal and external «general affairs». He was at heart an «inaugurator of exhibitions of chrysanthemums», as it used to be said at that time . . . His term of office lasted four years, and only one president stayed in office until the end of his mandate — António José de Almeida. The Head of State could not be re-elected for the four years following his term of office. It fell within his competence to promulgate the laws passed by the Congress, which was a compulsory act of mere attestation, since there was no provision for the veto power. Nor could he dissolve the Congress, adjourn or prorogue the sessions. And the members of his family were not entitled to sit at official ceremonies.

The Executive Power was vested in the President of the Republic and the Ministry — the latter being defined as a body formed by the ministers, under the chairmanship of one of them.

The ministers were responsible for their portfolio's affairs, but also for the government policy. It was therefore enshrined the ministers' collective responsibility, as well as their individual responsibility for the actions taken within the framework of their departments. The chambers were entitled to enforce such a responsibility by passing confidence or no confidence motions. The civil and criminal liability of the members of Government would be determined by the ordinary courts.

The 1911 Constitution could be amended by the Congress, every ten years, although the amending process might be anticipated by five years provided that two-thirds of all members of the two chambers of the Congress voted in favour, in a plenary sitting. The abolition of the republican form of government was prohibited.

### Constitutional Amendments

27. The first amendment took place in 1916 (Act no. 635 of 28 September), owing to Portugal's entry into World War I. Decorations were then restored for the purpose of rewarding civil and military deeds, and there was a provision for the death penalty, in case of war with foreign countries, for crimes committed on the field of operations.

Following the nationalistic coup d'État of 5 December 1917, guided by Sidónio Pais, the dictatorial government enacted the

Decree no. 3997, labelled electoral reform, which, as the leaders of the coup said, was intended to be submitted to parliament to the effect of constitutional amendment. A presidential regime was established under which the Head of State, elected by direct and universal suffrage, had the real exercise of the executive power. The State secretaries were appointed and trusted by as well as answerable to the President. Henceforth the Senate's membership encompassed representatives of municipal authorities, of economic interests and occupational associations. It has been a very short experiment. Sidónio Pais was elected by universal suffrage, but would be assassinated on 14 December 1918. Two days following this tragic event, the Congress considered the 1911 Constitution in force (Act no. 833) until the adoption of the amendment act. Sidonism was over, the «New Old Republic» came back . . .

In May 1919, the legislative period began, which would draw up the ordinary constitutional amendment act. The Congress of the Republic was then assigned powers to review the Constitution — and would not, as many upholders of the regime advocated, miss such a paramount opportunity to consolidate the institutions, highly threatened by uncertainty, by the post-war economic crisis and the lack of trust. The constitutional revision (1919-1921) was to find its expression in four acts: no. 854, of 20 August 1919; no. 891, of 22 September 1919; no. 1005, of 7 August 1920, and no. 1154, of 27 April 1921. Thenceforth, the chambers worked in plenary sittings and in sections — representatives of the organised classes and associations could participate in the latter, when matters concerning them were to be discussed. The President of the Republic could dissolve the chambers, after consultation with the Parliamentary Council — a heir of the Council of State of the liberal monarchy — made up of a total of eighteen members, elected by the Congress, representing the different groups of opinion, and presided over by the age-oldest chairman of the two chambers, in his capacity as president of the Congress. The Government had its powers restrained, during the period between the dissolution of the Congress and the summoning of the new chambers. The appointment of the Government by the President of the Republic was no longer subjected to a ministerial counter-signature. The colonial authorities were granted greater autonomy.

### The Constitution of 1933. Antecedents

28. In 1926, the Congress of the Republic decided to amend the Constitution earlier than it was stipulated, but hot debates on the scheme for the exploitation of tobacco and later the coup d'État of 28 May 1926 hindered the realisation of such desideratum.

Despite the various efforts to counteract the institutional weaknesses of the republican regime, under which parliamentarism favoured the instability of governance (44 governments in scarcely 15 years) on account of an absence of rational factors, there was no possibility to implement such a sound and stable organisation as established in the 1911 Constitution. It is true that big efforts were really made, in the 1920s, particularly in the economic and financial sectors — with unquestionably happy results as to both the stabilisation of the economy and the budgetary balance — by persons like Álvaro de Castro, Vitorino Guimarães and Armando Marques Guedes, among others. Nevertheless, politically and socially, the regime could not manage to rid itself of jacobinism, of an unconceivable blindness to the new social movements, in particular the development of trade-unionism and the growing influence of an industrial working class on urban areas, to the entrepreneurial problems and to the need for a national strategy in the economic field . . . These shortcomings, together with the dissatisfaction that had spread among the Armed Forces since the war, resulted in an combustible political atmosphere.

On 28 May 1926, the Army and the Navy launched a revolutionary movement issuing from Braga, under the leadership of General Gomes da Costa, which relied on wide and equivocal supports, from Conservatives to the republican ranks critical of the Democratic Party's dominance. The President of the Republic, Bernardino Machado, and the Government, chaired by António Maria da Silva, were removed from their offices, the Congress was dissolved, the Constitution suspended, and the military dictatorship inaugurated. The Government gathered in the powers of both the Parliament and the Ministry, and passed decrees to be enforced as if they were laws.

### The Constitution of 1933

29. In 1928, Decree no. 15 063, of 25 February, established that the President of the Republic was elected by direct suffrage for a five-

year term of office. In the first election, General António Óscar Fragoso Carmona — a former minister during the Republic and a prominent figure of the new regime — was chosen president. Having taken office, he invited Coronel José Vicente de Freitas to form a government, rejecting in practice Sidónio's presidential model.

In 1931, a National Political Council was set up to assist the President of the Republic; among other duties, it had to give an opinion on the draft constitutions. In 1932, the dictatorial government's Minister for the Finances, António de Oliveira Salazar, a young professor at the University of Coimbra, who had accepted that post on condition that strict financial measures were adopted, tabled a draft Constitution, which was well received by the Council. A plebiscite was scheduled for 19 March 1933 with a view to the adoption of the new basic law — since voting was compulsory, failure to cast one's vote without a reasonable excuse therefor was counted as a yes-vote (according to this whimsical method, there were 1,292,864 votes in favour and 6,190 against).

The first version of the Constitution of 1933 contained 142 articles, being complemented by the Colonial Act — approved by the Decree no. 18 570, of 8 July 1930 (and republished by the Decree-Law no. 22 465, of 11 April 1933). The basic law had two parts: 1st. The Fundamental Safeguards; 2nd. The Political Organisation of the State; furthermore, it established the rules concerning both the revision of the Constitution and the transitional provisions.

According to its definition, the State was unitary and corporatist. The system was republican and the sovereignty was limited by morals and the law, as set forth in the Constitution. It contained a provision, article 8, dealing with the individual citizen's rights and safeguards — notwithstanding that its paragraph 2 stipulated that special laws would govern «the exercise of the right to freedom of expression of thought, the rights to education, assembly and association; with regard to the first one, the laws shall prevent or repress the perversion of public opinion, in so far as its function of social force is concerned, and protect the citizens' integrity [...]». Further, the detention without formal charge was permitted, in *flagrante delicto* and in the case of crimes committed, abortive or attempted, particularly the crimes deemed to be «against the security of the State».

The organs of supreme authority were the Head of State (President of the Republic), the Government, the National Assembly

and the Courts. The Head of State was elected by direct suffrage for a seven-year term of office. This scheme of appointment would last until the 1959 Amendment Act, when the method of indirect election was adopted — following the shock caused by the success of General Humberto Delgado's candidature in 1958.

Despite the extensive powers retained by the president, such as to appoint and dismiss the Chairman of the Council and the ministers, to dissolve the National Assembly and to confer constituent powers on the latter, «in view of the long consulate of Dr. Oliveira Salazar as Chairman of the Council, the effective conduct of the Government was shifted away, as Marcello Caetano put it, to that charge while the President of the Republic was confined to a formal ceremonial magistracy occasionally acting as an arbiter»<sup>(7)</sup>. Attached to the Head of State, there was a Council of State, composed of members *ex officio* and ten life members — yet, it hardly intervened in the constitutional life.

The Government was headed by the Chairman of the Council of Ministers. He alone was answerable to the President of the Republic for the general policy; he did not depend on the votes of the National Assembly, nor was the Government bound to appear before the latter to account for its activities. In the absence or impediments of the President of the Republic, it was the Chairman of the Council that deputised for him. Recalling Marcello Caetano's perspective once again, the two supreme authorities were so closely linked that the system could be labelled «bicephalic presidentialism» in its conception, although in practice it should be defined as «Prime-Ministerial presidentialism».

At an early stage the National Assembly was made up of 90 parliamentarians, elected out of a single list. The 1945 Amendment Act increased this number to 120, distributed among constituencies — districts, in the mainland, and provinces, in the colonies. In 1959 that number would rise to 130. Nevertheless, the electoral college had few members, despite the several, though minute, extensions, and there was no independent control of the fairness and legality of the voting process.

The main tasks of the National Assembly — the legislative period of which had been set at four years — encompassed the political su-

(7) *História Breve*, cit., p. 103.

pervision of the Government and the Administration, the public accounts being a particular focus, and the passing of bills brought in by the Government or moved by parliamentarians. However, the legislative power was in practice basically exercised by the Government.

Attached to the National Assembly, a Corporatist Chamber was created to function as a consultative body to assist the law-making process; this chamber could also be consulted by the Government — actually, the Executives waived that faculty. The Chamber was made up of representatives from corporations, local authorities, the Catholic Church, the university, teaching and cultural institutes, welfare institutions, and public agencies. It worked in sections and subsections, which formulated opinions on behalf of the Chamber.

30. The Constitution of 1933 underwent several amendments. First, between 1935 and 1938, on minor issues (Laws no. 1885, of 23 March 1935, no. 1910, of 23 May 1935, no. 1945, of 21 December 1936, no. 1963, of 18 December 1937, no. 1966, of 23 April 1938). Then, after the war, a further amendment took place especially on matters relating to the National Assembly (Law no. 2009, of 17 September 1945). In 1951, the Colonial Act was incorporated, several modifications and adjustments being introduced in this matter (Law no. 2048, of 11 June 1951). From 1959 onwards, as we have seen, the President of the Republic was elected indirectly by a restricted college (Law no. 2100, of 29 August 1959). Lastly, in 1971, towards the end of the regime, when Prof. Marcello Caetano was the Chairman of the Council (the «Marcelist Springtime», 1968-1974), the Constitution was amended somewhat ashamedly, being then inserted in the economic field such references as competition, well-being, and development; with regard to the colonies, the term «State» could be applied to the «provinces», in so far as the social progress and the complexity of the administration made it justifiable.

Between 1969 and 1971, an active role was played in the Assembly of the Republic by the so-called «liberal wing», composed of members pressing for an open regime — they had been elected as independent candidates on the National Union's lists, thanks to the intervention and commitment of José Guilherme de Melo e Castro. People like José Pinto Leite (who prematurely died, in an accident in Guiné), Francisco de Sá Carneiro, Magalhães Mota, Miller Guerra, Francisco Pinto Balsemão, among others, achieved significant eminence. The divide between these parliamentarians and Mar-

cello Caetano was brought to light at the time of the constitutional amendment — in fact, the absence of a political will, oriented towards the necessary democratisation, was manifest on the part of the Chairman of the Ministers' Council (<sup>4</sup>).

## 2. *The Constitution of 1976 — Antecedents and Building Process*

31. On 25 April 1974, a democratically-oriented military coup d'Etat put an end to the regime which had been inaugurated by another Armed Forces movement forty-eight years before. The modernising tendencies, moderately revealed during the so-called «Marcelist Springtime», would then find their full expression. The *Revolution of the Carnations* designed to seize the State — the very heart of the economic and social life — was made in the name of democracy, development and decolonisation. Democratisation soon started by enshrining in practice the citizens' rights, freedoms and safeguards, which at once entailed the recognition of such liberties as freedom of expression of thought, of the press, of association and assembly, of trade-unionism, freedom to conclude collective agreements, and the just cause requirement to the effect of dismissals of workers. Before the election of the Constituent Assembly, the so-called Revolutionary Process Under Way (PREC), an outcome of the radical positions assumed by social movements and the Armed Forces Movement (MFA), led to the adoption of several socialistic measures — particularly after the events occurred on 11 and 12 March 1975. Then, the whole banking and insurance sector was nationalised, as were all the key businesses operating in basic fields, particularly in industry and in the transport sector — save for foreign companies. At the same time, following the *de facto* occupations of large estates in Alentejo, which occurred in 1975, the State nationalised the rural

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(<sup>4</sup>) On the topic of the development of the Portuguese constitutionalism, apart from the already-quoted *História Breve*, written by Marcello Caetano, see the successive editions of *Manual de Ciência Política e Direito Constitucional*, by the same author, 6th ed., 1970, J. J. Gomes Canotilho, *Direito Constitucional*, 4th ed., 1989, pp. 207 and sq.; Lopes Praça, *Coleção de Leis e Subsídios para o Estudo do Direito Constitucional Português*, 1894, and Trindade Coelho, *Manual Político do Cidadão Português*, 1908.

estates that did not belong to autonomous farmers, in Alentejo and part of Ribatejo and Beira Baixa, drawing this way the boundaries of the «Agrarian Reform Zone». Measures concerning the compulsory leasing of abandoned estates had been taken, previously, and the leasing system of farming on land was modified.

The powers of the State to interfere in private firms increased so as to allow it to replace private management, either wholly or in part. In few months, the whole face of the country was reversed. However, no such deep structural changes were undertaken as social movements or their main action programmes claimed for. It did prevail voluntariness, according to which the new Portugal required a socialistic public interventionism, blended with base populism. From March until August 1975, the radical guidelines of the Armed Forces Movement prevailed. Before elections for the Assembly of the Republic could be held (25 April 1975), won by the Socialist Party, a Pact had to be concluded between the MFA and the Parties — it laid down the main principles upon which the new basic law would be drawn up. The leading members of the revolutionary bodies were however remarkably reticent about the representative democracy . . . An illustration of this is provided by the Guide-Document of the Alliance between the MFA and the People, adopted on 8 July 1975, whereby the MFA regarded itself as a national liberation movement, and advocated the direct democracy.

32. On 25 November 1975, the sedition of the para-troopers from the School Air Base of Tancos, the Regiment of Artillery of Lisbon and the Practical School of Military Administration provided a further elucidation in the course of the events. The period of social and political upheaval came to an end, creating the conditions to the institutionalisation of the State based on the rule of law. In this sense, the political parties were requested to put forward their proposals for the amendment of the Pact concluded with the MFA (17 December) with a view to the signature of a second agreement by the Council of the Revolution and the main political parties, which took place on 26 February 1976; that enabled the Constitution to be approved on 2 April by all parties, with the exception of the Social Democratic Centre.

The new constitution drew its inspiration from the democratic and socialistic ideals, and enshrined, by virtue of a complicated compromise, an economic, social and political organisation oriented

towards the affirmation of the pluralistic representative democracy resting upon the respect for the fundamental rights and freedoms and the historical goal of more social justice and equality of opportunity. Therefore the Constitution is not neutral, as regards the necessity of transformation; issues like the scope of the citizens' rights, freedoms and safeguards as well as the basic principles relating to the structure and operation of economy and society find their full expression in a number of provisions of the Constitution.

33. Since it emerged from the confluence of the liberal-democratic and socialist principles, combined in a Janus-faced manner, and bearing in mind that it was drawn up in an atmosphere in which the values of transformation and change of the socioeconomic system were highly emphasised by nearly all those who have participated in the formation of the constituent will, it is not surprising that the Portuguese Constitution has sought to enshrine a set of principles and rules upon which to build the society of the days to come. Nevertheless, for Professor Jorge Miranda «perhaps it is not accurate to confine the compromise to an amalgamation of two sole principles, since it was manifold and multifarious» (3). For Professor Jorge Miranda, the rights, freedoms and safeguards and the political democracy derive from PS and PPD (nowadays PSD) and CDS concurring views; socialism from the confluence of PS, PPD and PCP; the collectivist features owe their origin to the entente effected between PS and PCP; the personalist sense derived from both PPD and CDS; the source of social rights, self-government and planning lies with PS; regional and local autonomies and the jurisdictional guarantees were defended by PPD; nationalisations, the agrarian reform and local government are indebted to PCP; the Universal Declaration of Human Rights and free enterprise were advocated by CDS.

The different contributions are evident and account for the 1976 Constitution's open, polyhedral configuration that has accommodated to an ever-changing reality. As to the first phase in the constitutional life (1976-1982), which we can single out, apart from a programmatic course of action clearly socialistic, it is worth mentioning the separation of powers, the military from the civil institutions — a sequel to the considerable weight placed on the Armed

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(3) *A Constituição de 1976, Formação, Estrutura, Princípios Fundamentais*, Lisbon, 1978, p. 274.

Forces Movement, in the aftermath of the Revolution. That dichotomy found its expression in the Council of the Revolution, which had its own and decisive powers in matters of national defence, besides acting as a supervisory body for the constitutionality of the laws, to this effect relying upon an advisory body — the Constitutional Commission. The 1982 Amendment Act introduced the second period in the life of the 1976 Constitution that was influenced by the general trend of the first amendments approved by the Assembly of the Republic: the Council of the Revolution was abolished, and the subordination of the Armed Forces to the democratic civil power was institutionalised; the powers ascribed to the abolished body were re-allocated — which made the President of the Republic of the day, General Ramalho Eanes, consider that his powers had been reduced, account being taken of the fact that he was the Chairman of the Council of the Revolution. The Constitutional Court was established and some formulae of the Economic Constitution of a markedly one-sided ideology were mitigated. The 1989 Amendment Act opened the third period in the life of the Constitution that was dominated by the economic openness, the abolition of the principle of the irreversible nationalisations, and the first steps in the process of re-privatisation of the total capital of the businesses nationalised after 25 April 1974.

34. Until the 1989 Amendment Act, the Republic was defined as «a democratic State based on the sovereignty of the people, on the respect for the safeguarding of fundamental rights and freedoms and plurality of both democratic expression and democratic political organisation; its aim is to ensure *the transition to socialism by achieving economic, social and cultural democracy and push participatory democracy further*» (article 2). By way of a complement, the preamble, retained as a part of the basic law, after referring to the national independence, the citizens' fundamental rights, democracy and the State based on the rule of law, mentioned the opening of the way to «a society respecting the will of the Portuguese people and keeping in view the building of a free and fair and just and more fraternal country». Nevertheless, nothing made us overlap the constitutional concept of socialism and a requirement of the historic process, as the marxist authors view it, or a utopian, rootless and futile, concept. Admittedly, the term *socialism* involved an idea of eradication of the economic system pertaining to the individualistic

capitalism, an idea which was not set forth in its various concrete passages, nor in its rhythm. Hence, the subordination of the economic power to the political power, the collective ownership of the principal means of production and the workers' democratic intervention, alongside with the fundamental rights and freedoms and political pluralism, were characteristics featuring the process labelled «transition to socialism».

There was not, however, any constitutional definition of socialism, which did not mean that the reference was meaningless. It did have a meaning: on the one hand, tied in to the idea of social justice and the building of a novel society, more fair and just (until 1989, the first article read «classless society», viewed as that in which equality of opportunity was secured), and, on the other hand, to the political, economic and social democracy, the goal to achieve by complying with the Constitution.

— Since there was no objective pre-established dogmatically in its content, both conceptions, socialist and not socialist, could find their practical expression in the light of the Constitution, at the governmental level — on the basis of the principle of alternation. Indeed, no general restraint hampered the free participation of the different political parties and currents of opinion in the democratic life. After all, it did not lie with the Constitution to draw up government policies. Accordingly, the teleological socialist goal was bound up with some clues paving the way to a new open system of justice, in which there would be no inequality of opportunity, nor disrespect for the dignity of the human being, rather than with a rigid pre-definition of a new closed system. Hence, the need to safeguard the fundamental rights and freedoms, to ensure the peaceful alternation in the exercise of power, in accordance with the will of the people freely expressed through the vote, and the primacy of law in the democratic State based on the rule of law.

In that sense socialism should coincide with the gradual realisation of the economic, cultural, social and political democracy (as article 2 of the Constitution still reads). The constitutional aim was then assimilated to its own day-to-day fulfilment. The same is also true of today — once the Constitution refuses the understanding of a «perfect» or «achieved democracy», instead, it points towards its gradual invariably «imperfect» realisation. Understandably, Eduardo Lourenço said: «Our Constitution does not contain, and it could not contain, a clear-cut perspective of socialism and the society it must

face. There is however an inspiration pervading the constitutional text, in particular the provisions dealing with the economic and social order. The codrafters of the different parts of the Constitution did not share — far from it — the same views on a socialist society or on what must be understood by transition to socialism. Therefore, the clearest [...] concerns 'the manner' in which such 'transition', for instance, must be protected, the 'peaceful' and 'pluralistic' manner, as provided for in the Constitution. We may thence deduce that socialism imposed against the democratic and freely expressed will of the citizens is inconsistent with the spirit of our Constitution; the same applies to a regime under which the plurality of opinions as expressed in a society, defining it as democratic, is not ensured (6).»

### 3. *Structure of the 1976 Constitution — Fundamental Principles*

35. The Constitution of the Portuguese Republic was adopted on 2 April 1976, as already mentioned, and came into force on 25 April of the same year; it was revised twice, in 1982 and 1989. At present the Basic Law has 298 articles, divided as follows: *Fundamental principles*; *Fundamental rights and duties* (comprising three sections: General principles; Rights, freedoms and safeguards; Economic, social and cultural rights and duties); *Economic organisation* (with four sections: General principles; Plans; Agricultural, commercial and industrial policies; Financial and fiscal system); *Organisation of political power* (encompassing ten sections: General principles; President of the Republic; Assembly of the Republic; Government; The Courts; Constitutional Court; Autonomous Regions; Local Authorities; Public Administration; National Defence); *Safeguards and revision of the Constitution* (including the supervision of the constitutionality and the revision of the Constitution), and the *Final and transitional provisions*.

Here we have a programmatic Constitution, modelled upon the German Constitution of Weimar (1919) and the post-war basic laws; it displays teleological goals linked to the building of the democratic

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(6) Article «É ainda necessário sublinhar a responsabilidade das Forças Armadas na democracia», in *O Jornal*, 22 August 1979.

social State and the improvement of the political, economic, social and cultural democracy. This accounts for the legislator's concerns, reflected in the emphasis placed on the rights, freedoms and safeguards and the pluralist democracy, on the one side; on the other, on the changes in the economic, social and cultural fields. There is, after all, a closely complementary relationship between the principles of liberty and equality. Complementarity dictated by the primacy of the human being — involving free enterprise and voluntary solidarity, the creativeness of the individuals and the communities.

36. So far as the *fundamental principles* are concerned, the constituent legislators started by defining Portugal as a «sovereign Republic based on the dignity of the human person and the will of the people and committed to building a free and fair society that unites in solidarity» (article 1 of the Constitution), making it clear that it is a «democratic State based on the rule of law, the sovereignty of the people, plurality of both democratic expression and democratic political organisation as well as respect for and the safeguarding of fundamental rights and freedoms», affirming the determination «to achieve economic, social and cultural democracy and to push participatory democracy further» (article 2).

The State, subject to the Constitution and founded on democratic legality, is based thus on the *sovereignty of the people*, is unitary and observes the principles of both the autonomy of local authorities and the democratic decentralisation of the Administration — the basic law providing for the *regional autonomy* of the archipelagos of Azores and Madeira, which involves the existence of the respective political and administrative statutes and self-governing organs.

37. Portugal comprises the territory that has been historically defined on the European territory and the archipelagos of the Azores and Madeira (article 5). The Asiatic territory of Macao remains under Portuguese administration until 1999, when powers will be transferred to the Popular Republic of China, and abides by a statute of its own (article 292). Moreover, Portugal remains «bound by its responsibilities under international law to promote and safeguard the right to self-determination and independence of *East Timor*» (article 293, paragraph 1).

38. With regard to *international relations*, the Constitution declares that Portugal is governed by the principles of national independence, respect for human rights, the right of peoples to self-determination and independence, equality among States, the peaceful settlement of disputes, non-interference in the internal affairs of other States and co-operation with all other peoples for the emancipation and the progress of mankind (article 7, paragraph 1). Accordingly, the basic law expressly advocates the abolition «of all forms of imperialism, colonialism and aggression», the «simultaneous and controlled general disarmament» and the «dissolution of politico-military blocs», and recognises the «right of peoples to revolt against all forms of oppression, in particular against colonialism and imperialism» (article 7, paragraphs 2 and 3).

It is worth mentioning that the ties of friendship with Portuguese-speaking countries, the commitment to the «reinforcement of the European identity» and the «strengthening of the European States actions towards peace, economic progress and justice in the relations among peoples» (article 7, paragraphs 4 and 5) have deserved a particular emphasis.

39. The Constitution stipulates that rules and principles of general or ordinary *international law* are an integral part of the Portuguese law. International conventions duly ratified or approved apply in Portuguese law, following their official publication, in so far as they are binding on the Portuguese State internationally (article 8, paragraphs 1 and 2). Whilst rules laid down by the competent bodies of international organisations of which Portugal is a member apply directly in internal law, in accordance with the provisions of the respective constitutive treaties (article 8, paragraph 3, of the Constitution).

40. All persons who are regarded, as such by law or by an international convention are Portuguese citizens.

Pursuant to the Nationality Act (Law no. 37/81, of 3 October), the following persons are *Portuguese by origin*: the children of a Portuguese father or mother born in Portuguese territory, or abroad if the Portuguese father or mother was resident abroad in the service of the Portuguese State; the children of a Portuguese father or mother, born abroad, if they have made a declaration to the effect that they wish to be Portuguese or if they have their birth entered in the Portuguese civil register; persons born in Portuguese territory

of a foreign father and mother who have been normally resident in that territory for six years and are not in the service of their State, if they have made a declaration to the effect that they wish to be Portuguese; and persons born in Portuguese territory if they possess no other nationality. Underage or incapacitated children whose father or mother acquires Portuguese nationality may also acquire such nationality by declaration; any person who is the subject of full adoption by a Portuguese national also acquires Portuguese nationality. A foreign national who marries a Portuguese national may acquire the Portuguese nationality by a declaration made during the marriage — the acquisition of nationality, as regards the spouse who married in good faith, will not be affected if his/her marriage is declared null and void.

The Government may grant Portuguese nationality by *naturalisation* to foreign persons who, cumulatively, fulfil the following requirements: be of age or emancipated under Portuguese law; be resident within Portuguese territory or territory under Portuguese jurisdiction for at least six years; have sufficient knowledge of the Portuguese language; be of good standing and legally capable of handling their own affairs and providing for their subsistence. The residence and knowledge of the language requirements may be waived in the case of those who have had the Portuguese nationality, members of the community of Portuguese ancestry and foreign persons who have rendered or are called to render relevant services to the Portuguese State.

Those who, being nationals of another State, have made a declaration to the effect that they do not wish to be Portuguese lose the Portuguese nationality.

41. Another general topic which deserves to be mentioned is the *revision of the Constitution*. This falls within the competence of the Assembly of the Republic «once five years have elapsed after publication of any revision law» (article 284, paragraph 1, of the Constitution). However, the Assembly of the Republic, by a majority of four-fifths of its members entitled to vote, may assume powers of constitutional reform at any time (article 284, paragraph 2). The initiative must always be taken by the members of the Assembly — once a plan for constitutional reform has been tabled, any such plans must be submitted within thirty days, otherwise they will not be examined.

Amendments to the Constitution must be approved by a two-thirds majority of the members sitting in the Assembly. All the amendments approved are incorporated in a single constitutional act — the President of the Republic may not refuse promulgation thereof.

No amendment act may be approved while a state of siege or emergency is in force — which aims at preventing «constitutional coups d'Etat». The Constitution provides for material limits to the revision on the substance that must be safeguarded. It is a list of fourteen issues, such as: *national independence and unity of the State; the republican form of the government; the separation of the Church from the State; the rights, freedoms and safeguards of the citizens; the rights of the workers, the worker's committees and trade unions; the coexistence of the public sector, the private sector and the co-operative and social sector in the ownership of the means of production; the existence of economic plans within the framework of a mixed economy; universal, direct, secret and periodical suffrage for the appointment of the elected members of the organs of supreme authority, the autonomous regions and the organs of local government, as well as the system of proportional representation; plurality of expression and political organisation, including political parties and the right to a democratic opposition; separation and interdependence of the organs of supreme authority; the scrutiny of legal provisions for active unconstitutionality and unconstitutionality by omission; the independence of the courts; the autonomy of local authorities and the political and administrative autonomy of Azores and Madeira.*

Prior to the amendment of 1989, there was a different wording in respect of three points, as follows: instead of *coexistence of sectors*, the Constitution read *collectivisation of the main means of production and land*; instead of *plans*, the Constitution provided for the *democratic planning*; and, furthermore, it was mentioned *the participation by local people's organisations* in local government, which was deleted. There was much argument on the question whether to modify the material limits adopted by the Constituent Assembly. Nevertheless, the idea prevailed that the revision could comprise such an amendment, provided that democracy was safeguarded in its essence. On the other hand, the view that the matters contained in the enumeration of material limits could be

amended simultaneously with the constitutional articles concerning them directly did not prevail. Only the constitutional revision that comes after the amendment of the limits may modify the principles at issue.

#### 4. *Fundamental Rights and Freedoms*

42. Part I of the Constitution deals with the fundamental rights and duties — the preference given to rights and duties, by placing them before the economic and political organisation, in the constitutional text, is a reflection of the option taken on the rule of law and the pre-eminence of the dignity of man. It is in this context that one must understand the affirmation of the principles of *universality* (all citizens enjoy the rights and are subject to the duties laid down in the Constitution) and of *equality* [«all citizens have the same social dignity and shall be equal before the law», and no one will be favoured or put at a disadvantage on account of his ancestry, sex, race, language, place of origin, religion, political or ideological convictions, education, economic situation or social status (article 13 of the Constitution)].

Testifying to the special concern displayed for this matter, it is specified that the provisions of the Constitution and laws relating to fundamental rights must be read and interpreted in harmony with the *Universal Declaration of Human Rights*, which article 16, paragraph 2, of the basic law expressly mentions. In addition, the provisions relating to *rights, freedoms and safeguards* are directly applicable to concrete situations, regardless of law or regulation, and binding on public and private bodies. And the same applies to the so-called «fundamental rights of a *similar type*» (for instance, the right to private property; cf. articles 17 and 18 of the Constitution).

Laws restricting rights, freedoms and safeguards must be general and abstract in character and may not have retroactive effect; the organs of supreme authority may not suspend the exercise of rights, freedoms and safeguards, except in the case of a state of siege or emergency, declared in the manner laid down in the Constitution. All citizens are guaranteed the access to law, administration of justice and the courts; «justice shall not be withheld from a person for lack of financial means» (article 20, paragraph 1). It is expressly recognised the *right to resist* «any order that infringes his rights, freedoms or safeguards» (article 21).

43. The Constitution created the *Provedor de Justiça* —the counterpart of the *Ombudsman* of the Scandinavian countries— in order that citizens may assert «their rights or defend their interests injured by actions or omissions on the part of the public authorities». The *Provedor de Justiça* is empowered to make recommendations to the competent organs to prevent or make good acts of injustice, without power of decision. The *Provedor* is an independent organ appointed by the Assembly of the Republic every four years by a two-thirds majority of the members present, where that majority is larger than the absolute majority of the members entitled to vote (Law no. 81/77, of 22 November).

44. There is a first set of *personal rights* recognised by the Constitution; among them, mention must be made of the right to life (which comprises the *prohibition of the death penalty*), to personal integrity, to freedom and security, limits set to remand in custody, non-retroactivity of criminal law, limits to sentences and security measures, *habeas corpus*, safeguards in criminal proceedings, inviolability of home and correspondence, protection of citizens as regards the data contained in automated data records and files, freedom of expression and information, freedom of press and public information media, freedom of conscience, religion and worship, of creation in the cultural field, freedom to learn and teach, freedom of movement and freedom to emigrate, freedom of assembly and demonstration and freedom of association.

Extradition and deportation of Portuguese citizens are not permitted from national territory. Nor is extradition allowed either for political reasons or for crimes punishable by the death penalty under the law of the applicant State. The *right of asylum* is guaranteed for humanitarian reasons to foreigners and stateless persons who are persecuted or threatened with persecution, «as a result of their activities on behalf of democracy, social and national liberation, peace among the peoples, or individual freedom and human rights» (article 33).

45. All citizens have the right to *participate* in political life and «the control of the country's public affairs, either directly or through freely-elected representatives» (article 48). This right entails others, from the right to vote, vested in all citizens who are over 18 years

of age, until the right of access to public office, the right to set up and join political associations and parties, the right of petition and to *actio popularis*.

The *right of petition* enables all citizens, individually or jointly, to submit petitions, representations, claims and complaints to the organs of supreme authority or any authority, in defence of their rights, the Constitution, the law or the public interest. The *right to actio popularis* enables, in particular, the prevention or the institution of proceedings in respect of offences against public health, the environment, the quality of life, or the cultural heritage — comprising the right to claim the corresponding damages for the aggrieved party or parties (article 52).

Furthermore, the Constitution makes provision for the institution of the *referendum* — subjects thereof will only be such questions of vital national importance as must be decided by Parliament or the Government by way of approval of international conventions or legislative acts. The voting citizens enrolled within the national territory may be called upon to express themselves directly and on a mandatory basis by way of the *referendum*. It lies with the President of the Republic to decide whether or not it will take place, upon a proposal of the Assembly of the Republic or the Government. Neither matters falling within the political or exclusive legislative powers of the Assembly of the Republic, nor questions and acts of a budgetary, fiscal or financial nature may be the subject of a *referendum*. Each *referendum* will deal with one single matter and «the questions shall be formulated objectively, clearly and precisely and in such terms as to require a yes or no answer» (article 118, paragraph 4). This type of popular consultation will not be called or carried out between the dates when general elections for the organs of supreme authority, for the organs of self-government of the autonomous regions and the local powers, as well as for the European Parliament, are respectively called and carried out. The President of the Republic must refer the proposals for a *referendum* to the Constitutional Court for the preventive control of their conformity with the Constitution and the law.

The organs of the local authorities, in turn, may carry out direct consultations of the voters enrolled in their area, by secret vote, on questions covered by their exclusive competence (article 241, paragraph 3).

46. In addition to the right of participation, the Constitution lays down the rights, freedoms and safeguards of the workers — the cornerstone of the democratic social State — such as, for instance, protection of employment, the right to set up workers' committees, trade union freedom, the right to organise and the right to conclude collective agreements. And, besides, it provides for the right to strike and the prohibition of *lock-outs*.

As a supplement, under the heading of economic, social and cultural rights and duties, the Constitution recognises the right of every citizen to work, as well as the right of workers to a fair remuneration, to safe and healthy working conditions, job security, rest and leisure.

47. Considering that, in the contemporary world, social states refer to complex societies where, apart from the relations between capital and labour, due regard must be had to new interests and conflicts institutionalised in society, and to new criteria determining social groups, one can easily understand the Portuguese Constitution's special concern for the rights of consumers, private economic enterprise, or private property. Not to speak of the rights and duties in sectors such as social security, health, housing, environment, quality of life, family, childhood and youth, disabled persons and old age. Without forgetting the cultural rights — from education and science to creation in the cultural field (7).

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(7) There is a vast bibliography on the 1976 Constitution; we would like to single out the following works that deal with the subject at large: J. J. Gomes Canotilho, *Direito Constitucional*, 4th ed., Coimbra, 1989; J. J. Gomes Canotilho and Vital Moreira, *Constituição da República Portuguesa Anotada*, 2nd ed., vol. 1, Coimbra, 1984, vol. II, Coimbra, 1985; Jorge Miranda, *A Constituição de 1976. Formação, Estrutura, Princípios Fundamentais*, Lisbon, 1978; Jorge Miranda, *Manual de Direito Constitucional*, 4 vols., vol. 1, 3rd ed., Coimbra, 1985, vol. II, 2nd ed., Coimbra, 1983, vol. III, 1st ed., Coimbra, 1983; Marcelo Rebelo de Sousa, *Direito Constitucional. Introdução à Teoria da Constituição*, Braga, 1979. Besides the above-mentioned annotated Constitution, see: Isaltino de Moraes, J. M. Ferreira de Almeida and Ricardo Leite Pinto, *Constituição da República Portuguesa Anotada e Comentada*, Lisbon, 1983; António Nadais, António Vitorino and Vitalino Canas, *Constituição da República Portuguesa. Texto e Comentários à Lei Constitucional no. 1/82*, Lisbon, 1982. Among the collective works, the following deserve being mentioned: *Estudos sobre a Constituição*, coord. Jorge Miranda, 3 vols., Lisbon, 1977, 1978, 1979; *Nos Dez Anos da Constituição*, org. Jorge Miranda, Lisbon, 1986; *Portugal — O Sistema Político e Constitucional, 1974-1987*, coord. Mário Baptista Coelho, Lisbon, 1989.

## ORGANS OF SOVEREIGNTY

*«Seendo no poboo cuidado notável por sua segurança e defensom da terra [...]»*

FERNÃO LOPES, *Crônica de D. João I*, part 1, chapter 2

## Organs of Sovereignty

48. The principle of the separation and interdependence of the organs of sovereignty is one of the most distinctive features of the State based on the rule of law, as enshrined in the Portuguese Constitution of 1976. The representative democracy rests thus upon a system of checks and balances in so far as the powers of the State are concerned, but also on the «direct and active participation by the citizens in political life» (article 112 of the Portuguese Constitution).

The President of the Republic, the Assembly of the Republic, the Government, and the Courts are the organs of supreme authority — their organisation, membership, powers and working are defined in the basic law. In line with this provision, the drafter of the Constitution has stipulated that «no organ or supreme authority, organ of an autonomous region or organ of local government shall delegate its powers to other organs except in cases and in the conditions expressly laid down in the Constitution and by law» (article 114, paragraph 2).

Let us then take a look at the configuration of the organs of supreme authority.

*1. President of the Republic*

49. The President of the Republic is one of the «safeguards» of the system, under the Portuguese Constitution. With a view to avoid-

ing the deficiencies and inabilities of the parliamentary system, which had the most pernicious effects on the first Republic, the members of the Constituent Assembly of 1976 decided to adopt a *semi-presidential system*, under which the President —elected by direct and universal suffrage— has not only ceremonial functions but also possesses such powers as to become the guarantor of national independence, the unity of the State and the regular functioning of the democratic institutions. To dissolve the Assembly of the Republic, to appoint the Prime Minister and relieve him of his post, to veto the decrees of the Assembly of the Republic or the Government are some of the President's concrete powers. As a consequence of the judicious union of representative, moderating and stabilising powers, the Presidents of the Republic —Ramalho Eanes and Mário Soares— have been called upon, since 1976, to play the role of a genuine *safety net* against occasional abuses of power by parliamentary majorities or by Government. That *safety net* represents a stable and durable element in the system — that has been viewed as a valuable factor for the promotion of solidarity and co-operation between the organs of supreme authority, particularly as from 1986.

50. The candidate who obtains more than half of the votes cast is elected President of the Republic for a term of office of five years. There will be a second ballot if no candidate obtains that number of votes. Only the top two candidates may stand for election in the second ballot. It must be noted that a re-election for a third consecutive term of office or during the five years immediately following the end of the second term of office is not permitted. Nomination of candidates for the President's office does not fall within the competence of the political parties; candidates are sponsored by the citizens entitled to vote — not less than 7,500 and not more than 15,000.

51. In the exercise of powers with regard to office, it is incumbent upon the President of the Republic to either promulgate or veto the laws, decree-laws and regulative decrees as well as to sign the resolutions of the Assembly of the Republic that approve international agreements and other decrees of the Government; to decide whether to submit matters of relevant interest to a *referendum*; to declare a state of siege or a state of emergency; to grant pardons and commutation of sentences; to refer legal rules to the Constitu-

tional Court for the preventive control of constitutionality or to be declared unconstitutional; to perform acts concerning the territory of Macao as laid down in the statute pertaining to the latter (article 137 of the Constitution), and to act as Commander-in-Chief of the Armed Forces.

52. Where other organs are concerned, the President possesses, first and foremost, the power to dissolve the Assembly of the Republic, after having heard both the political parties sitting in the Assembly and the Council of State. Dissolution of the Parliament is prohibited within the six months following its last election and during the last half year of the President's term of office; nor shall it be dissolved during a state of siege or emergency (article 175). Furthermore, the President is empowered to dismiss the Government and relieve the Prime Minister of his post. Dissolution of the Government occurs only when this becomes necessary to secure the *regular functioning of the democratic institutions* — and the Council of State must be heard. The Head of State is entitled to preside over the Council of Ministers, at the instance of the Prime Minister (in fact, in happened only once, in 1979, during the 5th Constitutional Government). It falls within his competence, *inter alia*, the power to fix the dates of the different elections, except for those concerning local authorities; to convene extraordinary sessions of the Assembly of the Republic; to address messages to the Assembly; to appoint the Prime Minister; to appoint members of the Government and relieve them of their posts, upon proposal of the Prime Minister; to appoint the ministers for the Republic and relieve them of their posts, upon proposal of the Government and after consultation with the Council of State; to dissolve the organs of self-government of the autonomous regions by his own initiative or upon proposal of the Government, after consulting with the Assembly of the Republic and the Council of State. The Head of State also appoints and relieves of their posts, upon proposal of the Government, the President of the Court of Audit and the Attorney General, and the chiefs of staff of the three services of the Armed Forces.

53. In so far as *international relations* are concerned, it is the duty of the President to appoint ambassadors, upon proposal of the Government, and accept the credentials of members of the diplomatic corps; to ratify international treaties, once they have been duly

approved; upon proposal of the Government, to declare war in the case of actual or imminent and make peace, after consultation with the Council of State and with the assent of the Assembly of the Republic.

54. As already said, the President of the Republic is entitled to exercise *veto* on the laws of the Assembly of the Republic and the decrees of the Government. In the first case, there is a time-limit of twenty days, as from the receipt of any decree of the Assembly for the purpose of being promulgated as a law or of publication of a ruling of the Constitutional Court to the effect that none of the provisions contained therein violates the Constitution, within which the President shall either promulgate it or exercise his right to veto. The Assembly of the Republic may however confirm the decision it had taken before by the absolute majority of its members entitled to vote — in which case the President of the Republic is bound to promulgate the decree within a period of time of eight days of having received the decree concerned. A two-thirds majority of the parliamentarians present, where that majority is larger than the absolute majority of the members entitled to vote, is nevertheless required in order to confirm decrees concerning such matters as follows: elections of office-holders in the organs of supreme authority; *referendum*; organisation, working and procedures of the Constitutional Court; organisation of the national defence; the state of siege and the state of emergency; international relations; determination of the sectors with respect to the ownership of the means of production; and regulations on the election for the European Parliament or any other electoral acts provided for in the Constitution.

As far as the Government decrees are concerned, the President is allowed a time-limit of forty days within he must promulgate or exercise his veto power.

55. Furthermore, the President may request the Constitutional Court to assess preventively the conformity with the Constitution of any provision contained in any decree which has been submitted to him for the purpose of being ratified, promulgated or signed. Preventive assessment must be requested not later than eight days from the date when the decree was received.

If the Court holds the provision contained in the decree to be unconstitutional, the right to veto must be exercised.

56. Attached to the President of the Republic there is the *Council of State*, which is a political advisory body and a genuine forum of political dialogue as well. It is presided over by the Head of the State himself and is composed of the following members: the President of the Assembly of the Republic, the Prime Minister, the President of the Constitutional Court, the Ombudsman, the presidents of the governments of the autonomous regions, the former presidents of the Republic, elected under the Constitution and not removed from office, five citizens appointed by the President of the Republic for the period corresponding to his term of office, and five citizens elected by the Assembly of the Republic, in accordance with the principle of proportional representation, for the period corresponding to the duration of the legislative period. The Council of State has played an important role in the life of the 1976 Constitution. It delivers its opinion, particularly on the dissolution of the Assembly of the Republic or the organs of self-government of the autonomous regions, on the dismissal of the Government by the President of the Republic, on the appointment and dismissal of the ministers for the Republic for the autonomous regions, on the declaration of war or peace, advising the President of the Republic, at his request, on the performance of his duties.

57. As Alfredo Barroso and José Vicente de Bragança said, «placed on an institutional triangle, the other apices being the Assembly of the Republic and the Government, the President of the Republic is a datum point of vital importance to the public opinion, in that he is seen as a moderating power and an arbiter willing and able to intervene with a view to putting an end to the political crises and ensuring the stability of the democratic institutions. In times of crisis, and principally in the absence of a homogeneous absolute majority sitting in Parliament, the President of the Republic becomes the very centre of gravity of the political, constitutional system, once the decision on the settlement of political crises lies with him, in his capacity as supreme authority» (1).

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(1) «O Presidente da República: função e poderes», in *Portugal — O Sistema Político e Constitucional*, cit., p. 321.

After a brief account of the panoply of the Head of State's powers under the Constitution, mention must also be made of that which the President of the Republic of today labels «magistracy of influence». This means seeking to act upon daily life in a mobilising and impelling manner — either by sustaining and putting forward great national designs or by constantly keeping in touch with the institutions, the political parties, the two sides of industry, the economic agents, the scientific and cultural communities, and the local authorities, notably on such occasions as the «Open Presidencies», which have taken place since 1986, upon the initiative of President Mário Soares; by sojourning for a tie in towns and regions other than Lisbon, the President creates the opportunity to get a better knowledge of local problems.

As the only single-member organ of supreme authority, ratified by the support of a free election by direct suffrage, the President of the Republic plays a moderating and stabilising role in the Portuguese system — the constitutional experience indicates that, since 1976, there has been a tendency in the exercise of influences towards a «pendulum alternation» between the presidential and parliamentary spheres, according to circumstances. Hence, one speaks of either *semipresidentialism* or *rationalised parliamentarism* to define the system. There has been however no overlapping of the parliamentary and the presidential majorities, which has helped in strengthening the *moderating role of the President*, who by no means can be viewed as a merely symbolic figure <sup>(2)</sup> . . .

## 2. Assembly of the Republic

58. The Portuguese Parliament is composed of a single chamber. It owes its name, Assembly of the Republic, to a proposal put for-

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(2) On the theme, in addition to the text cited above, see: J. J. Gomes Canotilho, *Direito Constitucional*, cit.; J. J. Gomes Canotilho and Vital Moreira, *Constituição Anotada*, cit.; Jorge Miranda, *Manual de Direito Constitucional*, cit., vol. 1; Jorge Miranda, *A Constituição de 1976. Formação, Estrutura, Princípios Fundamentais*, cit.; Marcelo Rebelo de Sousa, *Direito Constitucional*, cit., vol. 1; André Gonçalves Pereira, *O Semipresidencialismo em Portugal*, Lisbon, 1984; Isaltino de Moraes, José Mário Ferreira de Almeida and Ricardo Leite Pinto, *O Sistema de Governo Semipresidencial*, Lisbon, 1985; Marcelo Rebelo de Sousa, *O Sistema de Governo Português, antes e depois da Revisão Constitucional*, Lisbon, 1984; Margarida Salema, *O Direito de Veto na Constituição de 1976*, Braga, 1980.

ward by Mota Pinto, who was sitting as an independent in the Constituent Assembly at that time. In conformity with the electoral law, Parliament has 230 members (article 13 of Law no. 14/79, of 16 May, as re-worded by virtue of Law no. 18/90, of 24 July). Members of the Assembly of the Republic represent the whole country, not the constituencies for which they are elected. The electoral boundaries of the mainland follow the boundaries between administrative districts; in addition, there are two electoral constituencies in the Autonomous Regions of Madeira and Azores; the electors residing outside the Portuguese territory are grouped in two constituencies — one comprises the European countries, the other encompasses the re-maining countries and the territory of Macao. Following the amendment of the Constitution in 1989, law may provide for a single nation-wide constituency — which has not happened as yet (article 152 of the Constitution). All Portuguese citizens entitled to vote may stand for election, provided that they are not subject to the restrictions laid down by electoral law «with regard to incompatible local functions or the holding of certain offices» (article 153) — judges or public prosecutors, permanent cadres of the Armed Forces on active military service, career diplomats in the exercise of their functions, by way of example. All citizens over the age of 18 are entitled to vote.

59. Nominations are presented by the political parties, either separately or in alliance, and the lists may include citizens who are not members of the political parties.

Proportional representation principle is applied to the election of the members of the Assembly of the Republic, according to the Hondt highest average method — law may not provide that parties failing to secure a minimum percentage of the national vote cannot participate in the allocation of seats. Office-holders in Parliament who are called upon to discharge their functions in the Government may not exercise their mandate until expiry of their term of office; their place will be temporarily filled by the members coming next on the lists out of which they were elected. *Replacement* is moreover possible either in case of absence of a temporary character of parliamentarians or expiration of their term of office. Parliamentarians enjoy the parliamentary immunities: they have no civil, criminal or disciplinary liability for the votes they cast and the opinions they express in the performance of their duties; they will not be

detained or arrested without the Assembly's assent, except for a crime punishable by a major sentence when caught in *flagrante delicto*. The Assembly decides whether he must be suspended to enable the proceedings instituted against him to take their course.

The Assembly of the Republic is installed in S. Bento Palace, in Lisbon — the meeting place of the Cortes since the liberal monarchy.

60. Among the powers of the Assembly of the Republic, first and foremost it should be mentioned as we already said the power to amend the Constitution.

Furthermore, it falls within the competence of the Parliament to approve the political and administrative statutes of the autonomous regions and the statute of the territory of Macao; to legislate on all matters other than those which are reserved for the Government in conformity with the basic law; to authorise the executive power to enact legislation; to grant amnesties and general pardons; to approve laws concerning the major options for the plans and the Budget of the State; to authorise the Government to raise and grant loans and engage in other credit obtaining operations for a period of time over one year; to approve international conventions on matters falling within its exclusive legislative powers, treaties involving participation in international organisations, treaties of peace, defence treaties, treaties rectifying frontiers or concerning military matters; to propose to the President of the Republic to submit any question of relevant interest for the nation to a referendum as well as to authorise and confirm the declaration of a state of siege or of a state of emergency (article 164).

Naturally, the Assembly has further important tasks of a supervisory nature; it is deemed to be one of the «guardians of the observance of the Constitution and the laws». Hence, it may review the decree-laws of the Government on matters other than those which fall within the Government's exclusive powers, for the purpose of refusal of ratification or amendment. In addition, it receives the public accounts and examines annual and final reports on the implementation of the Plan (article 165).

As far as other bodies are concerned, the Assembly witnesses the induction of the new President of the Republic, scrutinizes the programme of the Government, passes motions of confidence in and of censure on the Government. By a two-thirds majority of the mem-

bers present, where that majority is larger than the absolute majority of the members entitled to vote, also elects ten judges of the Constitutional Court, the *Ombudsman*, the President of the Economic and Social Council and the seven members of the Higher Council of the Bench (article 166).

The basic law stipulates that certain matters fall within the exclusive competence of the Assembly of the Republic — namely those relating to the election of persons to hold office in the organs of supreme authority, as well as in the other organs elected by direct and universal suffrage; the referendum; the organisation, working and procedures of the Constitutional Court; the organisation of the national defence; associations and political parties; the foundations of the educational system; the status of members of the organs of both supreme authority, of local government and of the other constitutional organs or elected by direct and universal suffrage as well (article 167).

The Assembly has exclusive powers with respect to other matters, but it can grant the Government authorisation to the same effect. Such is particularly the case of issues relating to rights, freedoms and safeguards; the classification of offences and penalties and questions of criminal procedure; the foundations of the social security system and the national health service; the foundations of the system for the protection of nature, the ecological balance and the cultural heritage; tax creation and the fiscal system; the determination of the sectors with respect to the ownership of the means of production; ways and means of intervention, expropriation, nationalisation, and privatisation of the means of production and land for public purposes, as well as the criteria for determining compensation; rules governing agricultural policy; the organisation and powers of the courts and the Public Prosecution; rules governing the intelligence services and State secrecy; the status of local authorities . . .

61. The Assembly adopts *constitutional laws* (as is the case of the amendment of the basic law); *organic laws* (as regards the election of office-holders in the organs of supreme authority and the referendum; the organisation, working and procedures of the Constitutional Court; the organisation of national defence and the state of siege and state of emergency); *laws* (in the exercise of legislative powers); *motions* (of confidence and censure); and *resolutions* (as far as treaties

are concerned for instance). Power to initiate legislation lies with the parliamentarians and the parliamentary groups — *draft bills* — with the Government and the regional legislative assemblies — *bills*.

62. Membership of the Assembly is wholly renewed every four years; the interval between two elections is called *legislative period*. Each *legislative session* lasts for one year and Parliament sits from 15 October to 15 June — this normal period may be extended. Extraordinary sessions of the Assembly may be summoned by the President of the Republic to deal with specific subjects. Outside the normal period, and even if the Assembly has been dissolved, there is a *Standing Committee* functioning under the chairmanship of the President of the Assembly of the Republic; it is composed of the Deputy-Presidents and members appointed by all the parties, in proportion to their strength in Parliament. The Standing Committee monitors the activities of the Government and the Administration, convenes the Assembly where it is deemed necessary, prepares the opening of the legislative session, and is entitled to authorise the President of the Republic to declare the state of siege or the state of emergency as well as to make war or peace.

As a rule, Parliament holds three plenary sittings every week, with a pre-adopted agenda; there is a period in which questions concerning matters of general policy may be raised, in line with the «question time» of other parliaments. The activities of the committees tend to be more and more important — principally as regards the committees provided for in the Rules of Procedure of the Assembly (on constitutional matters, on rights, freedoms and safeguards, on foreign affairs, on economy, on financial matters and planning) but also the select committees, which may be set up to carry out inquiries or for any other specific purpose. Ministers have the right to attend and to speak in plenary meetings of the Assembly; the secretaries of State may assist or deputise for them. Moreover, special meetings are held in order that the Government may answer questions and requests for further elucidation by members of the Assembly. However, under the rules of procedure the parliamentary groups are confined to a certain number of questions — one question for each group of 25 parliamentarians or fraction comprising the group. Government is free to select the questions to be answered.

63. Members elected for the same party or alliance are entitled to form a *parliamentary group* — which is granted extensive rights, namely to introduce motions for the rejection of the Government's Programme, or motions of censure, to participate in the committees of the Assembly proportionately to its membership, to initiate, in each legislative session, two discussions on matters of general or sectorial policy by way of questioning the Government, *inter alia*. The parliamentary groups are represented in the Conference of Leaders, which became an organ of major influence taking into account that its resolutions have a bearing on the functioning of the Plenum and the rhythm of the parliamentary workings.

64. If it is certain that the instability of the party system had negative repercussions in parliamentary life, at least until the elections of 19 July 1987, it is no less true that the emergence of a single-party absolute majority had two significant effects: on the one hand, the executive power's dominance with regard to legislative activity, which had scarcely ever happened before; on the other hand, owing to the stability achieved in the system, the creation of conditions to provide the Assembly with the supporting structures essential for its sounder institutionalisation.

We are still a long way from achieving our aim, but there seems to be a growing tendency to approach the questions relating to the reform of the Assembly of the Republic — involving closer links between parliamentarians and the electorate (which implies the amendment of the electoral law), the creation of logistic, technical and political structures to assist the members of the Assembly, and a more effective scrutiny of the Executive by Parliament.

65. Moreover, as regards the latter issue, António Vitorino said: «[...] the experience of the model indicates [...] that the parliamentary action in Portugal is still in search of its own identity, of an adequate understanding (and use) of the devices available, constitutionally and lawfully, for the parliamentary scrutiny of the Government's action, in the light of a normal co-operation between the policy-making organs (1).»

(1) «O controlo parlamentar dos actos do Governo», in *Portugal — O Sistema Político e Constitucional*, cit., p. 386.

Here we see a Parliament which seeks to improve its image, gain prestige and rise to prominence — all this requires a higher degree of autonomy in order that it ceases to be merely a chamber echoing the ideas of partisan leaderships<sup>(4)</sup>.

### 3. Government

66. «Conduct of the country's general policy» is entrusted to the Government — the seat of the executive power, which the Constitution further defines as «the highest organ of public administration» (article 185).

The Government is composed of the Prime Minister and the ministers —exercising specific powers— and the secretaries and under-secretaries of State, whose powers delegated by the ministers.

The number, official denomination and tasks of the members of the Government vary as they are laid down in the decrees appointing them and the decree-laws. Present-day ministers are as follows:

Prime Minister;

Minister for the Presidency;

Minister for the National Defence (this portfolio originates in the War Secretary of State and the Navy Secretary of State, created in 1736);

Minister for Parliamentary Affairs;

Minister for Finance (1788, under the title Secretary of State of the Treasury);

Minister for Planning and Territorial Administration;

Minister for Home Affairs (1736, Secretary of State of the Realm);

Minister for Justice (1821);

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(4) On the subject, see: Gomes Canotilho, *Direito Constitucional*, cit.; J. J. Gomes Canotilho and Vital Moreira, *Constituição Anotada*, cit.; Jorge Miranda, *Manual de Direito Constitucional*, cit., vol. 1, theme 1; Jorge Miranda, *Constituição de 1976*, cit.; Marcelo Rebelo de Sousa, *Direito Constitucional*, cit., vol. 1; Manuel Braga da Cruz and Miguel Lobo Antunes, «Parlamento, partidos e governo — acerca de institucionalização política», in *Portugal — O Sistema Político e Constitucional*, cit., pp. 351 ff.; Rogério Soares, «Sentido e limites da função legislativa no Estado contemporâneo», in Jorge Miranda and Marcelo Rebelo de Sousa (coord.), *A Futura das Leis*, INA, 1986, vol. II.

Minister for Foreign Affairs (1736);  
 Minister for Agriculture, Fisheries and Food;  
 Minister for Industry and Energy;  
 Minister for Education (1913, Minister of Public Instruction);  
 Minister for Public Works, Transport and Communications (1852,  
 Minister of Public Works);  
 Minister for Health;  
 Minister for Employment and Social Security;  
 Minister for Trade and Tourism;  
 Assistant Minister and Minister for Youth;  
 Minister for Environment and Natural Resources.

(Enumeration in accordance with the provisions of Decree-Law no. 329/87, of 23 September, modified by the Decree-Law no. 253-A/88, of 18 July, Decree-Law no. 401/88, of 9 November, Decree-Law no. 217/89, of 3 July, and Decree-Law no. 94/90, of 20 March; there is a reference in parentheses to the year in which the oldest ministries were established.)

67. The Prime Minister directs the Government's general policy, coordinates the action of all ministers, directs the work of the Government and its general relations with the other organs of the State and informs the President of the Republic on matters concerning the way in which the internal and external policies are being conducted. Ministers carry out the policies laid down for their offices and maintain the relations of a general nature between the Government and the other organs of the State, where their offices are concerned (article 204). The Prime Minister, the Deputy-Prime Ministers, if any, and the ministers compose the *Council of Ministers* — the secretaries of State may be called upon to attend to its meetings.

68. The Council of Ministers is responsible for the main outlines and implementation of governmental policy; it approves bills and motions for resolutions, decree-laws, and international conventions that are not submitted to the Assembly of the Republic; it approves acts of the Government that involve increases or decreases in the public revenue or expenditure (article 203).

«Councils of specialist Ministers may be established for particular subjects» (article 187, paragraph 2) the competence of which is either

set forth in the law or delegated by the Council of Ministers (article 203, paragraph 2). Traditionally, the Council of Ministers for the Economic Affairs is particularly important.

The Prime Minister is appointed by the President of the Republic, after consultation with the political parties represented in the Assembly of the Republic. By virtue of the Constitution, the Head of State must have «due regard to the election results» (article 190, paragraph 1) — a formula which is not rigid, in that it leaves the President with a significant margin of manoeuvre. Ministers and the remaining members of the Government are also appointed by the President of the Republic, on proposal of the Prime Minister.

In case of resignation of the Government, the Prime Minister of the outgoing Government is relieved of his functions when the person appointed to replace him takes office. From the date of resignation of the Government until the date of dismissal of the Prime Minister, and before the Assembly has scrutinised the Government's programme as well, the Executive «shall limit itself to those acts which are strictly necessary to ensure the management of public affairs» (article 189, paragraph 5).

69. One of the keys in the semi-presidential system (that some prefer to label rationalised parliamentarism, as already mentioned) is the collective responsibility of the Government, which is answerable both to the President of the Republic and the Assembly of the Republic. The Prime Minister is responsible to the President and, «in the context of the Government's political responsibility», to Parliament (article 194, paragraph 1); while all the Ministers, besides being jointly responsible to the Assembly for the Government policy, are responsible to the Prime Minister for implementation thereof, in so far as their own departments are concerned. Secretaries of State and under-secretaries are responsible, in turn to both the Prime Minister and the minister concerned. If criminal proceedings are initiated against a member of the Government, and where a formal charge is brought against him, except in the case of a serious offence punishable by imprisonment for over three years, the Assembly of the Republic decides whether he must be suspended to enable the proceedings to take their course.

70. In the scrutiny of the Government's Programme (a document containing the main political guidelines and measures to be adopted)

we can find another important element revealing the balance of power — President/Parliament. The Programme of the Government is submitted to the Assembly of the Republic for scrutiny by means of a *statement by the Prime Minister*, within not more than ten days of his appointment. The debate must not exceed three days and, before winding up, any parliamentary group may propose the rejection of the Government's Programme; the Government may itself ask the Assembly for a vote of confidence. It is merely entitled to do it. There is no need for the Government to have its programme approved by Parliament to acquire legitimation. That it is not rejected will suffice — rejection only occurs if a motion of no-confidence is approved by an absolute majority of the parliamentarians entitled to sit in the Assembly of the Republic.

Apart from the occasion on which its programme is scrutinised, the Government may ask the Assembly for a vote of confidence on a «statement of general policy» or on «any matter of national interest» (article 196); likewise, the Assembly may pass motions of censure on the Government in connection with the implementation of its programme or any relevant matter, provided that the initiative lies with any parliamentary group or one quarter of the parliamentarians entitled to sit in the Assembly. If a motion of censure is not approved, its signatories may not move another motion of censure during the same legislative session. Whether the Government fails to win a motion of confidence or a motion of censure is approved by a majority of the members of the Assembly entitled to vote, the Government is compelled to resign.

As it has been said, the President of the Republic is empowered to dismiss the Government, but only when this becomes necessary to secure the smooth functioning of the democratic institutions and after consultation with the Council of State, whose advisory opinion is not binding on the President.

71. The Government is vested with political, legislative and administrative powers. The «political area» encompasses the power to *counter-sign* certain acts of the President of the Republic (such as the promulgation of laws, some appointments and the declaration of the state of siege or emergency); to negotiate and agree on international conventions and to approve them where such an approval does not fall within the competence of the Assembly; to submit bills and draft resolutions to the Assembly of the Republic; to propose to the Presi-

dent of the Republic to submit matters of relevant interest for the nation to a referendum; to deliver its opinion on declarations of a state of siege or emergency; to submit to the Head of State declarations of war and to propose the making of peace, and to submit the accounts of the State to the Parliament. In the exercise of its administrative functions, the Government issues decrees — on matters not reserved to the Assembly of the Republic, or, where authorised, on matters relatively reserved to the Assembly, or in application of legal principles or bases provided for by laws. It must be noted, however, that all matters concerning the Government's organisation and working fall within its own competence.

72. In the administrative field, the Government prepares the plans on the basis of the laws concerning the major options in that respect, approved by the Parliament; implements the Budget; issues regulations; directs the departments and the direct administrative activity of the State; and superintends and watches over the public bodies subject thereto.

73. The Portuguese system, resting upon the above-mentioned triangle of balance and shared powers, has witnessed, lately, a certain imbalance in favour of the Executive, once there has been a homogeneous single-party majority in Parliament since 1987, at the expense of the Legislature. Such a trend is however mitigated statutorily, owing to the fact that the President of the Republic does not originate in the party supporting the Government (PSD); instead, he comes from the largest party in the opposition (PS), and was a founder member and charismatic leader thereof. Nevertheless, on account of such homogeneous overall majority in Parliament, the President's «active powers» have been in a way weakened — in view of the prevailing circumstances, not by virtue of any constitutional provision reducing his powers. The Government, with its party's support in Parliament, have thus gained prominence — and the «institutional solidarity» ensured by the President of the Republic has proved to be an additional factor for institutional stability. In other circumstances, the «variable geometry» underlying the constitu-

tional pattern will probably lead to the readjustment of the balance of power between the organs of supreme authority — for the sake of efficiency and stability (?) . . .

#### 4. The Courts

74. By virtue of the Constitution, «the courts are the organs of supreme authority that shall have the powers to administer justice in the name of the people» (article 205, paragraph 1). The courts are a fundamental stone of the architecture of the State based on the rule of law; it falls to the courts to ensure the defence of the rights and interests that are protected by law, to preserve democratic legality and settle disputes.

As Laborinho Lúcio puts it «by expressly stipulating that the courts administer justice *in the name of the people*, the constitutional law clearly provided the response to the issue of the original ownership of that basic value, but also underlined the representative character of the judiciary which, since it is not clothed with institutional forms of supervision and is not shaped by judicial devices for the transfer of powers, rest essentially upon the ethical nature of representation itself»<sup>(6)</sup>.

(?) On the subject, see: J. J. Gomes Canotilho, *Direito Constitucional*, cit.; J. J. Gomes Canotilho and Vital Moreira, *Constituição Anotada*, cit.; Jorge Miranda, *Manual de Direito Constitucional*, cit., vol. 1, theme 1; Jorge Miranda, *A Constituição de 1976*, cit.; Marcelo Rebelo de Sousa, *Direito Constitucional*, cit., vol. 1; André Gonçalves Pereira, *Semipresidencialismo*, cit.; Francisco Lucas Pires, «O sistema de Governo: sua dinâmica», in *Portugal — O Sistema Político*, cit., pp. 291 ff.; Isaltino de Morais, J. M. Ferreira de Almeida and Ricardo Leite Pinto, *O Sistema de Governo Semipresidencial*, cit.; Luís Salgado de Matos, «L'expérience portugaise des Régimes Semi-présidentiels» in *Les Régimes Semi-Présidentiels* (dir. Maurice Duverger), Paris, 1986; Manuel de Lucena, *O Estado da Revolução*, Lisbon, 1978; Marcelo Rebelo de Sousa, *O Sistema de Governo Português*, cit.; Pedro Santana Lopes and J. M. Durrão Battsoso, *O Sistema de Governo e o Sistema Partidário*, Lisbon, 1980.

(6) On the subject see: Álvaro Laborinho Lúcio, «O sistema judiciário em Portugal», *Povos e Culturas*, no. 1, Lisbon, 1986; Álvaro Laborinho Lúcio, «O poder judicial na transição», in *Portugal — O Sistema Político*, cit., pp. 737 ff.; J. J. Gomes Canotilho, *Direito Constitucional*, cit.; Vitalino Canas, *Introdução às Decisões de Provimento do Tribunal Constitucional*, Lisbon, 1984. On the scrutiny of constitutionality: J. J. Gomes Canotilho, «Direito, direitos: tribunal, tribunais», in *Portugal — O Sistema Político*, cit., pp. 901 ff.; J. M. Cardoso da Costa, «O Tribunal

75. The Portuguese legal system is organised as follows: there is a Constitutional Court, which is entrusted with «specific powers to administer justice in matters of both legal and constitutional nature» (article 223 of the Constitution); there are also the Supreme Court of Justice and the courts of law of first and second instance; the Supreme Administrative Court and other administrative and fiscal courts; the Court of Audit; the military courts.

*The Supreme Court of Justice* is the highest court of law, despite being expressly provided for in the Constitution that such a definition does not prejudice the jurisdiction of the Constitutional Court. Its present-day membership is made up of forty-one justices sitting in four divisions (two are civil, one is criminal and the fourth deals with social matters) (cf. Decree-Law no. 214/88, of 17 June).

*The courts of first instance* are as a rule the *comarca* (the smallest judicial unit) courts or the courts of law that have specific functions (there are civil, assize, criminal, police, and small claims chambers) and the courts with special jurisdiction (courts of criminal investigation, family courts, juvenile courts, labour courts, courts for the enforcement of sentences and admiralty courts).

*The circuit* — an intermediate division between the judicial district and the *comarca* — courts usually sit as jury courts or plenary courts. The circuit courts of Lisbon and Oporto contain chambers with specific jurisdiction.

*The courts of second instance* are the *Courts of Appeal*, situated in each of the four judicial districts: Lisbon, Oporto, Coimbra and Évora.

Courts of justice are the common courts of law, which have all jurisdictional authority «not ascribed to the other judicial systems» (article 213, paragraph 1, of the Constitution; cf. Act no. 38/87, of 23 December).

*The Supreme Administrative Court* is the highest court in the hierarchy of the administrative and fiscal courts. In addition, there are the circuit administrative courts, the fiscal courts of first instance, the customs courts, the Administrative Court of Macao, and the fiscal court of second instance (cf. Decree-Law no. 129/84, of 27 April).

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Constitucional português: a sua origem histórica», in *Portugal — O Sistema Político*, cit., pp. 913 ff.; Luís Nunes de Almeida, «O Tribunal Constitucional e o conteúdo, a vinculatividade e os efeitos das suas decisões», in *Portugal — O Sistema Político*, cit., pp. 941 ff. In a historical perspective: Armindo Ribeiro Mendes, «O Conselho da Revolução e a Comissão Constitucional na fiscalização da constitucionalidade das leis», in *Portugal — O Sistema Político*, cit., pp. 925 ff.

The Supreme Administrative Court sits in two sections: Administrative Appeals (1st Chamber) with three sub-sections; Fiscal Appeals (2nd Chamber) with two subsections. It is composed of the President, 27 judges sitting in the 1st section and 11 judges sitting in the 2nd section. «The administrative and fiscal courts shall have jurisdiction over cases and appeals aiming at settling conflicts that derive from administrative or fiscal legal relations» (article 214, paragraph 3, of the Constitution) mainly over appeals brought against administrative acts.

Both the Chief Justice of the Supreme Court and the President of the Supreme Administrative Court are elected by and among the judges of the supreme court concerned.

The trial of essentially military offences falls within the jurisdiction of the military courts which are empowered by the law to impose disciplinary measures.

The *Court of Audit (Tribunal de Contas)*, which is a genuine court nowadays, being therefore an integral part of the judiciary, carries out its duties as an independent organ that is subject only to the law. It is defined by the constitutional law as «the highest body entrusted with the supervision» of the legality of public expenditure and with passing judgement on such accounts as required by law. The Court has regional divisions in Azores and Madeira. It is incumbent upon it, basically, to give an opinion on the General Accounts of the State and the autonomous regions and to give effect to liability resulting from financial offences.

76. Hearings before the courts are public, on principle, except where the court decides otherwise and gives the reason therefor — «in order to safeguard personal dignity and public morals or to ensure its own proper working» (article 209 of the Constitution).

There is a provision for *juries* to be called to criminal courts — and each jury will be made up of the judges of the plenary court and the jurymen. A *jury* is called for the trial of serious crimes *at the request* of either the prosecution or the defence; *it will not* be called for the trial of offences where *terrorism* is involved.

The Constitution provides for the participation of the people by way of *social judges* nominated out of electoral rolls, who may be called for hearings on industrial disputes, offences against public health, misdemeanours, «and other matters involving the assessment of infringed social values» (article 210, paragraph 2), namely in juvenile courts.

77. Judges are irremovable and will not be held liable for their decisions, except as provided by law. They are not allowed to hold any other office either public or private, except for positions in teaching and scientific research in the legal field.

Appointment, assignment, transfer and promotion of court of law judges, as well as the powers to exercise disciplinary action against judges, fall within the competence of the Higher Council of the Bench (article 219 of the Constitution). As far as administrative and fiscal courts are concerned, such powers are assigned to the appropriate Higher Councils. As to the other courts, they are governed by specific rules, in conformity with the law.

*The Higher Council of the Bench* is the body which links the judiciary's self-government to the democratic life of the community. It is composed of two members appointed by the President of the Republic, one of which being a judge; seven members elected by the Assembly of the Republic and seven judges elected by their peers in accordance with the principle of proportional representation. The Higher Council is presided over by the Chief Justice of the Supreme Court of Justice. The rules concerning the safeguards of judges apply to every member of the Higher Council of the Bench. Clerks of justice elected by their peers may attend the meetings of the Higher Council when matters concerning the assessment of professional merits and the exercise of disciplinary action with respect to their class are to be discussed and voted.

78. *The Public Prosecutor's Department* is the body which represents the State in criminal proceedings and defends democratic legality and interests that are protected by the law. Public prosecutors are «responsible magistrates hierarchically graded and shall not be transferred, suspended, retired or dismissed except as provided by law» (article 221, paragraph 3, of the Constitution).

The Attorney-General's office is the highest organ of the Public Prosecutor's Department. It is presided over by the *Attorney General* and includes the Higher Council for the Public Prosecution which is constituted by members representing the Public Prosecutor's Department and members elected by the Assembly of the Republic.

79. *The Constitutional Court*, established by the Amendment Act of 1982, is made up of thirteen judges; ten are appointed by the Assembly of the Republic and three are co-opted by the former.

Six of its members must be chosen among the judges of the other courts and the remaining seven must be jurists. The term of office of the judges of the Constitutional Court lasts *six years*. The President is elected by the judges sitting in the Court.

As a court with jurisdiction to administer justice in matters of both legal and constitutional nature, the Constitutional Court not only examines the cases in which infringement of the basic law may be at issue, but also intervenes at a particularly delicate moment of the life of the democratic institutions; in view of this, it is incumbent upon the Constitutional Court to ascertain the death and pass judgement on the permanent physical inability of the President of the Republic as well as to ascertain that the latter is temporarily prevented from exercising his functions; to ascertain the forfeiture of office of the President of the Republic; to rule on appeals against decisions on the regularity of the acts of the electoral procedure; to ascertain the death and pass judgement on the incapacity for the exercise of the presidential functions of any candidate for the office of President of the Republic; to pass judgement on the legality of the constitution of political parties and their alliances, and of their names, monograms and symbols as well; to pass judgement on the conformity with the Constitution of referenda and the direct consultation of the electorate at local level.

The Constitutional Court has the essential task of the review of the constitutionality, which may be preventive, abstract or concrete. It also examines the unconstitutionality on grounds of omission.

*Preventive assessment of the constitutionality* may be requested by the President of the Republic — as regards some particular provision of an international treaty, that has been submitted to him for approval, of any decree of the Assembly of the Republic or the Government sent to him for promulgation, or of any decree-law or an international agreement the act for approval of which has been sent to him for signature (article 278, paragraph 1). The ministers for the Republic in the Autonomous Regions may also request the preventive assessment of the constitutionality in respect of any text that has been sent to them for signature. In such cases, preventive assessment of the constitutionality must be requested not later than *eight days* after the date of receipt of the text at issue.

Following the amendment of the Constitution, in 1989, the Prime Minister as well as one-fifth of the members of the Assembly of the Republic on active duty are also entitled to request the opinion of

Constitutional Court on the preventive constitutionality, but only in respect of any provision of a decree of the Assembly of the Republic that has been submitted to the President of the Republic for the purpose of being promulgated as an *organic law* (article 167 of the Constitution).

That being the case, the Head of State may not promulgate the decree either before eight days having elapsed since the date of receipt or before the Constitutional Court, if requested, has ruled. The Constitutional Court must give its ruling within twenty-five days, but the President of the Republic may shorten that time-limit for urgent reasons (article 279 of the Constitution).

If the Constitutional Court holds that a provision is unconstitutional, the President of the Republic or the Minister for the Republic, as the case may be, must exercise his veto power. The organ that has passed the text concerned must have the provision judged unconstitutional expurgated. The Assembly of the Republic, however, by a two-thirds majority of its members present, where that majority is larger than the absolute majority of the parliamentarians entitled to vote, may confirm the provision declared to be inconsistent with the Constitution.

In so far as the concrete control of the constitutionality is concerned, the Constitutional Court has jurisdiction to hear appeals brought against such decisions of courts as provided for in article 208 of the Constitution, namely: decisions which refuse to implement a rule on the grounds of its unconstitutionality, or which apply a rule which has been claimed to be unconstitutional during court proceedings; or decisions that refuse to implement any provision contained in a regional legislative text on grounds of violation of a higher-ranking law, of infringement of the statute of an autonomous region or of a general law of the Republic; and decisions implementing a provision, the legality of which was questioned before that court on the grounds already mentioned. The Public Prosecutor's Department must *ex officio* appeal before the Constitutional Court against court decisions to the effect of giving application to provisions that the Constitutional Court held to be inconsistent with the Constitution or illegal.

The President of the Republic, the President of the Assembly of the Republic, the Prime Minister, the *Ombudsman*, the Attorney General, one tenth of the members of the Assembly of the Republic are entitled to request the Constitutional Court to pass fully

and generally binding rulings on the unconstitutionality or illegality, in the context of abstract control. As to the autonomous regions, the Constitutional Court may be requested to pass rulings on the unconstitutionality, where there is a violation of their rights or violation of the statute of the region concerned or the general law of the Republic, by the ministers for the Republic, the regional legislative assemblies, the presidents of the regional governments or one-tenth of the members of the regional legislative assemblies (article 281 of the Constitution).

Where a provision has been held to be unconstitutional or illegal in three concrete cases, the Constitutional Court must examine and declare it to be unconstitutional or illegal; the corresponding rulings are *fully binding* — producing their effects, on principle, as from the date of entry into force of the provision at issue (unless the infringed rule is subsequent), and determine the restoration with retroactive effects of the provisions that it may have revoked. Cases already judged are safeguarded, unless the Constitutional Court decides otherwise, and furthermore, it may fix the effects of the declarations of unconstitutionality or illegality.

The Constitution also provides that «at the request of the President of the Republic, the Ombudsman, or, on the grounds that the rights of the autonomous regions have been violated, the presidents of the regional legislative assemblies», the Constitutional Court must check as to the fact that the Constitution is not being complied with through the *omission* of the legislative measures necessary to make certain of its rules enforceable (article 283, paragraph 1).

## PARTY SYSTEM, ELECTORAL SYSTEM

«O Brasileiro era a alma do partido governamental, O Tapadas capitaneava a falange do conselheiro, Pernambuco falava com todos, esfregando as mãos e sorrindo. O regedor passava com importância por entre os grupos, recomendava ordem e respeito às autoridades, e dava de olho aos cabos, seus subordinados, para que se não esquecessem de cumprir as instruções recebidas votando no candidato ministerial.»

JÚLIO DINIS, *A Morgadinha dos Canaviais*, 1868, xxx

### 1. *The Party System in Portugal — Antecedents and Present-Day Situation*

80. The origin of the party system in Portugal coincided with the setting up of the constitutional system, being possible to divide it into six distinguishable periods: 1820-1851 — Genesis of the system; 1851-1891 — Two-party system; 1891-1910 — Multiparty system with no dominant party; 1910-1926 — I Republic — Multiparty system with a dominant party; 1926-1974 — *Estado Novo*, the age of the «no-party politics»; 1974-... — Multiparty system with no dominant party and with several *nuances*.

81. *1820-1851 — Genesis of the system* — As we have seen in the context of the constitutional development, these were stirring times involving significant and diversified situations — from the short life of the 1822 Constitution until the restoration of the Constitutional Charter in 1842, including the granting of the latter by King Pedro IV, the re-establishment of the absolute monarchy, the civil strifes between Legitimists and Liberals, the Charter's second life, the temporary return to the 1822 Constitution, and the approval of the Constitu-

tion of 1838. The most striking feature of this period was the a lingering atmosphere of political fighting — first between the upholders of the ancient order and the proselytes of liberalism, then between Constitutionalists and Chartists, and finally between Costa Cabral's followers and his detractors. It was the existence of factions, rather than organised parties, that was at issue: «They are prompted [...] initially, above all, by the desideratum of the power they want to seize by force, not simply in disregard of the constitutional existing devices, but even with the purpose of replacing them, wholly or in part», in the words of Marcelo Rebelo de Sousa (1).

Only after the Convention of Évora Monte (1834) did the first parties begin to emerge, or rather, their embryos, to be accurate. In the liberal field there was an overt conflict, then, between a conservative trend on the one side, which upheld the Charter, the king's constituent power, restricted enfranchisement and a mitigated parliamentarianism, and a democratic current, at times tending to support republican views, which advocated the sovereignty of the people, the extension of the franchise, and the parliamentarianism, on the other.

The Revolution of 1836 marked the victory, though short-lived, of the latter. Little by little, however, the *Orderly Party*, in which Rodrigo da Fonseca Magalhães played a leading part, moved into prominence during the life of the 1838 Constitution, while coming closer to the Chartist views. A former supporter of the radical Septembrism, converted to «moderation», would play a key role in the political leadership of this party. It was António Bernardo da Costa Cabral, who strove for the restoration of the Constitutional Charter — which took place in Oporto in 1842, as we have seen above. Then, a phase started which could have been most fruitful, bearing in mind that the country was equipped with the necessary substructures (it may be said that the road was being prepared for the «regenerator» period) — were it not for the autocratic course it took and the monopolistic speculation, which generated the dissatisfaction of the people, the fierce struggle between Cabralistes and Septembrists, allied to discontent members of the Orderly Party and even to King Miguel's old supporters. The gap widened and culminated in civil war, the *Patuleia* (1846-1847), where the parties turned

(1) *Os Partidos Políticos no Direito Constitucional Português*, Braga, 1983, p. 155.

out to be genuine forces under arms. In 1851, the victory of the vast anti-Cabraliste front cleared the ground for an agreement over the regime, urging in the Regeneration and the alternation in government.

82. 1851-1891 — *Two-party system* — The former *Orderly Party*, whose ideologists had withdrawn from the political scene during Costa Cabral's consulates, formed an alliance with moderate Septembrists, after 1851, under the leadership of Marshal Saldanha, drawing its inspiration from Alexandre Herculano in its early stages. A new era was initiated in the party political life of the country. Following the Regeneration movement, two political forces came into being which were to take turns in the government of the nation: the already-mentioned *Regenerator Party*, whose members Rodrigo da Fonseca, first, and Fontes Pereira de Melo, after him, played a key role, besides Marshal Saldanha; and Duke of Loulé's *Historical Party*, later Anselmo Braamcamp's, a political force whose sympathies were with the progressive liberal heritage with roots in 1820 and 1836. But times had changed and the two parties combined well enough to ensure the stability of the system. Under King Pedro V (1853-1861), for instance, it was the Historical Party that stayed in office longer, thanks to the monarch, who clearly favoured it; therefore, it shared in the success of the improvement policy that featured the Regeneration, but it was Fontes Pereira de Melo who held office for the longest period as Prime Minister. Actually, Fontes Pereira de Melo and Anselmo Braamcamp were to stand as genuine symbols for the regime.

In the 1860s, the two institutional parties coalesced and formed the so-called *melting government*; its policies caused widespread discontent, paving the way for a third party, the *Reformist* (of the Bishop of Viseu and of São da Bandeira) which pledged to moralise the life of the nation and to reform the Constitutional Charter. Yet the new party ere long merged with the Historicals through the *Pact of Granja*, launching the *Progressive Party* (1876). As a matter of fact, it was precisely between 1876 and 1891 that the two parties alternated in government in an institutionalised manner; elections sanctioned, *a posteriori*, the party chosen by the king to hold office in government. Meanwhile, Anselmo Braamcamp's reform policy to infuse into the new party fresh energies — notably through the socialising strand of *Vida Nova*, a movement standing for the renewal

of the country's political and economic life, counting upon the historian Oliveira Martins as its main driving force — failed to achieve the anticipated end. The progressive leader hardly survived that attempt — and the party (like the Regenerator) sunk into pure parliamentarism, drifting back to mere managerial positions within the system, gradually losing social influence to the Republican Party.

In line with Europe, the parties of the liberal constitutionalism were organised in local electoral centres, situated both in the seats of each district and at important localities. The party's social base of support was formed by the local chiefs in municipalities and districts. The Party's General Assembly was attended by delegates of local centres, ministers, former ministers, peers of the realm, parliamentarians, former civil governors and the governors of the day. The General Assembly elected an Executive Committee, but the power to decide lay with the party leader either in Government or in the Cortes.

83. *1891-1910 — Multiparty system with no dominant party* — The indifferenciation of the monarchist parties, increasingly shut upon themselves, under pressure from an excessive personalisation, on the one hand; the growing influence of the republicanism on public opinion, particularly in urban areas, on the other — both factors had a decisive bearing on the last stage of the liberal monarchy. We must not forget to add thereto the country's financial circumstances in view of the bankruptcy and the great instability of the political life. In 1901, João Franco Pinto Castelo Branco headed the split in the Regenerator Party, and created the Liberal Regenerator Party — which committed itself to attract the republican voters, despite its populist and authoritarian line. On the other hand, José de Alpoim led the «progressive dissent» in 1905, which organised in a party by 1907. The Republican Party, relying upon a significant militant support, would benefit from the unrest and lack of trust in the institutions by adopting two complementary tactics — the commitment to a revolutionary change and the engagement in the electoral fight — with important results, indeed (as a mere example, its victory at the election for the Lisbon city council, in Au-

gust 1910). Little by little, the monarchical institutions waned, the dynastic parties' legitimacy decreased — the ground was prepared for the republican project to succeed <sup>(2)</sup>.

84. 1910-1926 — *I Republic* — *Multiparty system with a dominant party* — When the country became a Republic on 5 October 1910, the *Portuguese Republican Party* — stemming from the Lisbon Federal Republican Centre (1873), the Federal Republican Centre (1878) and the Unitary Republican Party (1880), and reorganised in 1891 — emerged as the very *matrix* of the new political regime as well as of the party system. In fact, it is regarded as the source of all republican political groups.

In the Constituent National Assembly, three groups centred on the three most pre-eminent figures of the new system: the Portuguese Republican Party proper, which changed its name to *Democratic*, rallied round Afonso Costa, claiming the jacobin and radical tradition; the *Evolutionist Party*, which owes its origin to António José de Almeida, appeared as a conciliatory, liberal and tolerant force; the *Republican Union* or Unionist Party, in its turn, was formed on the initiative of Brito Camacho and always had little political significance, as compared with the others; it invariably stood for the most conservative views of the republican ideal. Moreover, the Unionists were associated with the emergence of such movements as those which ushered in the dictatorships of Pimenta de Castro (1915) and Sidónio Pais (1917-1918). In the early times of the regime, Evolutionists and Unionists were allied, forming the *bloc*, but with Portugal's entry into the war, in 1916, António José de Almeida's party associated with the Democrats, founding the *Sacred Union*.

Ere long the Democratic Party stood out as the leading force, and remained in power far longer than any of the other political forces. It emerged victorious from nearly all elections between 1910 and 1926 — except for the 1921 parliamentary election. As Marcelo Rebelo de Sousa said: «Similarly to what had happened under the constitutional monarchy, one of the best legal and political devices

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(<sup>2</sup>) On this topic, Vasco Pulido Valente, *As Duas Táticas da Monarquia perante a Revolução*, Lisbon, 1974.

to perpetuate the Democratic Party's dominance is the electoral system, under which the majority representation method still persists <sup>(1)</sup>.

If a multiparty system confined to three forces has prevailed until 1917, the truth is that as from this year — which coincides with the beginning of the dictatorial interregnum of Sidónio Pais — a dispersed multipartism was to develop. Under Sidónio's consulate, Professor Egas Moniz led the ephemeral *Centrist Party* which aimed at being the *cornerstone* of the new presidential system. On Sidónio's death, some members of that party sided with former Unionists and some Evolutionists (whose leader, in the meanwhile, had been elected President of the Republic) and formed the *Liberal Party*, which was conservative in its views. Whilst other Evolutionists had rather assemble in the *Popular Party*, more left wing, yet of less political significance.

Early in 1920, in the wake of an important split within the Democratic Party, the reason therefor being the party's refusal to support a governmental solution issuing from its own ranks, the *Reconstitutionist Party* came into being under the leadership of Álvaro de Castro.

The «bloody night» of 19 October 1921 — a dreadful settlement of a dispute, which has never been clarified, whereby António Granjo, Machado Santos and Carlos da Maia were assassinated — contributed to the formation of the *Nationalist Party* through the Liberal Party and the Restorationist Party. It was necessary to save the Republic by a combination of efforts capable of giving rise to an alternative to the Democratic Party. Nevertheless, serious divisions disclosed before long and Álvaro de Castro founded the short-lived *Republican Action Group*; in the twilight of the regime, it was Francisco Cunha Leal's *Republican Liberal Union* that emerged on the political scene. In times of dissents, a split in the Democratic Party accounted for the constitution, in 1924, of the *Democratic Left Party* led by José Domingues dos Santos — who accused the democratic leader António Maria da Silva of being too conservative in his policy and too narrow-minded vis-à-vis a changing society.

(1) *Op. cit.*, pp. 172-173.

Apart from the Democratic Party, which enjoyed the strongest support in the country, the remaining political forces were no more than associations locally or regionally influent or merely parliamentary groups. By virtue of its statutes, the party was made up of its members who elected the political committees (in parishes, councils and districts). The Congress was the highest decision-making body which used to hold a meeting every year, and the Directory was the executive body in charge of the ordinary affairs.

The political fragmentation was favoured by an electoral legislation which allowed the patronage by non-partisan entities of candidatures for the Congress — as was the case of the *Economic Interests Union*, an entrepreneurial organisation which, for instance, had six parliamentarians and three senators sitting in the Congress of the Republic in 1926.

85. 1926-1974 — «*Estado Novo*», or the «no-party politics» phase — «No-party politics», that is the way that the regime stemming from the military dictatorship inaugurated in 1926 presented, euphemistically, the monolithic power. From the point of view of Marcelo Rebelo de Sousa, who has been several times mentioned in the context of our analysis of the party political development in Portugal, the life of the 1933 Constitution is matched by a leading-party system: «The outstanding characteristic of this sort of system is the existence of a party political force which assumes, on the factual plan, an exclusive role in making the nomination of candidates for offices in the nominally-elective organs (4).» Despite the fact that the *National Union* (Decree-Law no. 21 608, of 20 August 1932) and the *Popular National Action* (1970) did not claim to be political parties, rather a «lasting group aiming at participating in the institutions' workings» and an entity intending to «develop and promote its principles and make them prevail in public administration and in the Government», respectively, the truth is that all officially-nominated candidates for the nominally-elective organs, at central and local level, were put forward by such organisations.

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(4) *Op. cit.*, pp. 181-182.

Leading party? Single party, as Manuel de Lucena likes better (5)? State party? Lasting group? Actually, in Oliveira Salazar's words, it was a «no-party politics» system (which he had rather label «national politics simply» — cf. the address inaugurating the Second Conference of the National Union, Oporto, 1949). This contradiction in terms presupposed a non-democratic logic, in spite of some existing, merely tolerated entities of an ambiguous status which represented some currents of opinion (monarchist groups, republican associations), but which could not be assimilated to parties. Whether it fulfilled or not all the requirements of a single party, it is certain that the *National Union*, at its best came close to such a type of party — being the subservient instrument of the autocratic power.

Until 1945, only *National Union* lists were put forward in the elections for the National Assembly. In postwar period, subsequently to the defeat of the Axis powers and in an international climate favouring democracy, several attempts were made to nominate opposition lists. For want of neutrality on the part of the Government, such candidatures were systematically withdrawn, except for the elections held in 1967 and 1973, under Marcello Caetano, who had replaced Oliveira Salazar on his retirement for health reasons (6). In 1969, the CDE — Democratic Electoral Commission, the CEUD — Democratic Unity Electoral Commission, and the CEM — Monarchist Electoral Commission stood for the election; in 1973, the CDE was the sole opponent to the Popular National Action and included members of both the Communist Party and the newly formed Socialist Party, whose main activists had supported the Democratic Unity Electoral Commission four years before. On both occasions the opposition failed to have any of its candidates elected.

At the presidential elections of 1935 and 1942, only the candidature of the National Union — that of General António Óscar Fragoso Carmona — was put forward.

In 1949, General José Maria Norton de Matos appeared as the candidate of the opposition against General Carmona, but his candidature was withdrawn just before the polling day for lack of guaran-

(5) *A Evolução do Sistema Corporativo Português — I — O Salazarismo*, Lisbon, 1976, pp. 49-50.

(6) In 1953, an opposition list, headed by Cunha Leal, stood for the election but nobody was elected.

tees of a fair conduct of the electoral process. In 1951, on Fragoso Carmona's death, two candidates of the opposition stood at the presidential election — Professor Ruy Luís Gomes, who was declared ineligible, and Admiral Quintão Meireles, who withdrew his candidature for want of the minimal guarantees of fairness in the electoral process. General Francisco Higino Craveiro Lopes, the candidate nominated by the *National Union*, would stay in office until 1958. That year, Craveiro Lopes did not stand for re-election; the regime had rather put forward someone of a less activist profile — the Rear Admiral Américo Thomaz. Yet two opposition candidates — Dr. Arlindo Vicente and General Humberto Delgado — stood in the presidential race. The former, backed by the Communist Party, withdrew his candidature in favour of the latter — a personality connected with the *Estado Novo*, but who was in total disagreement with the President of the Council. Humberto Delgado caused quite a stir in the foundations of the regime for the wave of enthusiasm he inspired. Admiral Thomaz was declared elected, but accurate voting figures were never publicly announced. It was the last time that a president of the Republic had been formally elected by direct suffrage under the 1933 Constitution. In 1965 and 1972 Américo Thomaz was re-elected, indirectly, by a restricted electoral college.

During the *Estado Novo* and in so far as the National Assembly was concerned, the electoral system always made sure that the National Union, and later the Popular National Action, retained its dominant or monopolistic position — by adopting the majority representation or regulating the electoral capacity, by placing restrictions on the nominations of candidatures, or by resorting to a method restricting electoral enrolment.

86. On 25 April 1974, the Programme of the Armed Forces Movement provided for the formation of political associations, the embryos of the would-be political parties. Although there has been no legislation on parties until 1974 (Decree-Law no. 594/74 and Decree-Law no. 595/74, of 7 November), the truth is that organisations claiming that status mushroomed before long. Nevertheless, the number of parties progressively decreased, thus enabling us to make a brief recital, taking into account only those forces that have or have had some parliamentary representation.

87. You can find below a description of the four parties which have been represented in Parliament since the Constituent Assembly of 1975:

*a) Democratic and Social Centre (CDS)* — Following the Christian Democrat ideology, it was founded by Diogo Freitas do Amaral, Adelino Amaro da Costa, Basílio Horta and Xavier Pintado, among others. It was one of the signatories of the two platforms concluded by the Armed Forces Movement and the political parties (1975), but it did not take part in any Provisional Government (1974-1976). It was the only party that has voted against the final version of the Constitution of 1976. In 1978, it reached a political agreement with the Socialist Party, rendering viable the Second Constitutional Government which had the participation of Centrists. As from 1979 it formed, along with the Social Democratic Party and the Popular Monarchist Party, the Democratic Alliance, which won the overall majority of the seats in the Assembly elections of December 1979 and October 1980. This Party was represented in the 6th, the 7th and the 8th Governments (1980-1983). In December 1980, the Democratic and Social Centre lost one of its greatest leaders, Adelino Amaro da Costa, the then National Defence Minister, who died in an air crash, together with the Prime Minister Francisco Sá Carneiro. By the end of 1982, following the resignation of Freitas do Amaral, Francisco Lucas Pires took the leadership of the party, and, in 1986, Adriano Moreira was elected president of the party. Diogo Freitas do Amaral resumed his leadership position in 1988, after obtaining 49% of the votes at the 1986 presidential election, which he had fought as an independent candidate supported by the Social Democratic Party and the Centrists.

*b) Portuguese Communist Party (PCP)* — This party, whose roots lie in the Portuguese Maximalist Federation, was founded in 1921. Influenced by the Marxist-Leninist ideal, it has kept, throughout its long life, its allegiance to the principles and practices which guided the Russian revolution of 1917, and to the official Soviet pattern prevailing in the Soviet Union. In the period between 1926 and 1974, its members were persecuted and compelled to clandestineness, under the leadership of Bento Gonçalves; in the forties, Álvaro Cunhal emerged on the political scene as the great reorganiser of the party, side by side with José Gregório and Júlio Fogaça. Particularly from 1944 onwards, the influence of the Communist Party was clearly visible in the strategies of the opposition (the 1944, 1946 and 1957

Conferences) — from the Anti-Fascist Movement for the National Unity (MUNAF) to the Portuguese Democratic Movement (MDP-CDE, 1969, 1973), without forgetting the Democratic Unity Movement (MUD, 1945). Subsequently to 1974, the Communist Party participated in six provisional governments and was the third major force elected to the Constituent Assembly. In the course of the revolutionary process, it fostered or favoured some radical abuses and some of its leading members even voiced the party's reservations in respect of the pluralistic participatory democracy which modelled and is enshrined in the Portuguese Constitution. It has evolved a political action in the Assembly of the Republic (where it has been in the opposition since 1976), in local authorities, in the so-called «agrarian reform zone», and in trade-unions — in this context, it has maintained strong and close links with the General Confederation of Portuguese Workers — National Inter-Unionist Federation (CGTP-IN). Since 1977 the Communist Party has been a member of several electoral alliances: the United People Electoral Front (1977), United People Alliance (1978) and, at present, the Unitary Democratic Coalition which was born in 1987, including the environmentalist Green Party and some members of the «Democratic Intervention Association».

c) *Socialist Party (PS)* — The foundation of the Portuguese Labour Socialist Party can be traced back to 1875, upon proposal of Azedo Gneco who relied on the support of José Fontana, Antero de Quental and Nobre da França. In view of the country's incipient industrialisation and the growing influence of the Portuguese Republican Party on the lower and middle bourgeoisie and the urban proletariat over the last decades of the 19th century, the Socialists had little significance in the Portuguese society, at the turn of the century. Nevertheless, the party has been closely linked with the international socialism as from its earlier times. For instance, it was Jean Jaurès himself who secured the Portuguese representation to the International Socialist Congress of Paris, in 1900. Jean Jaurès, who would visit Portugal in July 1911, two years prior to the Portuguese Labour Socialist Party joining the International II. In 1919, the socialist Augusto Dias da Silva entered the government of Domingos Pereira as Minister for Labour. Following the establishment of the military dictatorship in 1926, the party lost its organisation — though it went on working until 1933, the year of its fourth Conference which took place in Coimbra. The year of 1942 saw the

emergence of the Nucleus for Indoctrination and Socialist Action; two years later the Socialist Union came into being. In 1945, the fundamental nucleus that created the MUD — Democratic Unity Movement was made up of Socialists (José Magalhães Godinho, Gustavo Soromenho, Manuel Mendes, Câmara Reys . . .). On May 1st 1947, António Sérgio presented his «Address to Socialists»; in 1953 the Republican-Socialist Resistance came into being; in 1961 the «Programme for the Democratisation of the Republic» was published, and, in 1964, Mário Soares, Tito de Morais and Francisco Ramos da Costa created the Portuguese Socialist Action (ASP). In March 1968 Mário Soares, the leader of the said Socialist Action, was deported to S. Tomé, in pursuance of a decision of the government of Salazar; he came back in November of that year, by an order of Marcello Caetano, then Chairman of the Government. In the 1968 elections, the Portuguese Socialist Action promoted the lists of the Democratic Unity Electoral Commission (CEUD), which obtained worse results than the Democratic Electoral Commission (CDE). In 1970, Mário Soares was forced to leave the country; in April 1973 the Portuguese Socialist Action gave way to the Socialist Party at the Bad-Munstereifel Congress. Its members stood on the lists of the Democratic Electoral Commission, together with Communists and Independents, for the elections of that year. After 1974, the Socialist Party, under the leadership of Mário Soares, took part in five provisional governments, and emerged victorious from the elections for the Constituent Assembly (1975), having secured the majority of the seats therein. The party repeated its electoral success at the 1976 general election. In 1974 and 1975, during the revolutionary process, the party detached itself from the Communist Party, either in respect of the «trade-unionist unicity» issue, when Salgado Zenha stood out by denouncing the Communist Party's dominance of the labour movement, and by resolutely defending pluralism and fundamental liberties. In 1976, the Socialist Party gave its support to Ramalho Eanes, a candidate for the President's office — and won — the same happening in 1980 — but at that time Mário Soares voluntarily distanced himself from the re-candidature. The socialist leader ruled three times as prime minister (in 1976-1977, at the head of a minority government supported by the Socialist Party alone; in 1978, leading a majority government relying on a Socialist Party-Democratic and Social Centre arrangement; in 1983-1985, heading

a majority government, formed upon an agreement concluded between Socialists and Social Democrats). Just as it occurred in between 1978-1983, so the Socialist Party has remained outside the Government since 1985, being the main opposition party in Parliament. The October 1985 general election resulted in a severe setback, in that it reduced the party's membership in Parliament to 20%, which may be ascribed to the introduction of an economic austerity policy by the so-called «Central Bloc» Government (PS-PSD). In February 1986, the party's historical leader Mário Soares was elected President of the Republic by the whole Left, defeating, in the second ballot, the candidate of both the Social Democratic Party and the Democratic and Social Centre, Diogo Freitas do Amaral. Vítor Constâncio succeeded Mário Soares as secretary-general of the Socialist Party, having resigned in October 1988. Jorge Sampaio was elected at the Congress of January 1989 to replace the outgoing leader — and later became Mayor of Lisbon, in the same year.

d) *Social Democratic Party (PPD/PSD)* — In May 1974, three members of the former «Liberal Wing» of the National Assembly under Marcello Caetano, Francisco Sá Carneiro, Magalhães Mota and Francisco Pinto Balsemão, announced the foundation of the *Popular Democratic Party* which adopted the motto «Social Democracy for Portugal» and had a declared aim to pursue a centre-left policy for the country. Among its founder members, there were Catholics who had distinguished themselves in opposing the authoritarian regime, historical Republicans and «humanist Socialists». The party took part in five provisional governments, like the Socialist Party. It was the second largest party elected both to the Constituent Assembly and to the Assembly of the Republic's first legislative period (1976). It approved the 1976 Constitution, with the Socialist Party, the Communist Party and the Portuguese Democratic Movement/Democratic Electoral Commission. Francisco Sá Carneiro soon achieved some eminence as the historical leader of the party. In 1975, when illness forced him to go abroad, he was replaced by Emídio Guerreiro, an old militant of the opposition, known for being close to Humberto Delgado subsequently to 1958. In 1975, the party ran into its first turbulent period and, in the wake of a significant split within its ranks, occurred during the Congress of Aveiro, some of its members, namely Emídio Guerreiro himself, Jorge Sá Borges and Carlos Mota Pinto, among others, withdrew from the party for dis-

agreeing with Sá Carneiro over political and statutory issues. Sá Carneiro headed the party in 1976 and 1977, in the opposition. In 1976, like the Socialist Party and the Democratic and Social Centre, the Popular Democratic Party decided to give its support to General Ramalho Eanes in the election for the presidency. In 1977, the party changed its name and became the Social Democratic Party. Sá Carneiro, unexpectedly, relinquished his post as leader of the party, in the same year, alleging that the positions adopted by his leading colleagues were too conciliatory with regard to the Socialist Party and Ramalho Eanes. It was necessary to find a way out of the *impasse* — to use the term Francisco Sá Carneiro himself used — before which the national political life was standing, which called for the constitution of a bloc to serve as an alternative to the Socialist Party as well as required a struggle for a change in the «political system». In 1977 and early in 1978, the party's lead was entrusted to António Sousa Franco, a young Law Professor, who offered his resignation due to lack of conditions to go on performing his duties. On his return in 1978, Sá Carneiro vigorously launched an attack on the then President of the Republic's ambivalent stance, the weight of the political and military power, and on the Socialists' state views. His criticism assumed a gradually increased acuteness from the moment when the Head of State inaugurated his experiment on governments, on «presidential initiative» — Nobre da Costa, 1978; Mota Pinto, 1978-1979; Maria de Lourdes Pintasilgo, 1979. In April 1979, the party faced another split and thirty-seven of its parliamentarians abandoned its ranks, although remaining in Parliament as independents (Sousa Franco, Magalhães Mota, Sêrvulo Correia, Cunha Leal, Jorge Miranda, Figueiredo Dias...).

Few months later, the Social Democratic Party found an antidote to such a haemorrhage of cadres and activists by entering an agreement with the Democratic and Social Centre and the Popular Monarchist Party with a view to forming the *Democratic Alliance*, which, after obtaining an absolute majority in the 1979 and 1980 elections, placed Sá Carneiro at the head of the 6th Constitutional Government (1980). Yet, the death of Francisco Sá Carneiro in an air crash came as a great shock to the party, in December 1980 — on the closing days of the party's hardfought campaign for General Soares Carneiro against General Ramalho Eanes in the race for the presidency. Francisco Pinto Balsemão became the leading man at once

in the party and in the Government (1980-1983). The Democratic Alliance would not survive a setback, though not severe, in the 1982 local elections; the eventual breaking off of the Alliance entailed the resignation of its leader and the introduction of Carlos Mota Pinto, a dissident of the Aveiro Congress who had joined the party in the meanwhile. Despite being the second largest party after the 1983 parliamentary election, the Social Democratic Party reached an agreement with the Socialist Party on the formation of a coalition — and the «Central Bloc» Government took office to pursue an economic policy of austerity, dictated by the crisis prevailing in the country. As early as 1985, Mota Pinto resigned the leadership of the party, following persistent pressure from within his party. Rui Machete deputised for him *ad interim*. In May, the party held its Congress at Figueira da Foz in dramatic circumstances, few days after Mota Pinto's death of a sudden illness. Rather unexpectedly, Aníbal Cavaco Silva was elected the new chairman of the party; he led the Social Democrats to an electoral victory in October, in the sense that they managed to secure a relative majority in Parliament. Up to 1987, Cavaco Silva stayed at the head of a homogeneous minority government which was defeated in Parliament by virtue of a motion of censure, tabled by the Democratic Renewal Party — bringing about the dissolution of the Assembly by the President of the Republic, who ordered elections to be held in July; the Social Democratic Party succeeded in winning an absolute majority, an unprecedented fact as from 1976. In 1985, the party stood for Diogo Freitas do Amaral, a candidate for the presidential election. Aníbal Cavaco Silva continues to decide the fortunes of the party and the Government; the party has been in government for over ten years (1979-1991) uninterruptedly.

Apart from these parties which have ever been present in Parliament since 1975, other parties of minor significance are to be mentioned:

e) *Portuguese Democratic Movement/Democratic Electoral Commission (MDP/CDE)* — This party has its origins in the 1969 and 1973 elections, still held under the Constitution of 1933. Soon after the 25 April 1974, the Communist Party, against the views of the Socialist and the Social Democratic Parties, advocated the need to maintain a unitary structure which would rally the different forces upholding the Revolution. Such an idea never materialised and the leading members of the Portuguese Democratic Movement decided

to organise in a political party, which stood for the election for the Constituent Assembly and obtained a small share of the seats. Later, the movement joined the United People Electoral Front and the United People Alliance, along with the Communist Party. As a consequence of an unbridgeable gap between the Portuguese Democratic Movement and the Communists, the former, under the leadership of José Manuel Tengarrinha, withdrew from the United People Alliance and stood by itself at the 1987 general election, failing to secure its representation in Parliament. Meanwhile, some of its members who were more in line with the Communists left the party and formed an association, «The Democratic Intervention», which is currently a party to the Communist-dominated Unitary Democratic Coalition.

f) *Popular Monarchist Party (PPM)* — It was founded in 1974 by adherents to the monarchic cause — notably, Gonçalo Ribeiro Teles, Henrique Barrilaro Ruas, Augusto Ferreira do Amaral — known for their positions in favour of an open system and in defence of democracy during the regime overthrown in 1974; this party played an important role in strengthening the democratic system and in pioneering the ecological banner and the strife for the preservation of the environment. In 1979, it took part in the Democratic Alliance, and was represented both in Parliament and in Government, in the period between 1980 and 1983. In 1985, members of the party were elected to the Assembly of the Republic as independents on the lists of the Socialist Party. In 1985, Gonçalo Ribeiro Teles came into prominence by standing alone as a candidate for the Lisbon city council on the «*alfacinha* list» (green), winning a seat as a councillor.

g) *Democratic Popular Union (UDP)* — This is an electoral front of Marxist-Leninist-Maoist inspiration, whose sympathies have been with the Albanese system all the time. It was founded in December 1974 by the combination of several maoist associations, namely CCR(M-L), UR(M-L) and CARP(M-L). One of its candidates was elected to the Constituent Assembly (1975) for Lisbon. In 1976, the party won a seat in the Assembly of the Republic, which it managed to secure in the 1979 and 1980 elections. Its members Acácio Barreiros and Mário Tomé stood out in parliamentary life. Since 1983, the Democratic Popular Union has not been represented in Parliament. In the 1976 presidential election, this electoral front stood out as one of the mainstays of Otelo Saraiva de Carvalho, who would

be the second top candidate (he won 16.2% of the votes) coming next to Ramalho Eanes (60.6%). Mário Tomé is the present-day leader of the Democratic Popular Union.

*h) Democratic Renewal Party (PRD)* — Born in 1985, under the leadership of Hermínio Martinho and tacitly fostered by Ramalho Eanes, the then president of the Republic, this party pledged to «moralise the political life of the Nation». Taking advantage of the erosive effects of the policy of austerity implemented by the Socialist-Social Democratic Government (1983-1985), the party turned out to be the chief beneficiary of the parliamentary dissolution in 1985, upon the initiative of General Ramalho Eanes, at the end of his second term of office. The party came near to winning an electoral outcome similar to the result obtained by the Socialists. In parliamentary terms, it became thus the third main party, a pivotal force — essential to maintaining the social democratic government in power (1985-1987). At the 1985 local elections, however, the Democratic Renewal Party displayed its feebleness and incipient organisation, and in the 1986 presidential elections it gave its support to the candidate Salgado Zenha who did not compete in the second ballot. In 1987, the party dealt the final death blow to Cavaco Silva's minority government by introducing a motion of censure in Parliament that was approved. The ensuing dissolution of Parliament brought about the virtual loss of its parliamentary representation, since it only secured seven out of the forty-five seats it held in dissolved Assembly. Meanwhile, Ramalho Eanes himself had seized the leadership of the party, which he relinquished ere soon, in view of the electoral defeat — being succeeded by Hermínio Martinho, again. At the election for the European Parliament, in 1989, Renewal Party entered an agreement with the Socialist Party and had one of its members elected out of the Socialist list on which he stood as an independent candidate. The Renewal Party's decline in its electoral significance has framed heated debates within the party, in view of its difficulty in asserting a political project of its own, capable of mobilising the electorate.

*i) Left Union for the Socialist Democracy (UEDS)* — It resulted from a split in the Socialist Party, driven by António Lopes Cardoso, a former Agriculture Minister (8 November 1977). The party was built up in August 1979, owing to the transformation of the Labour Fraternity Association which had distinguished itself of its political and cultural activities. Its roots lie mainly in the acute criticism to

the Socialist Party's «shift to the right» in 1977, when the Socialists alone supported the 1st Constitutional Government, chaired by Mário Soares. In 1979, the party stood for the legislative elections and had no candidate elected. The following year, it allied with the Socialist Party and the Independent Social Democratic Action (ASDI) in the Socialist and Republican Front, and won four seats in the Assembly of the Republic. In 1983, some prominent members of the party appeared on the Socialist Party's lists as independent candidates and formed a four-member parliamentary group. In 1985, the Left Union for the Socialist Democracy splitted off and a significant part of its members joined the Socialist Party. Lopes Cardoso, César de Oliveira and António Vitorino played an important role as leading members of the Left Union for the Socialist Democracy.

*j) Independent Social Democratic Action (ASDI)* — It originated from a split in the Social Democratic parliamentary, in 4 April 1979. In 1979, members of the party, then a political association, participated in the 5th Constitutional Government, chaired by Engineer Maria de Lourdes Pintasilgo — António Sousa Franco was the Finance Minister, and Joaquim Lourenço the Minister for Agriculture. In 1980 general election, the Independent Social Democratic Action, then as a party, joined the Socialist and Republican Front, side by side with the Socialist Party and the Left Union for the Socialist Democracy, and four of its candidates were elected. In 1983, prominent leaders of the party stood as independent candidates on the Socialist Party's lists, and formed, like the Left Union for the Socialist Democracy, a three-member parliamentary group. In Parliament the party's action was remarkable, and the draft it introduced in 1982 initiating the amending of the Constitution process deserves being singled out. In 1985 the party split basically up into a group which joined the Democratic Renewal Party, whereas another supported Mário Soares as a candidate for the President's office. Among its leaders and active members, mention should be made of António Sousa Franco, Magalhães Mota, Sérvulo Correia, Jorge Miranda and Vilhena de Carvalho.

*l) Ecological «Green» Party (PEV)* — A political association, which stood as a member of the United People Alliance (APU), where it played a peripheral role if compared with the Portuguese Democratic Movement, for the 1983 general election, the Green Party had its first representative in the Assembly owing to a vacancy. Later, the party assumed greater significance in the Communist-led alliance,

mainly after the Portuguese Democratic Movement's denunciation and subsequently to the formation of the Unitary Democratic Coalition (CDU). In 1987, two candidates were elected to the Assembly of the Republic — Maria Santos and Herculano Pombo; in the European election (1989) its candidate (Maria Santos) was elected on the lists of the Unitary Democratic Coalition. In 1990, the party underwent a severe crisis — in view of a cleavage between the «defenders of autonomy» and those who favoured an alliance with the Communist Party.

## 2. *An Outline of the Party System and the System of Government (1976-1990)*

88. In the life of the 1976 Constitution, several phases are to be found, in so far as the workings of the party and government systems are concerned, being dependent of the parliamentary support of the Executive, the relationship between the organs of supreme authority, the relative influence among them and the governmental solutions' degree of stability:

- a) Single-party minority Government (1976-1977);
- b) Attempt to form a government relying on a parliamentary majority (1978);
- c) Governments formed on the President's initiative (1978-1979);
- d) Majority Government formed by a combination of several parties as a result of a pre-electoral alliance (1980-1983);
- e) Majority Government including several parties in the absence of a pre-electoral alliance (Central Bloc — 1983-1985);
- f) Single-party minority Government (1985-1987);
- g) Government relying on a single-party parliamentary majority (1987-...).

Let us make a brief survey of the characteristics of each phase.

89. *Single-party minority Government (1976-1977)* — After six provisional governments — five of them were formed by the Popular Democratic Party, the Socialist Party and the Communist Party (1st, in May 1974; 2nd, in June 1974; 3rd, in October 1974; 4th, in March 1975; 6th, in September 1975) and one with the support of the Communist Party and independents (5th Provisional Government,

in August 1975) —, the Constitution's coming into force, and the first legislative elections, the democratic constitutional institutions started working in full.

After winning the election of 25 April 1976, without an absolute majority in Parliament, the Socialist Party (34.8 % of the votes and 107 MPs out of 263) decided to give its support only to a single-party government. Therefore, once he was appointed to the office of Prime Minister by the President of the Republic, the socialist leader Mário Soares accepted the task of forming a Cabinet without a majority support in Parliament, relying merely on the royalties of the members of the Socialist Party. He profited from the constitutional device that does not require the express approval by the Assembly of the Republic of the Government Programme, rather imposes its not being rejected by the absolute majority of the members sitting and voting. The second largest party — the Popular Democratic Party, under Francisco Sá Carneiro — which had polled 24.3 % and 73 seats, did not propose the rejection of the Programme, and the 1st Constitutional Government was therefore deemed to be ratified by Parliament.

It was then remarkable the Socialist Party's action as a dominant political force — which corresponds to a period featured by the parliamentary pre-eminence of the semipresidential system. Actually, there was, to a degree, a weakening of the role of the President of the Republic, General Eanes, elected on 27 June 1976 with the support of the Socialist Party, the Popular Democratic Party and the Democratic and Social Centre. Basic legislation was enacted by the Assembly of the Republic, owing to specific compromises reached between the Socialists and any of the opposition parties, depending on the matter at issue. From March to August 1977, it was apparent the systematic convergence between the Socialist Party and the Popular Democratic Party, which accounted for the adoption of primary economic legislation (delimitation of sectors, agrarian reform, leasing of land, and compensation). This combined action, however, coincided with the Head of State's greater intervention — from which Sá Carneiro would distance himself, in the same way as he disapproved of the Social Democrats' «flirt» with the Socialists, in Parliament. The party of Mário Soares became thus aware that it needed more stable and lasting supports, and sought to bargain them though unsuccessfully. It was too late! The closing days of 1977 witnessed

a great political turmoil. Sá Carneiro unexpectedly withdrew from the leadership of his party — with the purpose, it would be later realised, of agitating the *status quo* with a view to preparing an alternative to the power, buttressed by the Socialist Party-Eanes axis. Sousa Franco took the reins of the social democratic «power» in his hands, at the head of the group that disagreed with Sá Carneiro's political interpretation of the events — in their opinion, it was necessary to reach an agreement with the Socialist Party or other political parliamentary force, namely the Democratic and Social Centre; in 1977, an agreement was entered with the latter for mutual consultations («democratic convergence») with a view to strengthening the democratic system.

90. *Attempt to form a majority government relying on parliamentary support (1978)* — On 7 December 1977, the Socialists could do nothing but see a motion of confidence, which had been tabled by the Government itself, rejected in Parliament by the opposition. Thus, Mário Soares was bound to form a government relying on a parliamentary majority with the purpose of curbing the political erosion of the Socialist Party — and providing a lasting solution to the country's serious economic problems. The Popular Democratic/Social Democratic Party, under the temporary leadership of Sousa Franco, could not give the necessary support — that, moreover, had the approval of many leading members of the day. Then, an agreement was concluded by the Socialist Party and the Democratic and Social Centre on parliamentary co-operation, focussed on governmental action. It was the triumph of Adelino Amaro da Costa's «centrist» thesis, drawing its inspiration from the Italian Christian Democratic line, according to which the Democratic and Social Centre could and should «by-pass» the Socialist Democratic Party and bargain with the Socialist Party directly, being thus allowed more latitude for action and room for manoeuvre. It was the celebrated «camel's bosses» thesis. How long was it to last? Nobody dared to predict. Adelino Amaro da Costa, a versatile and brilliant mind, sincerely believed that it would succeed. . . .

Mário Soares was recalled to form a government — which included people from the Democratic and Social Centre, formally on a personal level. It was a quasi-coalition — which proved to be short-lived nevertheless, but time enough for an agreement to be concluded with the International Monetary Fund on economic stabilisation matters.

Before long, the contradictions between the two parties, united by a mere «marriage of conveniences», became self-evident. The radicalisation in the centrist ranks against such a union, regarded as *contra natura*, was apparent. Two very strong reasons or pretences were quickly brought into light: the first was the opposing fight within the Social Democratic Party which had stiffened, principally since the resignation of the leading group headed by Sousa Franco, elected at the 5th Congress (Oporto, January 1978) and who had become a target of an unbearable «curtain fire» on the part of the followers of Sá Carneiro, and the announcement of the return of the party's historical leader; the other, the President of the Republic's conspicuously distancing himself from the Government. Alternatively, certain difficulties in the health and agriculture sectors drove to the inevitable breaking off of the solution — and the unilateral termination by the Democratic and Social Centre of the agreement concluded with the Socialist Party. The political gulf was too deep to be eluded....

91. *Governments formed on the President's initiative (1978-1979)* — When the centrist ministers resigned from the Government and the Democratic and Social Centre denounced the agreement it had concluded with the Socialists, the President of the Republic considered the formula which had made him reappoint Mário Soares to be used up. He dismissed him against the opinion of the socialist leading members, who sustained that the Government could survive, provided that the vacancies were filled, until it was defeated in the Assembly of the Republic by virtue of the application of the constitutional devices available. For Ramalho Eanes, however, the situation was crystal clear: there were no conditions for a stable and coherent government to be formed on a parliamentary basis. Thus, times of subordination of the party system and of assertion of presidential ascendancy were inaugurated — according to the thesis advocated by differing people, from those who favoured an inter-party alliance (Socialist Party-Social Democratic Party), apt to implement a policy articulated with the President of the Republic, to those who were showing signs of the emergence of a new presidentially oriented political force.

On being appointed by the President of the Republic to the post of Prime Minister, Engineer Nobre da Costa, a personality uncommitted to any of the political parties and a former minister under

Mário Soares, decided to form a government composed of independents; in September 1978, the rejection in Parliament of the programme of «his» government — entailing the collapse of the Executive — was a temporary setback for President Eanes. It was the natural reaction of the party system.

Despite that failure, the President maintained his point of view and appointed Professor Carlos Alberto da Mota Pinto, an ex-member of the Popular Democratic Party and former minister under Mário Soares, to office of prime minister. The Programme of the 4th Government was not rejected by Parliament and it seemed that the formula was to work. Difficulties ere soon arose nevertheless. Sá Carneiro, at the helm of the Social Democratic Party again, overtly in confrontation with the wing that wished to draw the party and the Socialists and Eanes together («Undelayable Options» — Sousa Franco, Magalhães Mota, Sérvulo Correia), did not disguise his views against the course followed by the Government and managed to lead the Assembly of the Republic to reject the draft Budget Bill for 1979. Mota Pinto met therefore with a hostile front in Parliament, while becoming aware that the President was less engaged in the political support to his government. At the same time there was a great dissent within the Social Democratic Party in the Assembly of the Republic and virtually half of its representatives became independent MPs.

As a number of parliamentary initiatives were in sight, meant to censure the Government, and realising that there were no political conditions to go on ruling, Mota Pinto offered his resignation which was accepted immediately after he had the second draft bill on the Budget for 1979 approved.

Eanes refused to accept a governmental solution based on a parliamentary majority made up of Socialists and dissidents of the Social Democratic Party. He preferred to dissolve the Assembly of the Republic and to call for elections; he appointed Maria de Lourdes Pintasilgo to preside over a one-hundred-day government on presidential initiative, being assigned the task of preparing the election. This government submitted its programme to the Assembly of the Republic and was not rejected because the motion of no confidence tabled by the Democratic and Social Centre and the Social Democratic Party failed to obtain the majority required, once the Socialist Party and the Communists abstained, while the dissidents of the Social Democratic Party voted against.

92. *Majority Government formed by a combination of several parties as a result of a pre-electoral alliance (1980-1983)* — In the second semester of 1979, as a response to the recently occurred split in the Social Democratic Party and trying to apply a remedy to check the growing ascendancy of the presidential branch of the system of government, Francisco Sá Carneiro launched an electoral front designed to win the legislative elections. The idea stemmed from the Democratic and Social Centre's proposal, revised and reinforced subsequently. The *Democratic Alliance* was born, composed of three parties (the Social Democratic Party, the Democratic and Social Centre and the Popular Monarchist Party), including in addition some members of the Reforming Movement, made up of former socialists (Medeiros Ferreira, António Barreto) who apparently favoured the President's increased intervention. The Social Democratic Party needed, after all, to remedy, in terms of public image, the haemorrhage of cadres that had recently taken place.

In the elections of 2 December 1979, the Democratic Alliance won the absolute majority of the seats in Parliament (42.5 % of the vote, 121 members elected out of 250, apart from 7 parliamentarians of the Social Democratic Party, elected for Azores and Madeira). A new era in the life of the system had started. There emerged a «dominating partisan bloc», in the words of Marcelo Rebelo de Sousa. There was a majority government, stable and coherent — which, moreover, would easily win the general elections of the following year (October 1980) with a considerable increase in the vote outcome (44.9 % — 126 MPs plus 8 of the Social Democratic Party, elected for Azores and Madeira). The socialist opposition, despite having formed the Republican and Socialist Front with the dissenters of the Social Democratic Party (ASDI) and the Left Union for the Socialist Democracy, did not obtain more than 27 % of the popular vote. It was the result of the undeniable success of the Democratic Alliance formula and its majority vocation.

As 1980 drew to a close, the political contest vigorously inflamed again with dramatism, for the election of a new president of the Republic was at stake. The Democratic Alliance presented General Soares Carneiro — a competent member of the Army with no past record of a democratic engagement — as its candidate. Ramalho Eanes stood again for re-election with the support of the centre-left and the left — from a given time onwards without the participation of Mário Soares, who voluntarily suspended his activities as secretary

general of the Socialist Party, following a statement made by Eanes whereby he showed himself in line with the Democratic Alliance's political project.

Sá Carneiro declared that he should relinquish his post in the Government, if Eanes was elected. The campaign reached its *peak* few days prior to the electoral choice. Despite the fact that he knew of opinion polls showing a trend in favour of the president of the day, the Social Democrat leader did not slow down his struggle. And it was in the middle of the fight, wishing to be on time at the last electoral meeting in Oporto, that he died in a tragic accident, together with the Defence Minister, the great strategist of the Democratic and Social Centre, Adelino Amaro da Costa, António Patrício Gouveia and Snu Abecassis.

Ramalho Eanes was re-elected (he polled 56.4 % against 40.2 % obtained by Soares Carneiro), Francisco Pinto Balsemão took the leadership of the party and the Government. The Democratic Alliance survived two years the death of its main architects. However, the 7th Government (9 January 1981-14 August 1981) saw its activity much affected by the instability prevailing in the coalition. Balsemão was challenged from within and outside the party, which rendered difficult the formulation of a straightforward strategic line and hindered the ascendancy of the Social Democratic Party within the framework of the coalition. The situation grew unbearable and the Prime Minister resigned. He was invited to form the 8th Government (4 September 1981-23 December 1982), which was vested with the duty to guide the parliamentary majority during the amending procedure. Despite the prevalent factors of uncertainty and instability, the Government managed to grow stronger temporarily — to the extent of enabling the conclusion of an agreement with the Socialist Party, which would render viable the 1982 constitutional amendment. Marcelo Rebelo de Sousa, referring to that period, speaks of a «widened dominating bloc» — crucial, apart from the constitutional reform, to the parliamentary voting of the National Defence and the Armed Forces acts as well as of the legislation on the Constitutional Court's organisation, working and procedure (7).

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(7) Cf. *op. cit.*, pp. 601-602.

After the adoption of the constitutional amendment and supplementary legislation, the crisis re-surfaced in the Democratic Alliance in a irreversible manner.

At the December 1982 local elections, the small losses sustained by the parties forming the Democratic Alliance served as the motive for the Deputy Prime Minister Diogo Freitas do Amaral to resign and, after him, the Prime Minister himself. Therefore, the name of Vítor Crespo was put forward by the Social Democratic Party with a view to the formation of a new government. It was a tactical step, taken without enthusiasm and little determination, but Eanes did not accept such a solution which, as a matter of fact, was not supported by any of the most prominent members of the two major parties of the Democratic Alliance. The President dissolved the Parliament and called for elections to be held on 25 April 1983.

*93. Majority Government including several parties in the absence of a pre-electoral alliance — (Central Bloc — 1983-1985) —* Notwithstanding Ramalho Eanes's disapproval of the line followed by the 1982 constitutional amendment about an allegedly reduction in his powers as a result of the disbandment of the Council of the Revolution, the truth is that the crisis of 1983 showed that the system kept, in practice, its necessary flexibility and left the President with considerable scope to decide. The 8th Government stayed in office for a long period of time — in these circumstances, the presidential ascendancy was quite apparent. It was thus possible, in a markedly serious economic situation, particularly as regarded the external debt, to counterbalance the want of legitimacy of an Executive deeply weakened. At the 10th Congress of the Social Democratic Party (Montechoro) new executive leaders were elected under the chairmanship of Mota Pinto — the former prime minister, who had rejoined the party and returned to the political scene.

The party political centre of gravity had clearly shifted to the Socialist Party since the constitutional amendment. Having managed to cope with the crisis that his party had undergone in the wake of the 1980 presidential campaign, Mário Soares appeared in 1983 as the favourite. The electoral figures testify to it (Socialist Party: 36.1 %; Social Democratic Party: 27.2 %), but, having failed to obtain an socialist absolute majority in the Assembly of the Republic, the Socialist Party was forced to reach an agreement with the Social Democratic Party, aimed at rendering viable the 9th Government,

the third chaired by Mário Soares. It was important that the second major party should participate in the difficult task of implementing a policy of austerity necessary to deal with the crisis.

Difficulties in the economic sector, the excessive weight of the external debt, the very big external and public deficit, the necessity of concluding another agreement with the International Monetary Fund, aimed at achieving stability — all these factors predicted that severe economic measures were to be taken by the new government. The Finance portfolio was entrusted to Ernâni Rodrigues Lopes, a distinguished independent economist, and a former ambassador, usually regarded as being close to the Social Democratic Party. Mário Soares gave him all his support and political protection and a package of austerity measures was ere soon introduced. The curbing of inflation and the reduction of the purchases to the outside world had a bearing on real income, unemployment, and several businesses were driven to have recourse to the «wages in arrears» policy. Public opinion's dissatisfaction was inevitable. Furthermore, the President had never liked that governmental solution. Behind the scenes, with his friends, he congregated energies to form a new political party — a catalyst for criticism and discontent — which came into being early in 1985.

Within the Social Democratic Party, the uneasiness of those who did not regard favourably the party's renunciation to the leadership of the party system revealed itself, little by little. Then, although being present in the Government, the party increasingly became the most obstinate core of the opposition. The «New Hope», a group actively led by Marcelo Rebelo de Sousa with the participation of José Miguel Júdice, Pedro Santana Lopes, and Durão Barroso, were decidedly campaigning «against the Central Bloc». Mota Pinto, in a strait-jacket, was driven to resign the leadership and his office in Government — shortly afterwards, a sudden illness was to kill him prematurely. Rui Machete, a «historical», took the lead of the unquiet Social Democratic ranks for a while.

At the Social Democratic Congress of Figueira da Foz, when many expected a solution that could ensure continuity — under the leadership of João Salgueiro, a former minister of State and Finance of the Government of Pinto Balsemão — there emerged Aníbal Cavaco Silva, to their surprise. «Minister for the Finance of the Government of Sá Carneiro», as he used to emphasise, the new chairman of the party had been a severe critical of the course taken by the Democratic

Alliance as from 1981. On the first day of the Congress, all he did was to sustain the party should give its support to the ex-centrist leader, Freitas do Amaral. Nevertheless, behind the scenes, under the impact of the converging action of some friends of the late Mota Pinto, guided by a young lecturer at the University of Coimbra, Joaquim Fernando Nogucira, and several members of the «New Hope», a volte-face permitted that Cavaco Silva leapt into the midst of the events overnight, from 18 to 19 May 1985. A new «chief» had been found and the Social Democratic Party could take its distance from the austerity policy.

The reservations hitherto expressed by some in respect of the «Central Bloc» turned into a clear-cut demarcation. The days of the Socialist Party-Social Democratic Party Government were numbered and *in extremis* General Eanes, hardly six months prior to the end of his mandate, at the constitutionally-based threshold laid down to the effect, found the reason for another dissolution of Parliament — then with a new party on the political arena, the Democratic Renewal Party, composed of «Eanistes». The signature of the treaty for the accession of Portugal to the European Community, scheduled for 12 June, in which Mário Soares had engaged himself so much, for a time risked failing to materialise, owing to some doubts raised at the very last moment by the Social Democratic leadership. Yet Soares's point of honour was not affected and the solemn accession of Portugal took place on the prescribed date.

94. *Single-party minority Government (1985-1987)* — On 6 October 1985, the result of the election was like an earthquake — in respect of this all commentators were unanimous. The Popular Democratic Party/Social Democratic Party was the winner, having obtained a small percentage of the vote against all expectations (29.8% and 88 seats). True, it was the victor, not the epicenter of the surprise. The Socialist Party, having chosen Almeida Santos, a former lawyer in Mozambique, several times minister along with Mário Soares, as its candidate for the Government chairmanship, suffered substantial losses, as a consequence of the dissatisfaction with its policy of austerity, despite securing a narrow absolute majority (20.7% and 57 seats). It was the Democratic Renewal Party, the «Eaniste» force, that emerged as the greatest novelty by attaining a threshold that not even the most optimistic could have predicted — 17.9% and 45 seats.

Notwithstanding the dissolution of Parliament being caused by an absence of the conditions necessary for a majority government to come into office, after the election President Eanes found himself before a situation in which the first party had not even reached the threshold of 30% of the vote. Yet he invited Cavaco Silva to form the Government — he accepted the task, relying on the tolerance of the Democratic Renewal Party in Parliament. The experiment on minority governments re-surfaced, although in a spectrum of five parties instead of the four parties of 1976. Disclosing an acute tactical sense, the new Prime Minister could then convey his deep concern for efficiency and carefulness in presenting a consistent public image. And the difficulties posed by the absence of a majority were counterbalanced by the support of the Renewal Party all through 1986. . . .

January and February 1986 witnessed the presidential election. The Social Democratic Party gave its support to Diogo Freitas do Amaral, as Cavaco Silva had suggested at the Congress of Figueira da Foz. The left stood divided in the first ballot — Mário Soares was backed by Socialists and left-of-centre independents; Francisco Salgado Zenha had the obvious sympathies of General Eanes and the support of the Renewal Party and the Communists, after the withdrawal of Ângelo Veloso's candidature; and Maria de Lourdes Pintasilgo, somewhat surprisingly put aside by Ramalho Eanes and the Renewal Party, relied on some groups of non-aligned left-wing independents. Mário Soares and Freitas do Amaral were admitted to the fiercely contested second ballot; the former Socialist leader was the winner — benefitting from the support of the whole left, including the Communists who had to convene an extraordinary congress to revoke a decision previously taken not to give their support to Soares, whatever the circumstances might be.

In the absence of an agreement formally concluded between the Social Democratic Party and the Renewal Party, at the beginning of 1987 the gap widened more and more before certain situations, in respect of the conduct of the governmental policy; unexpectedly, the Renewal Group tabled a motion of censure — which would be approved in the Assembly owing to the Socialist and Communist concurring votes. Therefore the Government resigned, provoking a crisis which was dealt with by the President of the Republic, without delay, by means of the dissolution of Parliament again. Although the parliamentary left advocated that an adequate response should

involve the signature of an agreement by the opposition parties, rather than a dissolution of Parliament, one thing is certain — such an alternative never materialised, which warranted the presidential attitude, founded on the opportunity, as sustained by Mário Soares during the electoral campaign, to have recourse to the «constructive motion of censure», although not so far enshrined in the Constitution.

The parliamentary election was held on 19 July 1987 and the Social Democratic Party made widespread gains, without previous parallel, obtaining the absolute majority of the popular vote (50.2 %) as well as of the seats (184 out of 250).

*95. Government relying on a single-party parliamentary majority (1987-...)* — The victory by an absolute majority of one party alone was a new fact in the life of the Portuguese party system. It was thus inaugurated a new phase, characterised by a more stable and lasting government, which accounts for the fact that, for the first time under the 1976 Constitution, Parliament will have lived its full four-year term in 1991.

In July 1987, the second major force was the Socialist Party, led by Vítor Constâncio (22.2 % and 60 MPs), with a very small increase when compared with the 1985 outcome; the Communist-led coalition declined (from 15.4 % to 12.1 %) and the Democratic and Social Centre sustained a significant decrease in its outcome, as a result of instability in its leadership (Adriano Moreira had succeeded Francisco Lucas Pires) and of the efforts made by Cavaco Silva to maximize his support by attracting the centre-right and right-wing electorate (the Centrists dropped from 9.9 % to 4.4 %).

The biggest surprise was the Democratic Renewal Party again, under the leadership of General Eanes himself. The party which caused the crisis was severely penalised. Out of the forty-five seats in the dissolved Assembly only seven did it maintain. It was for nothing that the former President of the Republic had committed himself. The golden and illusory age of 1985 was gone...

Since the 1986 presidential election, Mário Soares has sought to play a moderating role with a view to promoting the consensus — hence he has focussed on two issues: the «institutional solidarity» with the remaining organs of supreme authority, particularly with Parliament and the Government; and the «magistracy of influence», instead of a contest for power, namely in so far as the Executive is concerned.

The existence of a sound and stable majority in Parliament seems in its dynamics to point to a tendency towards a multiparty system of two dominating poles — which has been patently demonstrated during the bargaining process leading to the amendment of the Constitution in 1989, which derived from a consensus reached by the two major parties, the Social Democratic Party and the Socialist Party. Such a trend seems, moreover, to be confirmed by the outcome of the recently held elections, either for the European Parliament or for the local authorities (1989), whereby the Socialist Party made relevant gains that fairly match the Social Democratic Party's losses. At local authority level, the Socialists won control of the major city councils and reached the top in the voting percentage with a little advantage over the Social Democratic Party. The new Socialist leader Jorge Sampaio was elected Mayor of Lisbon City Council at the head of a coalition which integrated the Portuguese Communist Party as one of its members.

Since 1975 dominance has tended to oscillate in a pendulum-like manner. Multipartism has been a constant feature which is likely to remain. The alternating predominance of two parties (the Social Democratic and the Socialist) can not be confused with bipolarisation or two-party system. Bearing in mind that incidental problems are likely to occur and not knowing today the effects that the *perestroika* may have upon the Communist Party in the future, it seems that the party-system in Portugal will go on resting upon four segments with the ascendancy of the two central forces which probably have the vocation to take turns in the exercise of power, either alone or in a coalition. For some, the Social Democratic Party and the Socialist Party may be considered as the contemporary successors of the old 19th century parties — the Regenerator and the Progressive. Yet the pure and simple transposition is dangerous, but it may well have its *raison d'être* . . . At least, let it give a warning about the necessary attention towards questions of representation of the society and issues concerning the improvement of devices designed for a democratic legitimisation. Parties and society can not, at heart, live by drifting apart <sup>(8)</sup> . . .

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<sup>(8)</sup> Besides the work by Marcelo Rebelo de Sousa that has been several times mentioned throughout this paper and where the fundamental bibliography can be found (e. g., pp. 233-236, and pp. 554-555), for further information see: Joaquim Aguiar, *A Ilusão do Poder. Análise do Sistema Partidário Português (1976-1982)*,

### 3. Development of the Electoral Systems

96. The history of the electoral systems in Portugal shows a slow and oscillating evolution which culminated, belatedly, in the enshrinement of the universal suffrage only subsequently to the 25 April 1974. The first Portuguese electoral law (11 July 1822) granted the right to vote to the Portuguese citizens and to the naturalised foreign people enjoying all political rights, aged under 25, and to married citizens, officers, and clergymen of the religious orders aged over 20. The mainland of the Realm was divided into twenty-six constituencies which elected 102 representatives, on the whole. The Decree of 7 August 1826 provided, in turn, much the same procedure for the so-called primary assemblies and an income qualification for the parish and provincial assemblies. The Decree of 3 June 1834 extended the income qualification: only citizens with a net income of 100\$000 *rêis* could vote (besides being aged 25 or 21, as was the case of married men, officers, of those who had a bachelor degree, and clergymen of the religious orders). The Decree of 8 October 1836 restored the 1822 system — retaining the multimember constituencies, despite being dismembered the big divisions of the Chartism. The 9 April 1838 Act imposed on the electors a new minimum income — 80\$000 *rêis* — and this trend was reaffirmed by the Decree of 5 March 1842, which came very close to the system introduced in 1834.

97. After the revolution of the Regeneration, the ensuing electoral legislation opened the door for different views. The laws of 30 September 1852 (Saldanha) and 23 November 1859 (Terceira) provided that an elector should have paid, in the previous year, 10\$000 *rêis* by way of tithe and related taxes on interests, quit-rents, and pensions, 5\$000 *rêis* by way of tithe on urban and rural states leased, or 1\$000 *rêis* by way of tithe and related taxes or any other direct

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Lisbon, 1983; José Manuel Durão Barroso, *Quelques éléments pour l'étude des partis politiques portugais; organisation, clivage idéologique; bibliographie sélective*, polyc., Barcelona, 1982; Pedro Santana Lopes and José Manuel Durão Barroso, *Sistema de Governo e Sistema Partidário*, Lisbon, 1980. In view of the basically informative nature of this paper, it is important that it should be complemented by more analytical works to be found in the existing bibliography, a detailed enumeration of which can not be included here.

tax connected with urban and rural estates not under lease and any income derived from industry — corresponding to a yearly income of 100\$000 *réis*. Whilst in 1852 there were multimember constituencies — citizens winning a majority of the votes were declared elected, provided that they obtained at least one-quarter of the votes of the real number of voters in the constituency —, in 1859 it was adopted the division of the territory into single-member constituencies.

98. In May 1878, Fontes Pereira de Melo extended the electoral body in a significant manner. He adopted a solution which would be regarded as the most open-minded of the whole liberal period (Constitutional Monarchy and I Republic): he increased the number of constituencies from 100 to 137, granted the vote to all men who could read and write, or, being illiterate, were householders; he lowered the age of voting from 25 to 21. As a result of such a provision, the number of electors nearly doubled, rising from 580 thousand to about 850 thousand. This growth continued until 1890, when electors must have numbered 950 thousand, as some sustain, owing to the regenerative legislation, which was complemented by the adoption, in 1884, of a mixed system of single-member and multimember constituencies and the incomplete list, which secured the representation of minorities in the capital towns of district.

99. Nevertheless, by virtue of the 1895 and 1896 legislation of the Hintze-Franco dictatorship the number of electors declined steadily to 600 thousand — once the illiterate who, being heads of household, did not have the required minimum income to pay \$500 *réis* by way of industrial tax or any other direct tax and respective extra, were deprived of the right to vote. The system was based on single-member constituencies, except for Lisbon and Oporto, where a system of multimember constituencies without representation of minorities had been adopted. José Luciano de Castro's 1899 Act hardly changed the situation. It only authorised the minors to vote in case they had a university degree. In 1901, Hintze Ribeiro abolished this exceptional provision and modified the constituency boundaries to minimise the influence of the opposition (mainly as concerned the Republican Party) in the biggest towns. He inserted into the Lisbon and Oporto constituencies large rural surroundings, using discretionary criteria for the establishment of the number of represen-

tatives for the multimember constituencies. The act was to become known as «the shameful rubbish», and constituted one of the factors that discredited the constitutional monarchy <sup>(9)</sup>.

100. Under the Republic, the electoral law of May 1911 maintained the right to vote only to male individuals over 21 who could read and write, and to those who had been householders for at least one year (this way extending the franchise to some women), and abolished the income qualification. Yet the republican regime did not adopt the universal suffrage, as had been claimed for and promised before 1910. «It was an error — would say Basílio Teles. It is always deplorable not to pursue in power what one pledged in the opposition, principally when an essential point of the democratic manifesto, so vigourously claimed for by the press and at public meetings, is at issue (motion of 10 December 1905) <sup>(10)</sup>.»

During the I Republic, if it is certain that in 1911 there were 850 thousand registered citizens, the truth is that the voter turnout was rather low — which also reflected in a decline in the electoral registration, the electoral roll numbering 500 thousand citizens in 1915... The introduction of the «new Republic» of Sidónio Pais and the formally-adopted universal suffrage — which had no real consequences in terms of democratisation of the regime, owing to the populist and authoritarian character of the Sidonism and to the fact that the institutional parties under the Republic did not take part in the electoral acts at that time — led however to an increase in the registration (up to 900 thousand) and the turnout (500 thousand). As from 1919 until 1925, another step backwards was taken nevertheless, either in terms of registered citizens (the total number thereof fell to about 500 thousand) or in so far as the voter turnout was concerned (400 thousand).

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<sup>(9)</sup> For more detailed information, see: Barbosa de Magalhães, *Código Eleitoral Português*, Coimbra, 1890; Trindade Coelho, *Manual Político do Cidadão Português*, 2nd ed., Oporto, 1908; José Tengarrinha, «Sistemas eleitorais», in *Dic. Hist. de Port.*, dir. Joel Serrão; and the articles by Luís Vidigal «Portugal na viragem do século: legislação eleitoral e modalidades de voto» and Fernando Marques da Costa «Uma democracia ilegítima», in *Diário de Notícias*, 6 October 1985.

<sup>(10)</sup> *As Ditaduras, o Regime Revolucionário*, 2nd ed., Coimbra, 1975, p. 77.

101. During the so-called *Estado Novo*, it is difficult to draw any conclusions accurately, in view of the type of regime and the absence of pluralism and freedom of political assembly. If it is certain that General Carmona was elected in 1928 by 750 thousand votes, according to official results, the truth is that 1,330,258 electors of the mainland, Azores and Madeira, and of the colonies appeared on the electoral register for the constitutional plebiscite, whilst in the National Assembly election, held in December 1934, 491,081 electors cast their vote, which — according to the official sources meant 80 % of the registered electors, and, in 1938, 738 thousand electors voted (661 in the mainland, 33 thousand in Azores and Madeira, and 38 thousand in the colonies). As to registered electorate, the million was only surmounted in the fifties, covering the whole territory, including the colonies (1,300 thousand in 1957, out of a population of about 20 million), in 1969 being reached a total of one million and eight hundred thousand.

#### *4. Electoral System for the Assembly of the Republic*

102. All citizens who are over 18 years of age have the right to vote — being excluded from voting those legally incapable by virtue of a judgement; those notoriously recognised as being mentally ill, though not subject to legal incapacity by a judgement, when they are placed in a psychiatric institution or declared as such by a panel of two physicians; those sentenced to imprisonment for a criminal offence while serving their sentence, and those who are deprived of their political rights by a decision of the court (article 2 of Law no. 14/79, of 16 May).

The Assembly of the Republic is elected by the citizens enrolled in the electoral register either inside the national territory or in Macao or abroad.

103. All Portuguese citizens enjoying electoral capacity may stand for elections to the Assembly of the Republic, except for judges of the Bench and members of the Public Prosecution's Department on active duty, permanent cadres of the military or security forces on active duty, and career diplomats while in office. The candidates who are holding office as chairmen of municipal councils or those who legally deputise for them may not perform their duties as from the nomination of their candidatures until the polling day.

104. Constituencies, in so far as the election of the Assembly is concerned, coincide with the administrative regions of the mainland. There is a constituency in the Autonomous Region of Madeira, and another in the Autonomous Region of Azores. Citizens residing outside the Portuguese territory are grouped in two constituencies — one comprises all the territory of the European countries, the other encompasses the remaining countries and the territory of Macao.

The Assembly of the Republic has 230 members at present (Law no. 18/90, of 24 July), corresponding to 226 constituencies inside the Portuguese territory, distributed proportionately to the number of voters in each constituency, according to the d'Hondt highest average method<sup>(1)</sup>. For every constituency outside the national territory two seats are allocated.

Members of Parliament are elected out of multimember lists in each constituency, and every elector uses one vote for one list. The candidates are ordered on the list following the order of their declaration to the effect of standing for the election. Vacancies in the Assembly of the Republic are filled by the first non-elected candidate, pursuant to the order on the list out of which the holder of the vacant seat was elected, who is not disqualified from holding office.

In Portugal, members of the Assembly who are appointed to an office in the Government may not exercise their mandate while staying in office, therefore being replaced in accordance with the law.

105. Political parties must be proposed by not less than five thousand electors, and are due to enter the files of the Constitutional Court (article 5 of the Decree-Law no. 595/74, of 7 November). Alliances for electoral purposes must be recorded by the said Court, which must be notified thereof until the presentation of the can-

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<sup>(1)</sup> Pursuant to Law no. 14/79, of 16 May, section 16, the conversion of votes cast into seats is done as follows:

a) All the votes cast for each party list in the constituency are ascertained;  
b) The total number of votes cast for each party list is divided by the numbers 1, 2, 3, 4, 5, and so far, the quotients being ordered inversely to their value in a series of as many terms as the seats allocated to the constituency;

didatures by means of a document bearing the joint signatures of the competent organs of the parties concerned, together with the mention of names, abbreviations, and symbols.

The lists are submitted to the judge of the law court situated in the main town of the constituency; as far as Lisbon and Oporto are concerned, they are submitted to the judge sitting in the 1st Civil Chamber. An appeal against the final decisions on the nominations may be brought before the Constitutional Court.

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c) The seats are allocated to the lists corresponding with their terms in the series as provided for above, each of the lists being allocated as many seats as their terms in the series;

d) Where there is one unallocated seat, and the terms following in the series are equal and pertaining to different lists, the seat is allocated to the list which has received the highest number of votes.»

PUBLIC ADMINISTRATION, AUTONOMOUS REGIONS  
AND LOCAL AUTHORITIES

«[...] — Lisboa é Portugal — gritou o outro [Ega]. — Fora de Lisboa não bã nada. O País está todo entre a Arcada e S. Bento.»

EÇA DE QUEIRÓS, *Os Maias* (1888)

«A administração do País pelo País é a realização material, palpável, efectiva da liberdade na sua plenitude [...]»

ALEXANDRE HERCULANO, *Carta aos Eleitores do Círculo de Sintra* (1858)

### 1. Central Administration

106. To speak of the Portuguese central administrative authorities involves the issue of the traditional weight of the State on society — and its implications. The roots of present-day Administration may be traced, looking back to the past two centuries and a half, to the organisation of the secretariats of State, during the reign of King João V, on 28 July 1736, further carried out under Queen Maria I, in 1788, by the establishment of the Secretariat of State for the Treasury Affairs, and at various emblematic moments in the 19th century as well: at the time of the Liberal Revolution, in 1820, after King Pedro's victory and the surrender at Évora Monte (1834); after the *Regeneration*, by the measures enacted in 1852, the reforms of Public Accounting authority and the Treasury Administrative authorities, in 1863, 1870 and 1881. Subsequently to 1910, despite governments having taken multiple piecemeal decisions during the I Republic, Administration did not undergo any consistent, in-depth reform. Therefore, the main administrative transformation of this

century, visible to the eye though in a fragmentary way, is deemed to be the one that was put at work during Salazar's dictatorship, early in the 1930s.

107. Yet, there has lately been a manifest anxiety to bring the central State's organisation in line with the democratic principles of devolution and decentralisation, as set forth in the Constitution of 1976 — with a view to promoting efficiency, rationality and transparency in the new administrative structure.

108. It should be first mentioned that both the deep dualities which divide the country — seaboard, inland; north, south; town, country — and the unfair partition of the wealth and income have contributed to a centralising concentration of powers and staff alike. It is worth mentioning that, in 1968, central administrative authorities employed a number of officials exceeding 150,000, while local administrative personnel strength was little more than 40,000; eleven years later (1979), the extraordinary growth of the State, resulting from the policies of the day and of economic instability, deepened the gulf manifestly — over 310,000 people in central administration and 60,000 in local administration. Today, the overall number being estimated at 500,000, the gap has scarcely closed; the problem has persisted to this day.

Nevertheless the endeavours which are currently made, together with a strong commitment on the part of the various departments, give an indication of a trend towards debureaucratisation, efficiency and higher standards of quality and rationality. «Debureaucratisation calls for clarification and reinforcement of the authority of Public Administration, clarification either of hierarchical structures and ranks or of decision powers (much confused and fragmented at present), discipline and responsibility vis-à-vis the public, master, not servant, of the services; along with expeditious and effective decisions, under a permanent supervision. That depends on external factors, like the officials' greater technical and professional skill; the eradication of irrational, redundant, erratic circuits and structures, and the abolition of the rule of concentration of decision-making power in the main instance [...] In the long term, it especially requires a permanent control — antibureaucratic and, above

all not bureaucratised — the mentalisation and training of officials and the adoption of techniques and methods of organisation by every big department <sup>(1)</sup>».

109. That orientation, which is now taking roots and which must be articulated with the reform in process of being carried out in such areas as financial administrative authorities, budgetary management, public accountancy, the Treasury, management of assets and national debt, as well as in tax and monetary management, is contained in a provision of the basic law according to which «public administrative authorities shall be structured in such a way as to avoid bureaucracy, to bring the administration closer to the population and to ensure participation by those concerned in its actual running» (article 267, paragraph 1). To achieve this, «suitable forms of administrative decentralisation and devolution shall be established by law, without prejudice to the efficiency and unity of action that are necessary or to take the Government's powers to direct and supervise» (article 267, paragraph 2). Therefore, public administrative authorities primarily seek to pursue the *public interest* — while observing those rights and interests of the citizens that are protected by law — in the performance of their duties, officials and personnel of the State and other public bodies, are exclusively serving the best interest of the public.

Complementarily, the citizens' rights and safeguards were, in line with these ideas, attached a special importance under the Constitution. Thus, citizens are «entitled to be informed by public administrative authorities, whenever they so require, on the progress of proceedings in which they are directly interested and to have knowledge of final decisions taken with regard to them» (article 268, paragraph 1). Likewise, citizens enjoy the right of access to the administrative archives and files, without prejudice to the legal provisions concerning internal and external security, criminal investigation and personal privacy.

110. With a view to protecting the citizens, administrative decisions must be notified to the interested parties — and must be properly

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<sup>(1)</sup> A. L. Sousa Franco and Guilherme d'Oliveira Martins, «Reforma da Administração — Alguns tópicos de uma tarefa adiada», in *Revista dos Quadros Técnicos do Estado*, January/February 1990.

substantiated when «they affect the legally protected rights and interests of the citizens» (article 268, paragraph 2). Interested parties have the right to appeal against any unlawful administrative decision affecting their legally protected rights and interests — access to the administrative justice being secured as well.

111. Alternatively, the basic law provides that ordinary law may impose restrictions on the «rights of expression, meeting, demonstration, association and collective, petition, and on the electoral capacity of the permanent cadres of the military and security forces on active duty», but «as strictly required by their peculiar functions» (article 270). Officials and staff of the State and other public bodies are liable to civil, criminal and disciplinary proceedings in respect of «actions and omissions performed in the exercise and because of their functions which result in infringements of the legally protected rights and interests of the citizens» (article 271, paragraph 1). When an official acts «in accordance with orders or instructions on a service matter from his legitimate superior shall not be held liable provided that he previously requested or required that they should be given or confirmed in writing»; the duty of obedience ceases «whenever the carrying out of orders or instructions involves committing some criminal offence» (article 271, paragraphs 2 and 3).

112. The Portuguese central administrative authorities comprise ordinary services and services with financial autonomy. The former encompass civil services in general which, according to the recent foundations of the public accountancy, usually have «administrative autonomy for the running of ordinary matters and which finds its expression in the power of the ruling people to authorise spending as well as to take final and enforceable decisions within the same framework» (article 2, paragraph 1, of Law no. 8/90, of 20 February).

Members of Government are empowered to direct, supervise and exercise oversight of administrative services as well as to perform all the tasks other than those within the scope of the running of ordinary affairs; the planning organs are entitled to intervene when the approval of plans and programmes is at stake, namely the so-called Investment and Expenditure Plan for the Development of Central Administration (PIDDAC). The organisation of the services with administrative autonomy «shall comply with basic principles of unifor-

mity so as to ensure both a permanent general outlook on the public administrative authorities and an effectively supervised management» (article 4, paragraph 1, of Law no. 8/90).

113. Administrative and financial autonomy is granted only to departments — public institutions, autonomous funds — where, cumulatively, their own revenue corresponds to two-thirds of their total expenditure, to the exclusion of expenses co-financed by the EEC budget. There are bodies (organs of supreme authority, for instance) with financial autonomy by virtue of the provisions laid down in the Constitution. The same may likewise be applied on «considerable grounds» that shall be set forth in an act of decree-law.

114. There are sixteen ministerial departments at present — the Presidency of the Council of Ministers and the following ministries: of National Defence; of Finance; of Planning and Administration of the Territory; of Internal Administration; of Justice; of Foreign Affairs; of Agriculture, Fisheries and Food; of Industry and Energy; of Education; of Public Works, Transport and Communications; of Health; of Employment and Social Security; of Commerce and Tourism; of Youth; of Environment and Natural Resources.

Every department is divided into State secretariats, some of them comprising under-secretariats. Those intermediate divisions, in which people heading them have powers delegated by ministers, encompass directorates general or similar boards without financial autonomy. In the framework of ministries, it is worth mentioning the above-said public institutions which, integrating the indirect State administration, are subordinated to the Government by virtue of the administrative tutelage and enjoying financial autonomy, the inclusion of which in the Budget of the State is compulsory (article 108, paragraph 1, of the Constitution).

The Portuguese public administration is at a turning-point of its life. The traditional bearing of centralism is gradually giving way to devolution and deconcentration of powers. Such is the aim of the current efforts to carry out a reform of the administrative authorities — starting by the financial area, and other spheres of State organisation and working afterwards.

There was a time when Alexandre Herculano and Oliveira Martins spoke of Portugal as «country of civil servants», in a pejorative sense. . . Little by little, such a situation is being transcended —

and must be transcended. The administration-State is called upon to discharge new functions — bound up with solidarity and economic balance, modernisation and reform of the society. As Pierre Rosanvallon wrote, «the State's pedagogic and paternalistic behaviour vis-à-vis the society loses its legitimacy and its *raison d'être*» (2). Whereas in the 1960s, the modernising State derived its strength from its capacity to anticipate society, today, «a full-grown country can not bear any longer being told *de haut en bas* what it must or need not do» (3). Society acquires, therefore, further spaces of autonomy — on the basis of a fresh relationship, rather than out of spontaneity, between public and private spheres that may contribute to the interpenetration of positive factors, on either side. It is a *State of solidarity* that is being built, in place of the State which founded the society — the pedagogical paternalistic State... Thus, the problem of the administration-State will not be solved only by its becoming reduced, but by a clear-cut definition of its functions and an understanding of the *principle of subsidiarity* — that must be matched by an effort to consider the results and a perception of the need to improve the representation of the society and the participation by the citizens...

## 2. *The Autonomous Regions*

115. The Atlantic islands of Azores and Madeira lived under an endowment regime until the 16th century (1582), when captains-general were for the first time appointed by Filipe II and given extensive powers, both military and administrative. But only under the Marquis of Pombal did the figure of the endowee disappear (1766); later, the autonomous districts — one in Madeira (Funchal) and three in Azores (Ponta Delgada, Angra do Heroísmo, and Horta)— came into being in 1836. It was the so-called *autonomous regime of the islands*, which, although tending to be decentralised and despite municipal authorities being empowered to dispose of a certain State revenue, on condition of defraying some public expenditure, had

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(2) *L'Etat en France — de 1789 à nos jours*, Seuil, Paris, 1989, p. 267.

(3) Simon Nora, «Servir l'Etat», in *Le Débat*, no. 40, May-September, 1986, p. 102.

a centralist orientation underlying it, which grew more and more evident, culminating in the decree of 2 March 1895 (Hintze Ribeiro/João Franco) and the Statute of 1939-1940. Yet, despite that trend, the aspirations of the peoples of Azores and Madeira for autonomy have been present all the while and came to find an echo in the main guidelines of the 1976 Constitution.

116. In this context, the Constitution establishes: «The special political and administrative arrangements for the archipelagos of the Azores and Madeira shall be based on their geographical, economic and social and cultural characteristics and on the historic aspirations of the peoples of the islands to autonomy.» (Article 227, paragraph 1.) The *regional autonomy* appears thus as a structural element of the democratic State, and the Azores and Madeira are assured a political and administrative statute of their own, as well as organs of self-government. Hence, autonomy serves the participation by their citizens, the economic and social development, the promotion and defence of regional interests — and the strengthening of *national unity* and the bonds of *solidarity* among all the Portuguese. Both factors have ever been present throughout the history of the autonomous regions, which has made the today's President of the Republic say, in respect of the Azores: «Here, the assertion of the rights of the Portuguese has always been kept alive — which constitutes an example that history enshrines, that everybody respects and is proud of.» Countless illustrations and facts bearing witness to this statement are also found, in so far as Madeira is concerned.

117. The organs of self-government pertaining to the regions are the *Regional Legislative Assembly*, and the *Regional Government*. The former is elected by universal, direct and secret suffrage, in accordance with the principle of proportional representation; its powers are laid down in the Constitution (article 234). The executive organ is politically responsible to the Assembly; the chief executive is appointed by the Minister for the Republic, with due regard to the results of the elections. The other members of the Regional Government are appointed and dismissed by the Minister for the Republic, upon proposal of the head of the government concerned.

118. The ministers for the Republic are the representatives in each autonomous region of the sovereignty of the Republic; they are appointed and dismissed by the President of the Republic, on proposal of the Government and after consultation with the Council of State. The ministers for the Republic are assigned the task of co-ordinating the work of the central departments of the State, in so far as it affects the interests of the region, and of supervising the administrative functions performed by the State in the region. They are entitled to attend the meetings of the Council of Ministers matters relating to the regions are to be discussed.

119. The autonomous regions have the *powers* defined below, which will be further specified in their political and administrative statutes: to legislate on such matters of specific interest to the regions as are not within the exclusive powers of the organs of supreme authority; to legislate on similar matters, authorised by the Assembly of the Republic, when such matters fall within the competence of the organs of supreme authority; to exercise the right of legislative initiative; to exercise the executive power with which they were vested.

120. The exercise of *their powers of taxation* is particularly relevant, since it comprises the right to dispose of revenue obtained by way of levying taxes in the regions, and other revenue assigned to them; the right to allocate that revenue to their expenses, and to *adopt the national tax system* to regional specificities, in accordance with the provisions of the *framework law* of the Assembly of the Republic. It also falls within the competence of the regions to approve the regional economic plan, the regional budget and the accounts of the region; to participate in the definition and implementation of the fiscal, monetary, financial, and foreign exchange policies; to participate in the definition of policies concerning the territorial waters and the exclusive economic zone, and in the negotiations concerning international treaties and agreements of direct concern to them.

The autonomous regions may exercise the right of legislative initiative by submitting bills and motions to the Assembly of the Republic. They may also exercise the right of initiative as regards their political and administrative statutes; the draft statutes are prepared by the regional legislative assemblies and submitted to the Assembly of the Republic for discussion and approval. Where the

Assembly rejects or introduces amendments to the draft statute, the latter will be referred to the Regional Assembly for consideration and opinion — subsequently, Parliament will discuss and take a final decision on the draft.

In so far as limits to the powers of the regions are concerned, the Constitution (article 230) forbids the self-government organs: to place restrictions on the legally recognised rights of the workers; to impose limitations on the passage of people and goods between the regions and the rest of the national territory, save for restrictions on goods dictated by any health requirements; to the exercise of an occupation or the access to public service for people born or resident in the region.

Furthermore, the *principle of co-operation* between the organs of supreme authority and the regional organs is ensured — with a view to promoting economic and social development, particularly to counteracting inequalities caused by their insular situation («costs of insularity»). Moreover, under article 231 of the Constitution, «the organs of supreme authority shall always consult the organs of regional government on those questions within their powers which concern the autonomous regions».

121. The Minister for the Republic is empowered to sign and order publication of the regional legislative decrees and regional regulatory decrees. He must sign the decrees of the Assembly, or exercise his veto power, within fifteen days; he may also request the preventive assessment of constitutionality within eight days, as we have already seen. The Regional Assembly may however confirm its vote by an absolute majority of its members entitled to sit, and the Minister for the Republic is compelled to sign the decree within eight days of having received it. As regards the decrees of the Regional Government, the Minister must either sign or exercise his veto power within twenty days, being as well entitled to refer the decree to the Constitutional Court for the preventive assessment of its constitutionality (article 236).

The President of the Republic may in turn dissolve the self-government organs of the autonomous regions, after consultation with the Assembly of the Republic and the Council of State, for reasons pertaining to their performance of acts contrary to the Constitution. In such circumstances, the region will be governed by the Minister for the Republic.

122. The Political and Administrative Statute of the Autonomous Region of Azores that is currently in force dates from 1980 and 1987 (Law no. 9/87, of 26 March, which modified Law no. 30/80, of 5 August).

The archipelago of Azores comprises the following islands: Santa Maria, S. Miguel, Terceira, Graciosa, S. Jorge, Pico, Faial, Flores, and Corvo. Owing to its islands lying scattered as to their geographic position, the Statute provides for the Regional Assembly meeting place to be located in Horta as well as it stipulates that the seats of the Regional Government departments should be installed in Angra do Heroísmo, Horta and Ponta Delgada, as the Assembly thinks fit. «The Regional Assembly is composed of members elected by universal, direct, and secret suffrage, in accordance with the principle of proportional representation, by constituencies.» (Article 10 of the Statute.) Each island forms a constituency; each constituency elects two members of the Assembly plus one for every 6,000 or fraction over 1,000 electors enrolled therein. There are two other constituencies — one comprises Azorean people residing outside the archipelago, but in Portuguese territory; Azorean people residing abroad form another constituency. The members of the Assembly are elected for a four-year term of office.

The Regional Government, which conducts the region's general policy, is composed of its President, the regional secretaries and under-secretaries, if any. The number, titles and powers of regional secretaries and under-secretaries, as well as the structure of their departments, are laid down in regional legislative decrees. As regards the regional administration, the Political and Administrative Statute of the Azores provides for an advisory body, the *Council of the Island*, to be set up in any island of more than one municipality. The Council is made up of the chairmen of municipal assemblies and municipal chambers of the island concerned, and a chairman of a parish committee appointed by each municipal assembly. Members of the Regional Assembly may attend, without the right to vote, the meetings of the Council of the Island, in so far as they represent the constituency of the island. Whenever circumstances so require, the Regional Government must appoint a delegate who «will represent it, will exercise such powers and secure such tasks as may be entrusted to him/her by law, regularly, or by delegation» (article 83, paragraph 1, of the Statute) in every island. A delegacy of each regional secretariat may be set up in each island.

123. The Political and Administrative Statute of the Autonomous Region of Madeira (Decree-Law no. 318-D/76, of 30 April) starts by defining that «the archipelago of Madeira, comprising the islands of Madeira, Porto Santo, Desertas, and Selvagens, constitutes an autonomous region of the Portuguese Republic and is a corporate body in public law».

Members of the Regional Assembly are elected, in accordance with the proportional representation principle, in eleven constituencies, each one corresponding to the councils of the region. They are elected for a four-year term of office. The Regional Assembly sits annually in ordinary sessions of three periods beginning on 1st March, 1st June, and 2nd November and ending when the Assembly so decides. Extraordinary sessions of the Assembly may be held, at the request of either the Regional Government or no less than one-fourth of the parliamentarians, for the purpose of matters contained in the notice summoning the Assembly being discussed and decided.

The Regional Government consists of its President, the regional secretaries and, if any, the regional under-secretaries. It lies with Government, as is the case in Azores, to conduct the general policy of the region; to draw up regional regulatory decrees necessary to implement the regional decrees and to ensure the smooth functioning of the regional administration; to supervise departments and the regional administrative authorities; to exercise the powers of supervision and tutelage with regard to local authorities, autonomous departments, public institutes, state-owned companies; in addition, the government is entitled to administer and to dispose of assets; to draw up, implement and supervise plans and budgets; to submit drafts of regional decrees to the Regional Assembly; to participate in the negotiations of international treaties and agreements of direct concern to the region.

### 3. *Regionalisation? By What Means?*

124. It was not merely the will of a foreign prince to maintain and increase his territorial dominion, nor the great political influence in the Lyonese realm of the powerful magnates of Entre Douro e Minho, notably the Mendes da Maia, that by themselves determined the independence of Portugal — bearing in mind that as of the Chalcolithic the individuality in the western periphery of the Peninsula

developed little by little. Certainly, it was not so self-evident an individuality that could not be put into question by Alexandreerculano and Oliveira Martins. Nevertheless, in the peninsular peripheries' centrifugal tendency toward the Lyonese and Castillian centre, the truth is that the West expressed an autonomous self-assertion, lasting and stable.

The reconquest and strengthening of the power over the First Dynasty may have contributed to reinvigorating the Portuguese kingdom's individuality, in parallel with the recognition by the «State» of the autonomy of the peoples — notably through the alliance between the real power and the third estate of the councils, owing to the latent conflict between high aristocracy and the high clergy. The councils' autonomy within the Portuguese macro-region appears thus closely tied in with the central power, which constituted a strong factor for unity. In this way, there was a symbiosis of the *unifying centralism* and the *controlled decentralisation*, in spite of the powers and the important role assigned to the councils. Moreover, during the crises of 1383-1385, King João I entered a similar alliance, explicitly, that grew more and more slender as the foundations of the centralising State were being laid, strongly influenced by the legists who had come from Bologna.

125. It may be argued, however, that the regional division of the Peninsula's western periphery solely and exclusively was based on the predominance of areas situated on the shore and, from among them, the more densely-populated units. In fact, the northern ports played a very significant part, specially until the day when Henri the Navigator fixed the «starting point» of the maritime expeditions in Algarve. There lay, after all, as P. Chaunu showed, the roots of the general winds for the tropical navigation, which the Spaniards also understood, since they attached higher value to the Mediterranean ports, as the place for sailing off. It was not until the reign of the King João II that Lisbon became an emporium and a privileged centre for trade in the North Atlantic — its importance was moreover emphasised by Luís Mendes de Vasconcelos in *O Sítio de Lisboa*, published in 1608.

It must be noted that one can not help recalling historically that even the romanization of the West of the Peninsula started by the inland regions, and the towns situated at the intersection of the major routes were attached more importance than those near the sea. It

is worth remarking that the seats of the *conventi*, in other words, the divisions of the territory which would come to be the Portuguese territory itself, were *Pax Julia* (Beja), *Scalabis* (Santarém), *Bracara* (Braga), *Asturiga* (Astorga), and *Emerita Augusta* (Mérida), the executive capital of Lusitanica, a town located some 200 kilometres from the sea.

It may thus be seen that the inland towns were not altogether set aside and underestimated; there were conditions for the development of areas other than those on the seaboard. Yet, one may argue that the integrating process of romanization neglected the indigenous peoples' tendencies. It is certain that the megalithic civilisation of the Chalcolithic may have spread from the sea-shore, despite its being deeply-rooted in the inland areas. But, as Professor Orlando Ribeiro said, the fact that iron replaced bronze entailed a decline in the maritime traffic which traversed the seas, occasionally landed in, heading to the tin-producing centres in West and Northeast Europe. That accounts for a certain decline in the coast, in Roman times — all the more so as the Serra Morena has copper and tin in abundance, and is served by the ports of Huelva on the Cadiz bay, including the great inland port of Sevilha (<sup>4</sup>).

Tensions between the coast and the periphery and, likewise, between the North and the South are notorious inside the Portuguese territory — whether or not there was an exclusive ascendancy of one over the other it is hard to say. The port and mercantile North can not make us forget the agricultural innovations brought from the South by the peoples of Islam, nor can the wealthier and more densely-populated seaboard let the inner part of the country in the shadow.

The independence and the «closing of the frontiers» to Spain (the «back turned to Castile», the «neither good wind nor good wedding») made the Atlantic area and the units of population concentrated in the northern part of the centre definitely predominant — a fact conditioning any analysis on regionalisation.

126. After such an overview of the framework, it is time to look closer to the regions into which the Portuguese territory is divided,

(<sup>4</sup>) Cf. *Introduções Geográficas à História de Portugal — Estudo Crítico*, Imprensa Nacional-Casa da Moeda, Lisbon, 1977, pp. 90-91.

and the extent to which they represent a factor for the development based upon decentralisation and community autonomy.

First, we must say that real differences coexist within the Portuguese territory (such as, for instance, those of contrasting areas like Minho and Alentejo), though not to a high degree; furthermore, there is patently a continuity, sometimes intermittent, either on the sea fringe or in the inland. On the other hand, the Portuguese people are the product of a complicated combination of multiple ethnic groups which constitute an interesting *melting pot* without the existence of consistent ethnic groups in well defined regions or areas (<sup>3</sup>).

The linguistic unity is an element worthy of mention, owing to its aggregating function, whereas a plurality of languages can be easily found in countless European countries. Local dialects (*mirandês*, *barroquenho*) are much circumscribed, they are not used in writing, and only a very small number of people make use of them. It is important to stress the religious, cultural and political unity — and thereto it must be added the ancientness of the Nation-State, born eight hundred years ago, which appears as a historic datum. Nevertheless, if it is certain that the political and cultural unity is undeniable, it is no less true that it has been the setting to a highly centralised State and a political system profoundly isolated from the civil society. At times, the North rebelled against the South, the inland against the seaboard, the country against the town, but the homogeneity did not allow the necessary transfer of antagonisms between groups and social classes and the institutional channelling of creative, innovative and self-organised movements. There has been, after all, no dynamics of a society, independently of the State.

### The Portuguese Regions

127. It is a customary division the one that was suggested by Amorim Girão in 1933 whereby it was intended to replace the concept of

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(<sup>3</sup>) The case of Miranda, in the domain of the *mirandês*, a dialect, is a particular consequence of the non-conformities between the limits of the Roman *conventi* and the Portuguese border. Here we see a wedge of the *conventus* of Astorga in the Bracara territory. Moreover, the importance of the abovementioned Roman frontiers was precisely emphasised by Jaime Cortesão and Menendez Pidal.

natural region with the concept of economic region, account being taken of the correlation between physical characters and social aspects. Moreover, this is basically the division which prompted the constitution of the provinces in the Administrative Code of 1936, encompassing the following regions: Minho, Trás-os-Montes, Alto Douro, Baixo Douro, Beira Litoral, Beira Alta, Beira Transmontana, Beira Baixa, Estremadura, Ribatejo, Alto Alentejo, Baixo Alentejo and Algarve.

In 1937, the German geographer Lautenach presented a different hypothesis based on the morphological determinants out of a primary separation between North and South. In the North he included three distinctive areas: *a*) Beira Litoral and Estremadura; *b*) Minho, Baixo Douro, Beira Alta and Cordilheira Central; *c*) Trás-os-Montes, Alto Douro and Beira Transmontana. In the South, he included two: *a*) Ribatejo, Beira Baixa, Alto Alentejo; *b*) Montanha do Algarve and Algarve Litoral.

For Orlando Ribeiro, a distinction should be made, according to a survey dated 1945: Atlantic North, «Transmontano» North and South; whereas, following some conclusions drawn in 1955, a greater discrimination is to be found: «*a*) Minho; *b*) Montanha do Minho, Trás-os-Montes and Douro; *c*) Beira; *d*) Litoral do Centro (Beira-Mar and Estremadura); Alentejo and Algarve.»

In 1966, however, a group of researchers led by Eugénio Castro Caldas and Manuel dos Santos Loureiro delimited four zones in mainland Portugal in a perspective of the development dynamics. One would comprise a small number of councils of the areas surrounding Lisbon, Oporto and Setúbal; the remaining three would be nearly parallel strips crossing the country from north to south, the poorest and underdeveloped being those of the inland.

It can easily be seen that we are far from a consensus, as regards the regional division of the Portuguese land. Besides, clearly, there are divisions which, being operative in the methodological sphere, namely in the research on the dynamics of the development (Castro Caldas and M. S. Loureiro), are not operative in terms of administrative regionalisations, although they may throw some light on it.

We may say that, apart from Algarve (the «Realm of Algarve», as it has been called for centuries due to a natural definition of frontiers) no one of the regions is likely to be defined indisputably.

If the scholars do not come to an understanding, if «polymorphisms» render it hard to draw the line of demarcation —specially as concerns the Central Seaboard—, if the administrative reforms of the two past hundred years successively came to nothing, if the endeavours made towards development and decentralisation call for great care lest they might be futile, it is not possible to think of radically changing mentalities and organisation by means of a regionalisation tending to be as centralising as it has ever been.

In this respect, it is interesting that the division of the territory has arisen so much controversy. The interest of the localities, the competition and longstanding rivalry, the historical self-respect, all these elements in the end weigh more than the voluntary combination of zeals.

On the basis of criteria of rationality, however two main alternatives appear: *a) the division into large transverse strips*: North, Centre, Tagus Valley, Alentejo and Algarve; *b) the division of the North into strips horizontally and vertically delimited*: Littoral North, Interior North, Littoral Beira, Interior Beira, Estremadura-Tagus Valley. The existing regional co-ordination commissions correspond with the former alternative. But we are still far from, in practice, enshrining the administrative regions, as is expressly set forth in the Constitution.

#### 4. Local Authorities — As from Municipalities

128. The history of the Portuguese municipality has been underlined by various authors like Alexandre Herculano or Henriques Nogueira, who see the Roman municipality —in its origin an urban, native community, subjected to Rome and, later, during the Empire, a city governed by Roman laws through its citizens' decisions— as the forefather of the modern municipal authority.

Throughout the Visigothic dominion prevailed the organisation inherited from the Roman occupation, whilst during the Mussulman period the cities were subordinated to the caliph. In the Christian Reconquest stage, the organisation of the municipalities became much diversified, under the law of the *charters* — documents governing the relationship between the settlers or the inhabitants of the towns and the Crown or the Landlord, mainly in administrative and fiscal matters.

Over the first centuries of the Portuguese Monarchy, from the 12th century onwards, such a diversified organisation remained — certainly, the monarchs applied the ancient charter pattern to the new situations (Santarém, 1179, for instance).

Participation in the municipal life was as a rule confined to the *homens bons*, free men, not belonging to the privileged classes (high aristocracy and high clergy), nor subjected to a special status (Jews or Moors) — attention should be drawn to the crucial role played by the municipalities and their authorities, in particular Lisbon, in the 1383-1385 dynastic crisis and, along with it, in the movement of the towns' bourgeoisie.

129. As from the 15th century, King Afonso's Ordinances (1446-1447), the Reform of the Charters by King Manuel I, the *Regimentos dos Officiais das Cidades, Vilas e Lugares destes Reinos* (1504), King Manuel's Ordinances (1512-1514) and Philip's Ordinances (1603) established a uniform system for the municipal administrative unit. It is a time which coincides with the emergence of the modern State and with a stronger self-assertion of the centralised political power. The new charters contained provisions other than those laid down by the general laws such as, mainly, charges and duties to be paid by the municipalities. In the words of Marcello Caetano: «Life in the councils, until the 19th century, was free of trouble, suitable to the stable economic and social circumstances and for the independence that deficiencies of the State big departments not only allowed but also imposed. Yet, the real power was ever present in the municipal administration, at least in the most important councils, through the *Juízes de fora*, besides other special magistracies (6).»

130. The liberal revolution introduced a new logic in the organisation — clearly seen in the Decree no. 23, of 16 May 1832, drafted by Mouzinho da Silveira, whereby it is established a uniform model of organisation, borrowed from the French, making provision for an Ombudsman by appointment of the king to perform his duties at municipal level, assisted by an elective chamber with mere initia-

(6) *Manual de Direito Administrativo*, Coimbra, 1970, 1, pp. 320-321.

tive and consultative powers. The history of the administrative codes, which started in 1836 on the initiative of Passos Manuel, will correspond to a swinging and cyclical movement, with alternated periods of centralising and decentralising solutions. The year of 1836 witnessed an orientation towards an increase in the municipal powers, and the Town Hall, elected by the people, saw its decision-making power extended, and its Chairman thenceforth elected by itself. The central power was represented in the municipality by the council administrator and in the district (larger circumscription) by the administrator general.

In 1842, Costa Cabral had a code approved whereby the jurisdiction of the magistrates appointed by the Government (council administrator and civil governor) prevailed, with strict oversight with regard to the collegiate bodies (Municipal Chamber, Municipal Council, and General Committee of the District). Such centralising guidelines, however, would not be put into question until thirty years later by the 1878 Code, known after its proponent's name —Rodrigues Sampaio— which displayed its centralising nature, and whereby the Chambers, District General Committees and Parish Councils were assigned important tasks of their own. The Code of 1886 (José Luciano de Castro), in line with the former, established for Lisbon and Oporto a special system and the representation of minorities in the administrative bodies. This Code would undergo extensive changes in 1892 during the Government of José Dias Ferreira, in the direction of a reduction in the powers of the local authorities with a view to dealing with the grave economic and financial crisis prevailing at that time. The much centralising nature of the next 1895-1896 Code (João Franco), and the granting of extensive powers to the Government representatives followed in that line.

131. With the Republic, the 1878 Code was restored, and the Code of 1896 applied on a subsidiary basis. Despite the decentralising trend, within the scope of the principles, the regime of 1910 failed to enact an Administrative Code, and merely approved Act no. 88, of 7 August 1913 — only as concerned the organisation, working and powers of the administrative bodies. By contrast, the regime which followed the movement of 28 May 1926 adopted, in the thirties, a Code (1936-1940) understandably centralising in its orientation, the framer of which was Professor Marcello Caetano. There we see the clear predominance of the administrative magistrates — civil

governor in the district and Chairman of the Chamber in the municipal authority. The «head of household» was only entitled to elect some of the members of the parish councils.

132. The Constitution of 1976 makes an express provision for *local authorities*, the pattern of which is oriented towards decentralisation. «Local authorities shall be territorial bodies corporate with representative organs serving the particular interests of the local population.» (Article 237, paragraph 2, of the Constitution). The local authorities in the mainland are the parishes, the municipal authorities and the administrative regions.

The organisation of each local authority includes an elected assembly with powers of decision and a corporate executive organ responsible to the assembly. The assemblies are elected by the resident citizens by way of direct and secret universal suffrage — according to the system of proportional representation. To perform their tasks, the local authorities have their own assets and financial resources; the system of local finance aims at the fair apportionment of public funds by the State and local authorities, and the «correction of inequalities between local authorities on the same level» (article 240, paragraph 2). Local authorities have their own powers to enact regulations, within the limits of the Constitution, and are subject to the administrative oversight. Supervisory measures restrictive of local autonomy, notably those imposed by the central administrative authorities' competent organs, depend on prior opinion of a local authority body, and the dissolution of local authority organs resulting from direct elections may be grounded only on serious illegal deeds and acts of omission.

133. The representative organs of the *municipal authority* are the *Municipal Assembly* and the *Municipal Chamber*. The former is composed of «the chairmen of the parish councils and at least an equal number of members elected by the votes in the municipal area» (article 251).

It is incumbent upon Assembly to monitor and supervise the activities of the Municipal Chamber and the municipal departments; to approve, upon proposal of the Chamber, the annual plan of activities, the budget and its amendments, the report on activities, the balance sheet, management accounting, the master plan and the loans.

The Chamber is the «corporate executive organ of the municipal authority, elected by the citizens entitled to vote who are residents in its area; the chairman shall be the candidate who heads the list that received the most votes» (article 252 of the Constitution). The Chamber is composed of councillors, in a number that varies (14 in Lisbon, 12 in Oporto, decreasing until 4 in municipal authorities of 20,000 or less electors). Among its tasks, the Chamber must implement and put into effect the decisions of the Municipal Assembly; draw up the annual plan of activities and the budget, as well as the amendments and revisions concerning them, and promote their implementation; supervise the management and direction of the staff in the service of the municipal authority. Undeniably, the powers of the Municipal Chamber in matters of urban planning and building are particularly relevant. The Chairman of the Municipal Chamber is the legal representative of the municipal authority and, in his capacity as such, he has the power to institute proceedings on its behalf; in addition, he must implement the decisions of the Municipal Chamber, and co-ordinate the municipal affairs.

The Municipal Assembly may establish a Municipal Council as an advisory body, being necessary that its membership should ensure fair representation of the economic, social, cultural and professional organisations of the municipal area.

Municipal authorities, which may form associations and federations for the administration of common interests, are entitled to share in the receipts from direct taxation. Accordingly, for the time being the municipal authorities' source of tax revenue lies in the municipal tax, the automobile tax, and the conveyancing tax — apart from a proportion of the value added tax on taxable earnings from touristic activities, and from several rates, tariffs and fines. Local authorities also receive a state grant from the Equalization Fund in the form of a given amount that is re-allocated from the State Budget to the municipal authorities every year (cf. Act no. 1/87, of 6 January).

134. Below the *municipal authority* there is the *parish*, whose representative bodies are the Parish Assembly and the Parish Committee. The *Assembly* is elected by the citizens entitled to vote who are residents within the parish, under the proportional representation system. The *Committee* is the executive body of the parish,

elected by the Assembly from among its members by secret ballot. The chairman of the Committee is the citizen who heads the list that received the most votes in the election for the Assembly. In parishes with 200,000 or less voters, the Parish Assembly is replaced by meetings of all the citizens entitled to vote (article 19 of Act no. 100/84, of 29 March).

Nevertheless, decisions of the meeting will not attain validity, unless a minimum of 20 % of the electors of the parish are present. Where there is a meeting of citizens, it will elect the chairman of the Committee.

Besides the political parties, other groups of citizens entitled to vote may put forward candidates for election of the parish organs — which does not apply in so far as municipal elections are concerned (nor does it apply to the elective organs central authorities).

135. The Constitution provides for the existence of *administrative regions*, above the municipal authorities; as already said, the regions were not established so far, owing to the difficulties in developing criteria for dividing the territory of the mainland. Under the basic law, «the administrative regions shall be simultaneously established by the law; the latter shall lay down their powers, membership, attributions and the working methods of their organs, where appropriate with differences from one to the other» (article 255 of the Constitution). The concrete establishment of the regions depends on a favourable vote of the majority of the municipal assemblies representing the larger section of the regional area's population.

The administrative regions will be entrusted with, *inter alia*, the duty to guide the public departments and the task to co-ordinate and assist the municipal action — whilst respecting the municipal autonomy and without limiting the municipal powers. The representative organs of the regions will be the Regional Assembly and the Regional Committee. The Assembly will be made up «of members directly elected by the citizens enrolled in the electoral register of the area of the region and members elected, according to the system of proportional representation and the Hondt highest average method, by an electoral college in which shall take place the directly elected members of the municipal assemblies of that area; the first-mentioned members shall not outnumber the last mentioned» (article 260 of the Constitution). The Regional Committee — the executive collegiate body — will be elected in a secret ballot by and from among the members of the Regional Assembly.

Attached to each region there will be a representative of the Government, who will exercise powers with respect to the local authorities in the area; he/she will replace the existing civil governor, who has jurisdiction within the district.

With a view to intensifying the participation of the population in local administrative life, the Constitution makes provision for the existence of neighbourhood organisations, which will enjoy the rights of petition with respect to matters of common interest and of participation in the Parish Assembly through their representatives, although not being entitled to vote (7).

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(7) On this chapter, see: Marcello Caetano, *Manual de Direito Administrativo*, cit., particularly vol. 1; *História do Direito Português*, vol. 1, Lisbon, 1981; the article «Concelho», in *Enciclopédia Verbo de Cultura*; and Diogo Freitas do Amaral, *Direito Administrativo*, reproduced papers, Lisbon, I, 1986, II, 1984, III, 1984-1985; José Manuel Sérvulo Correia, *Noções de Direito Administrativo*, 1, Lisbon, 1982; Nuno Espinosa Gomes da Silva, *História do Direito Português*, copied, Lisbon, 1969. As concerns the financial topic, see: A. L. Sousa Franco, *Finanças Públicas e Direito Financeiro*, Coimbra, 1986; Eduardo Paz Ferreira, *As Finanças Regionais*, Lisbon, 1985; J. J. Teixeira Ribeiro, *Lições de Finanças Públicas*, 3rd ed., Coimbra, 1989; Vasco Valdez Matias, *Contributo para o Estudo das Finanças Municipais em Portugal*, Coimbra, 1987.

## ECONOMIC ORGANISATION

*«Poucos países há, certamente, em cuja história seja tão sensível, de ponta a ponta, o influxo do factor económico, como este nosso: poucos há, também, cuja história económica fosse tão desprezada; e será acaso dos maiores obstáculos ao ressurgimento da nossa Pátria a falta geral de conhecimentos sólidos das condições económicas em que evoluciona.»*

ANTÓNIO SÉRGIO, *Prefácio à «Antologia de Economistas Portugueses»*, Lisbon, 1924, p. 00

## The Economic Organisation

## 1. Principles, the State and its Limits

136. Portugal is an open economy, based on the competitive coexistence of the sectors in the ownership of the means of production, private enterprise and market economy, within the framework of the subordination of the economic power to the democratic political power. The first version of the 1976 Constitution, however, placed the emphasis on the public intervention in the economy and on transition to a teleological socialistic model. It was undoubtedly an open model, based on the rule of law, on democratic pluralism and subordination to the will of the people expressed through direct, periodical, secret and universal suffrage. Accordingly the constitutional practice, from the very first moment has oriented itself towards the enshrinement of a «social State with an open economy», which was reflected in an «imperfect capitalist system» (Sousa Franco) in process of being transformed, resting upon the structures of a mixed econ-

omy. The 1982 and 1989 Amendment Acts have confirmed it. Competition prevailed over control and regulation over rigid planning of the future.

137. Article 80 of the Constitution contains an enumeration of the principles which it considers the foundations of the economic organisation, namely:

a) Subordination of economic power to democratic political power;

b) Coexistence of the public, the private and the co-operative and social sectors with respect to the ownership of the means of production;

c) Collective ownership of means of production and land as required by the public interest, and of the natural resources as well;

d) Democratic planning of the economy;

e) Protection of the co-operative and social sector with respect to the ownership of the means of production;

f) Democratic intervention of the workers.

Here we see the principles underlying what may be labelled the *static model for the economy*. The framer of the Constitution specifies the need of the economic power to subordinate itself to the democratic political power and makes an express provision for the existence of a model with a mixed economy — by way of the competition between the different sectors of ownership. And it is upon these two pillars that references are made to the collective ownership of the basic means of production, to the democratic planning and the intervention of the workers — and, further, there is the appeal to a dynamic perspective of transformation expressed by the development of social ownership.

The complementarity between the State and the market, between public and social and private economies appears thus as a corollary of the enshrinement of a multipolar economy.

138. Nevertheless, the drafter of the Constitution felt the need to clearly define the basic options of the transforming model; therefore, he translated them into «prime duties of the State», as set forth in article 81. As Vital Moreira and Gomes Canotilho wrote, it is

«one of the most complex (and simultaneously the least homogeneous) of the constitutional provisions» (1).

Actually, there is no consistency in the criteria used for enumerating such duties. These call, indeed, for a classification in three main topical groups:

a) Transformation of the social and economic structures (eradication of inequalities; better use of the productive forces; intervention of the workers; suppression of the large estates; system of planning; scientific and technological policy; energies policy);

b) Abolition of economic constraints (antimonopolistic orientation; suppression of abuses of the economic power and of all practices that are harmful to the common interest; defence of fair competition in business; protection of the consumer);

c) Promotion of the growth and development of the economy (increase in the social well-being; development towards a balanced growth of all sectors and regions; development of economic international relations).

The State is assigned a large number of tasks with a trend that is, however, markedly programmatic. Such a trend reflects in the economy of both the daily life and governmental policies.

Public authorities of control and intervention in the economy are clearly restricted. The line is drawn by the recognition of the right to private ownership and to freedom of initiative, as well as by the safeguard of the existence of a multipolar open economy. The intervention of the State appears thus to be primarily that of a *moderator* with a view to ensuring the equality of opportunities among the citizens, and equity. To use a phrase so dear to John Rawls, social and economic policies are intended thus to maximise, in the long term, the expectations of the unprivileged, in terms of equality of opportunities.

139. Yet, from among the prime duties of the State set forth in article 81, the provision was deleted in 1989 which referred to the nationalisations as the means to abolish and prevent the formation of private monopolies. Instead, the duty is laid down to abolish and prevent the formation of private monopolies and to suppress abuses

(1) Gomes Canotilho and Vital Moreira, *Constituição Anotada*, cit., I, p. 401.

of economic power and all practices that are harmful to the common interest — nevertheless, the need to ensure the fair competition in business was retained.

Article 83, in turn, instead of providing for the intervention, nationalisation and socialisation, stipulates that it is incumbent upon the law to define «the ways and means of collective interference in and the collective ownership of the means of production and land as well as the criteria for fixing the corresponding compensation». The concept of collective ownership was rendered flexible — the *ways and means* of its achievement will be defined by law. Such is a matter pertaining to the relatively reserved legislative powers of the Assembly of the Republic — which will encompass the definition of the ways and means of intervention with, expropriation, nationalisation and privatisation of the means of production and land for public purposes, as well as the criteria for determining compensation in such cases (article 168, paragraph 11).

As far as the abandoned means of production are concerned, provision was made, besides expropriation, for them to be compulsorily given out on lease or to a concessionaire under exceptional conditions to be laid down by the law, the Assembly of the Republic or the Government where it has been authorised to the effect [articles 89 and 168, paragraph 1, *l*]).

The principle of the development of social property, complementary to the collective ownership, ceases to benefit by the former autonomous approach which is mentioned only in the said article 80 (Fundamental principles).

140. «The re-privatisation of the ownership of or the entitlement to exploit the means of production and other property nationalised after 25 April 1974» will be carried out only if in compliance with a *framework-law* adopted by *the absolute majority of the members of the Assembly entitled to sit therein* (article 85).

Consequently, the principle of the irreversibility of nationalisations was deleted, although, once it was left outside the material limits to the revision of the Constitution, it could at all times have been amended by the Assembly, provided that the amending rules laid down in article 284 and article 286 were observed. Article 83 (of the Constitution before the revision) laid down a provision of

a fixed character that was hardly compatible with the principle of the overriding sovereignty of the people, the alternation in government and our open economy.

Small and medium-sized businesses indirectly nationalised which are outside the basic sectors of the economy may be re-privatised too, according to the law — in which case it must be applied a less strict scheme of alienation.

In what concerns directly nationalised enterprises, the Constitution contains, in the final and transitional provisions, the fundamental principles upon which privatisation may be achieved (article 296):

*a)* The re-privatisation of the ownership, or the right to exploit, will as a rule and preferably be carried out by way of open public competition, offers in the stock exchange or public subscription;

*b)* The revenue obtained as a result of the re-privatisations will be used only for the purpose of redeeming the national debt, sinking the debt of the State-owned businesses, servicing the debt contracted as a result of the nationalisations or new investments in the capital stock of the productive sector;

*c)* The workers of re-privatised businesses will in the process of re-privatisation keep all their rights and duties;

*d)* The value or means of production and other property to be re-privatised will be previously estimated by two or more independent entities.

These provisions aim at ensuring that public interest be properly safeguarded, in so far as privatisation policies are concerned — with due regard to the fundamental principles of economic organisation (cf. Law no. 11/90).

141. Following the amendment of the Constitution, in 1982, private enterprise was recognised as a part of the economic, social and cultural rights (article 61, paragraph 1), and ceased to be, as was the case, included only in the section dealing with the economic organisation. In the light of the 1976 Constitution, however, free enterprise should be understood to be recognised, since an open-economy model was enshrined in the Constitution and only with the free exercise of private enterprise can such a model be conceived of.

Today, we do believe that there is no ground for doubts to be raised. Free enterprise must be considered one of the cases falling within the field of the rights and freedoms of a type similar to the

fundamental ones; accordingly, it is subjected to the principle enshrined in article 18, whereby a constitutional provision relating to fundamental rights and freedoms is directly applicable, regardless of any complementary legislation (cf. article 17). Free enterprise encompasses freedom to commence an economic activity and to run a business, and must be read together with the right to private property, laid down in article 62. If it is certain that some authors consider this right to be merely a right to property, in other words, a right to freedom from expropriation or requisition of property by the State or third persons, except for public purposes and against the payment of compensation, the truth is that we are before a positive right; on the matter, Professor Sousa Franco said that the formula employed aims to «intentionally cover both the ownership as a real right to property and the right of appropriation — that is to say, the individual's right to appropriate any property to use for his own needs» (2).

The narrow conception has therefore no literal or substantial counterpart in the constitutional provision; hence, there is the express and positive recognition of the right to private property, encompassing the right to transfer *inter vivos* and *mortis causa*. Here again we see a right of a type similar to the fundamental rights and freedoms, susceptible of direct application and binding on all public and private bodies. Certainly, by drawing the line between the right to property and free exercise of private enterprise, the Constitution does not include the safeguard of the latter into the definition of the former. Nevertheless, we can not dissociate both realities. Either the positive content of or the limits to the right to private enterprise in the end have a bearing, in practice, on the use and enjoyment of property — either reality being essential for the definition of the static model of economy above-mentioned. Attention should further be drawn to article 61, which, by placing restrictions on the free exercise of private enterprise — in other words, by taking full account of private enterprise as a tool for the collective development and compliance with the legal framework as a requirement— invokes the social function as a barrier to the exercise of economic activity, which is inherent in the modern constitutions as well as in contemporary law. Ordinary law provides numberless instances of

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(2) «A Revisão da Constituição Económica», sep. of *Revista da Ordem dos Advogados*, Lisbon, 1982, p. 43.

limits warranted by such social function (the legislation for the defence of competition and consumers alike, the systems of access to trade and to foreign investment are examples of this).

## 2. Structures of the Ownership of Means of Production and Planning

142. The Portuguese Constitution provides for the existence of three sectors in the ownership of the means of production, land and natural resources, defined according to ownership and managerial powers (article 82). These three sectors — the public sector, the private sector, and the co-operative and social sector — regarding the ownership of the means of production are *institutional sectors of the economy*:

«The *public sector* shall comprise the means of production that belong to and are managed by the State or other public bodies» (article 82, paragraph 2) — the statist, self-managing, and community subsectors ceased to be distinct, the new public sector being confined to the statist one.

«The *private sector* shall comprise the means of production that belong to or are managed by private persons or private corporation bodies» (article 82, paragraph 3), without prejudice to those included in the social sector. This continues to be the rule-sector — similarly to the line has been followed since 1976.

The *co-operative and social sector* now comprises the means of production that belong to and are managed by co-operatives, in accordance with the co-operative principles [article 82, paragraph 4, *a*)], by local communities [article 82, paragraph 4, *b*)] and by other forms of collective exploitation by workers [article 82, paragraph 4, *c*)]. This sector covers, thus, not only co-operatives — that constitute its matrix — but also the self-managing and the community subsectors, which were part of the public sector before the Amendment Act.

As far as the public sector is concerned, it is worth mentioning that the «effective participation of workers in the management» of the production sector shall be secured (article 90).

As to private businesses, it lies with the State to ensure the respect of the Constitution and the law as well as the protection of the small and medium-sized units, economically viable (article 87, para-

graph 1). Public intervention in the management of private businesses is permitted «only on a temporary basis, where the law expressly provides to that effect and, as a rule, subsequently to a judicial decision» (article 87, paragraph 2).

A provision was retained by article 87, paragraph 3, which reads: «The law shall determine which are the basic sectors where the activity of private businesses and other entities of the same nature is forbidden.» These are the contours of the principle of subordination power to the democratic political power — and it falls within the competence of the Assembly of the Republic, by virtue of the provision of article 168, paragraph 1, *f*) (relatively reserved power), to determine the sectors with respect to the ownership of the means of production, including the basic sectors in which private businesses and other bodies alike shall not operate.

143. The delimitation of sectors act Law no. 46/77, of 8 July, as amended by the Decree-Law no. 406/83, of 19 November, and Decree-Law no. 449/88, of 10 December) distinguishes the situations below, as follows:

*i) Exclusive power* — In the present case, it is established that the companies operating directly in any of the following activities: waterworks, treatment, distribution of water to serve public supply purposes; sewerage; postal services; railway network (operating at public level); exploitation of maritime ports, and airports shall belong to the public sector. The *exclusive power* refers to businesses with a total state-owned capital, save for the cases of continuation of the operation of societies with private capital existing at the date of publication of the law and within the respective current operating framework.

*ii) Control reserva* — Provision is made for the Government to authorise 'in exceptional cases and on imperative grounds' the exercise of business in the arms build up sector by 'companies built by a process of association of a state-owned corporation sharing a majority of the capital stock and other bodies, namely foreign ones, provided that the latter have exclusive rights of technological nature that are not susceptible of negotiation in other appropriate manner, or have a dominant position in international markets of oligopolist structure, in which the public sector in itself has no capa-

bility to penetrate' (cf. article 5). The telecommunication and air-scheduled services may be operated by companies arising from the association of bodies of the public sector, which shall hold a majority of the capital of the new company, and other bodies (article 4, paragraph 2).

iii) *Contingent reserve* — The Government may, by a decree-law, forbid the exercise of industrial activities on a fiscal basis, such as the tobacco and matches, in so as private enterprise is concerned. Law no. 46/77 further provides that the exploitation of natural resources (v. g. subsoil) is subjected to franchise or another system that does not involve the transfer of ownership of the resources to be explored. On the other side, it is provided that the exploitation and management of businesses that do not operate in the basic sectors may be entrusted by the Government to private bodies in exceptional instances and never with a final character<sup>(3)</sup>.

From 1983 onwards, the exercise of banking and insurance activities as well as the access to the industrial sectors of fertilizers and cement ceased to be barred to the private sector.

144. The Amendment Act of 1989 reduced the number of the constitutional provisions, in so far as this topic is concerned (articles 91-95). On the one hand, the Government is entrusted with the task of preparing, in conformity with its Programme, *the medium-term economic and social development plans*, and an *annual plan* which finds its financial expression in the Budget of the State and which contains the main guidelines for the sectorial and the regional plans to be adopted as a consequence of its economic policy. On the other hand, the plans are oriented towards the promotion of the economic growth, a balanced development of the sectors and the regions, a fair partition of the national product among the individuals and among the regions, the coordination of the economic policy with the social, educational and cultural policies, the conservation of the ecological balances, the safeguard of the environment and the quality of life (article 91).

It falls within the competence of the Assembly of the Republic to approve the major options corresponding to each plan and to scrutinise the respective progress reports; the bills containing the

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(3) Cf. Carlos Ferreira de Almeida, *Direito Económico*, Lisbon, 1979, II p. 397.

major options must be accompanied by a report on the major overall and sectorial options and the reasons therefor. It lies with the Government to coordinate the implementation of the plans; that coordination must be decentralised with respect to both the regions and the sectors [articles 93 and 164, *b*]).

The instrumental duality for the approval of the planning tools still remains. The major options of each plan shall always be approved by Parliament — whilst the references to the long-term and medium-term plans, as individualised instruments, were deleted. *The Government is still vested with the duty to approve the plans.*

145. The National Planning Council came into being by virtue of the 1989 Amendment Act in order to replace the Economic and Social Council; it was intended to act as a body for consultation and concertation in the field of economic and social policies. It will participate in the preparation of the development plans and will perform such tasks as may be assigned to it by law. The membership of the Council must be determined by the Assembly of the Republic, or by the Government, duly authorised by the former to the effect; representatives of the Government, of the organisations representing the workers and of those representing the economic activities, representatives of the autonomous regions and the local authorities will have a seat in the Council [article 168, paragraph 1, *m*]).

The Economic and Social Council performs the duties of the former National Planning Council and is likely to discharge the functions that are currently entrusted to the *Permanent Council for the Social Concertation*. Here lies the reason for the special reference to concertation that was introduced by the framers of the Amendment Act.

146. In line with the 1982 Amendment Act, the agrarian reform ceased to be one of the prime duties of the State, in 1989; henceforth, article 81, subparagraph *b*), deals with the suppression of the very large estates and the reorganisation of very small farms. The political and ideological burden was substantially alleviated in this field and the heading relating to the Agricultural Policy and the Agrarian Reform gave way to another that reads: the Agricultural, Commercial and Industrial Policies.

The objectives of the agricultural policy are thus readjusted. To increase the agricultural production and productivity becomes a major design. The improvement of the economic, social, and cultural situation of the rural workers and farmers stands out, linked to the idea of rationalisation of the land-owning structures and the access to ownership or possession of the land and other means of production directly used in its exploitation by those who work it. Furthermore, there is a need to encourage various forms of co-operation between farmers, the direct exploitation of the land, the development of a policy for rural planning and for the conversion of the agricultural use of land in conformity with the ecological and social circumstances of the country.

Reshaping the size of land exploitation units whose dimensions are excessive from the viewpoint of the agricultural policy will be provided for by law — a matter which falls within the relatively reserved powers of the Assembly of the Republic [article 168, paragraph 1, *n*), and articles 97 and 98]. The legislator laid down the right of the owner of expropriated estates to compensation and to reserve for himself and area that is big enough for him to exploit under rational and viable conditions (article 97, paragraph 1). Expropriated land shall be handed over, either for ownership or for possession, to small farmers preferably family farming units, to co-operatives of rural workers or of small farmers or to other forms of exploitation of land by workers — without prejudice to the possibility of establishing a probation period for the purpose of judging whether the exploitation is effective and rational prior to transferring full property rights (article 97, paragraph 2).

As for very small farms, it is provided that the State promotes the reshaping of the size of land exploitation units whose dimensions are smaller than what is desirable, particularly by way of legal, tax, and credit incentives with a view to «achieving the structural or economic integration of units, such as the co-operative integration for instance, or by way of deparceling out units» (article 98).

Article 102 establishes the objectives of the commercial policy that combine and improve the provisions contained in the articles 109 and 110 of the Constitution, before the Amendment Act of 1989, as follows: beneficial competition among those in trade; rationalisation of the distribution chains; the fight against speculative activities and restrictive trade practices; developing and diversifying the external economic relations.

In respect of the objectives of the industrial policy (article 103), there is an orientation towards «increasing the industrial production against a framework of modernisation, adjustment of social and economic interests and international integration of the Portuguese economy»; «reinforcement of industrial and technological innovation»; «increasing the competitive and productivity of industries; assistance to small and medium-sized businesses and more generally to initiatives that create jobs, increase exports or replace imports» and «assistance with a view to giving international prominence to Portuguese companies».

### 3. *Budget and Public Finance*

147. As far as the public *financial Constitution* is concerned, the following aspects deserve being mentioned:

a) The Budget of the State is approved by the Assembly of the Republic, in a *monistic system*, the Government being entrusted with powers only to implement it;

b) The Budget is drawn up every year «in accordance with the major options of the annual plan» (article 108, paragraph 2);

c) The Budget of the State contains the details of the receipts and expenditure of the State, including the revenue and expenditure of the autonomous funds and departments and the budget of the social security;

d) It is further provided (article 109, paragraph 3) that the draft Budget must be accompanied by reports on the foreseeable development to the major macroeconomic aggregates that have a bearing on the Budget, as well as the money supply and its counterparts; the reasons for the differences in the anticipated receipts and expenditure with respect to the previous Budget; the national debt, the treasurer's transactions and the Treasury accounts; the situation with respect to the autonomous funds and departments; the situation of the National Health Service; the budgetary relations with the autonomous regions; the financial transfers between Portugal and the outside world that have a bearing on the Budget; the tax concessions and the corresponding foreseeable loss in receipts;

e) And, besides, it is reaffirmed that the Budget is a single unit and must specify the expenditure according to the applicable organic or functional classification so as to thwart the existence of secret

appropriations and funds; it may also be structured according to programmes — which is a significant innovative provision (article 108, paragraph 3);

f) As a consequence of this system, which concerns the budgetary programmes, it is provided that the law will define the criteria under which alterations might be introduced by the Government in the articles classified organic, at the time of its implementation, with a view to giving effect to each budgetary programme approved in the Assembly of the Republic — the functional division approved by Parliament will not be modified whatever the circumstances may be.

It should be noted that article 168, paragraph 5, clarified the issue of the *authorisations concerning fiscal matters* by expressly stipulation that «authorisations granted to the Government within the Budget Act» comply with the provisions concerning legislative authorisations — they lapse when the Government to which they were granted ceases to hold office, and they must determine the subject, the guiding lines and the scope as well as the duration. Nevertheless, authorisations relating to fiscal matters will not lapse until end of the financial year to which they refer. It was thus received the understanding of the majority of the doctrine; yet, it must be understood that authorisations concerning fiscal matters will not be used more than once, unless the authorisation provides for its gradual application. Nor should it be forgotten that such legislative authorisations relating to fiscal matters do not include the authorisations to raise and grant loans, since the latter are not legislative authorisations, but rather authorisations granted in conformity with the provision of article 164, subparagraph 1), of the Constitution.

148. In addition to what has been said, mention should be made to the Court of Audit, which is a genuine court nowadays. Article 216 lays down that the Court of Audit «is the highest body entrusted with supervising the legality of public expenditure and with passing judgement in such accounts as required by law», and have *inter alia* the following powers:

a) «To give an opinion on the General Accounts of the State, including the accounts of the social security and of the autonomous regions;»

b) «To give effect to liability resulting from financial offences, in conformity with the law;»

c) «To perform other duties conferred to it by law.»

The framer of the revision of the Constitution explicitly laid down the Court of Audit's highest supervising function, and therefore this body is not confined to simply scrutinise «the lawfulness of public expenditure» and the judgement on «such accounts as shall be required by law to be submitted to it».

149. Reference must now be made to the *regional finance*, in so far as their own taxation powers are concerned. In what concerns article 229, subparagraph *i*), to the power to dispose of the revenue obtained by taxation exercised in the regions and of other revenue assigned to them and to allocate that revenue to their expenses, it was added in 1989 the possibility for the regions to adapt *the national fiscal system to regional specificities in harmony with the provisions of the framework law of the Assembly of the Republic*. Here we see the assertion of the primacy of the powers of the Assembly of the Republic as regards the fiscal system, by enabling a framework law to establish the fundamental principles that the *regional adaptations* must observe. Such elucidation threw light on the configuration of the regional taxation power — it encompasses, thus, not only the right to profit by all revenue obtained in the region, but the possibility to introduce *adaptations* in the fiscal system as well, with due regard to the provisions of a framework law. Hence, this taxation power does not put the national fiscal system into question.

In the financial context, it should be recalled that the questions and acts of a budgetary, fiscal or financial nature will not be the subject of a *referendum* — as to the financial sphere, the legislator meant to cover the issues of the financing of the economy, currency, credit operations. Meanwhile, contrary to what would be deemed appropriate, the framer of the Amendment Act did not provide for a budgetary framework law to be included among the new organic laws [article 167, *a*) and *e*)], which will not facilitate interaction between that law and the budgetary laws.

#### 4. An Open Economy

150. What conclusions can we draw from all that has been said? We discern a serious concern to enshrine, unequivocally, an open economy with the coexistence and complementarity of sectors —

opening the way to new and more effective spaces of autonomy and heteronomy in the economic field, according to the main lines of the governments ratified by the vote of the people and the contribution of the participatory institutions. The basic law sets forth great principles that must be observed — they aim to introduce elements of equity in the system —, starting by the subordination of the economic power to the political power, and the coexistence of sectors of ownership, the democratic planning, the protection of the social sector and the collective ownership of the means of production as far as required for the sake of the public interest. It is the social function of economics that could not be forgotten. Yet, guarantees for *self-regulations* were retained: the safeguard of fair competition in business [article 81, *f*], which remains, unaltered, amongst the prime duties of the State; and, further, the enshrinement of the principles of equality of opportunity, and equity (the recognition of the right to equal consideration and respect, to use Ronald Dworkin's own words) that underlie various significant constitutional provisions (articles 1, 2, 9, 12, 13, or 106 are mere examples).

Being programmatic, the Portuguese Constitution, by enshrining the subordination to the majoritary vote, as nature that is not directive, not terminalistic either, with regard to the social reality. There is not, thus, any restriction by «a metaphysical ghost of the end of history». Out of the idea of programme, there comes a function that is highly mediatory and dialogic — between values, rules and facts. In the perspective of Professor Jorge Braga de Macedo, «from among all the effective organisations of the Portuguese economy, one chooses through the majority vote the one that comes closer to equity as envisaged by the Constitution»<sup>(4)</sup>. The ambiguity generated by the compromise of 1976 progressively gives way to an accommodation of the heterogeneous code (basic law) to the social and economic system, which is complex and diversified.

151. Thus, the constitutional system of mediation makes way for the assertion of such different institutional patterns as are possible in a multipolar economy, and gives rise to: *a*) the dialogue between ethic and juridical values (such as justice and equity), rules and facts

(4) Jorge Braga de Macedo, «A ilógica do sistema constitucional português», in *Estudos*, XX Aniversário do Centro de Estudos Fiscais, vol. 1, Lisbon, 1983, p. 221.

(efficiency); *b*) the regulation of the economic life — of competition and conflicts; *c*) the institutionalisation of a social State by eradicating imbalances and inequalities. There is an open system, the directive constraints of which may give way to flexible and lighter tools that enable the assertion of innovation and creativity, in compliance with the conditioning principle of the majority vote. The fortunes of economy and society will depend on the will, on contingencies and interests. The basic law defines the area where those fortunes are to be decided — it is not its duty to bar the paths of the future nor the vital force of the subjects that must face them. The constituent compromise does not stop at a given moment. It continues.

We watch, thus, the *constitutional compromise* grow stronger — by defining the rules of the game and pointing to directions which, without harming the creativity and the autonomy of economy and society, are meant to foster, with equity and efficiency, the enhancement of man, individually and jointly. It is not the imposition of a pattern, whatever it may be, that is at stake; instead, it is the use of conditions which will likely favour an innovative *mediation* between the ethico-juridical values and facts, between principles, directives and interests. The programme and the idea of promoting the enhancement become less rigid, grow more flexible, giving scope to movement, which does not mean that they cease to be exacting. It is the gradual reform of society and economy that is at issue (<sup>3</sup>).

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(<sup>3</sup>) On the subject, see: A. L. Sousa Franco, «Sistema financeiro e constituição financeira no texto constitucional de 1976», in *Estudos sobre a Constituição*, dir. Jorge Miranda, cit., vol. III; A. L. Sousa Franco, *Noções de Direito da Economia*, Lisbon, 1982-1983; A. L. Sousa Franco, *Finanças Públicas e Direito Financeiro*, Coimbra, 1987; António Menezes Cordeiro, *Direito da Economia*, 1, Lisbon, 1986; Carlos da Mota Pinto, *Direito Público da Economia*, Coimbra, 1981; Guilherme d'Oliveira Martins, *Lições sobre a Constituição Económica Portuguesa*, 2 vols., Lisbon, 1983-1985; Jorge Miranda, *Direito da Economia*, Lisbon, 1982-1983; J. J. Teixeira Ribeiro, *Lições de Finanças Públicas*, 3rd ed., Coimbra, 1989; Luís S. Cabral Moncada, *Direito Económico*, Coimbra, 1986; Manuel Afonso Vaz, *Direito Económico — A Ordem Económica Portuguesa*, Coimbra, 2nd ed., 1990; Marcelo Rebelo de Sousa, «10 questões sobre a Constituição, o Orçamento e o Plano», in *Nos Dez Anos da Constituição*, cit.

## FISCAL SYSTEM AND SOCIAL SECURITY

*«A imposição de tributos e a forma da sua repartição serão determinadas exclusivamente pelas Cortes. A repartição dos impostos directos será proporcionada às faculdades dos contribuintes e deles não será isenta pessoa ou corporação alguma.»*

*Bases para a Constituição de 1822,*

9 March 1821, no. 34

## Fiscal System and Social Security

152. The history of the tax system in Portugal is dominated during the last two centuries by successive attempts to create systems capable of generating the revenue necessary to defray the public expenditure and to guarantee its being brought as near as possible the models prevailing in Europe. Nevertheless, difficulties have always arisen as soon as the legislative measures taken by the public authorities were to be applied. On the one side, the economic disorganisation had some weight, hampering the generation of the required wealth in order for a stable taxation to meet the public needs — since the Napoleonic invasions (1807-1811) to the *Patuleia* (1846-1847), including the civil war between Miguelists and Liberals, ended in the Évora Monte Convention, there had been no possibility for the State to ensure a regular and continuous revenue; on the other side, society opposed the application of the liberal principle of taxation tending to generalisation. It was against such a background that, in the 19th and 20th centuries, several attempts were made, with different issues, to establish such tax systems as were compatible with the new political and economic conceptions of that time.

## 1. A Turbulent Story

153. Let us briefly approach the essential of those multiple attempts.

It was in 1832 that Mouzinho da Silveira abolished, by the Decree of 19 April, the transfer tax on movables and livestock, except for sales and exchange of freehold land, in respect of which the rate was decreased by 5 %, likewise, were abolished tolls and all the laws, by-laws, provisions, charters, edicts, and Council licences to import or export and, further, the *relegos* and all decisions to the effect that free trade was restricted within the territory and its dominions. The free-trading policy had come into effect. In the period following the peace made in 1834, the reorganisation took a long time and it could be clearly seen how hard it had become for the Government to obtain receipts. Therefore, some piecemeal measures were introduced, for instance, in respect of the stamp duty or death or gift taxes.

154. When Costa Cabral came into office, and subsequently to the restoration of the Charter (1842), a systematic attempt was initiated at reforming the tax system. The works for the drawing up of the Country's Geographical Charter started. It was necessary that the taxation process should be made easier. The old scheme of the *tenths*, reminiscent of the war tithes enacted by the Cortes of Lisbon of 1641, still persisted. On 19 April 1845, the Government published some legislation whereby direct taxes were reduced to three — *property*, *profits*, and *personal income* — in accordance with the *allotment* scheme, being established a fixed amount to be collected annually which was apportioned among the taxpayers. The opposing reactions soon made themselves felt. The drawing up of the register of estate met with a lot of resistance offered by the population, often by the force of arms. Furthermore, the country was suffering from the effects of an economic depression. . . . All this made for the mobilisation of the Government's opponents, who took advantage of the nuclei of popular revolt — first, *Maria da Fonte* and afterwards the *Patuleia*. As a result of such fierce opposition, the new laws were repealed to placate the hostility. And *civil strife* was inevitable in the end (1846-1847) . . .

155. Not until 31 December 1852, in the *Regeneration* period, was the Property Tax created, still following the *allotment* scheme. On 30 June 1860, the transfer tax and the conveyancing tax gave way to the Registration Tax, and the Industrial Tax came into effect on 30 July, replacing the *military tithe*, which was levied on industry and profits made by the factories. Yet the tenth on interests was retained, but heavier. In 1867, the introduction of new excise duties arose riots in Oporto and in Lisbon (*Janeirinha*, at the beginning of 1868), entailing the collapse of the Government which had been formed on a *merger* (coalition of Regenerators and Historicals).

In March 1870, Anselmo José Braamcamp submitted an in-depth reform of the tax system — which implied a change in the Property Tax scheme by introducing the method of the *share*, the extension of the industrial tax incidence and the adoption of an income tax. The reform turned out to be nothing but a draft. A last revolt of old Marshal Saldanha brought an end to such an audacious and fore-running programme . . .

156. On 18 July 1880, the Income Tax was reintroduced with five schedules: A — income from movables; B — income from occupation; C — income from real estate; D — income from commerce and industry; E — income from any other source, not produced but enjoyed or used, alike on the mainland and on the islands. Its implementation was however suspended, except for the provisions concerning the civil servants, in April 1881. . .

Opposition, thus, continued and the old system of the *tenths* persisted, with the piecemeal modifications that had been introduced in the meanwhile. In 1899, a further attempt was made to put into effect the scheme of the *share*, in so far as the property tax was concerned — without success in view of the difficulty in updating the valuation of property and income from property. In 1911, too, the Government of the Republic adopted new measures in that sense which comprised the reorganisation of the tax on registration. In 1913 and 1914, an empirical method of property revaluation was introduced, but difficulties persisted.

157. Act no. 1368, of 21 September 1922, reformed the whole taxation scheme. The following taxes were established or modified: purchase tax, industrial tax, property tax, tax on capital, personal income tax, and registration tax. It was rather an ambitious reform,

meant to act upon the circumstances undoubtedly. Resistance resurfaced nevertheless. The fate of the important reform of 1922 was thus inevitably its failing to be implemented. It merely appeared on the *Diário do Governo*.

158. Nevertheless, under the military dictatorship, Professor Oliveira Salazar was responsible for profound changes in the system, issued in April 1929, which were made effective. The fundamental aspects of such a transformation were as follows: the rural property tax became less heavy and the property value was subject to an automatic updating; the urban property tax maintained its rate but the cadastre was reorganised, as was the computation of taxable income; the industrial tax comprised three groups: A — businesses whose actual turnover was impossible to assess were applied a *fixed rate*; B — tax was levied on capital corrected by stock exchange rates; C — tax was to be levied on presumptive profits, these being calculated according to the turnover; it was introduced the occupational tax to be collected from employees, self-employed individuals, with the exception of civil servants; and it was retained, in addition, the complementary tax as an income tax corrective, the conveyancing tax and death and gift duties were made less heavy. Oliveira Salazar replaced the *actual income* method of taxation with the *normal income* one — aimed at securing a more regular flow of the State revenue and more simplicity and objectivity, namely as regarded the taxpayer's protection against fiscal authorities. That was the view of the Government.

159. With several adjustments, that system was in force until the fifties, when the Fiscal Reform Committee (1957), under the chairmanship of Professor Teixeira Ribeiro, set to work in order to prepare a new system, based on real taxation and on the introduction of personalising factors. The reform (1957-1966) retained the taxation by schedules, and came to include income until then exempt from taxation (for example, capital gains) and rationalised the taxation on consumption. Therefore, the Conveyance Tax Code and Death and Gift Duties Code (1958) came into being, as did the Professional Tax Code (1962); the Capital Tax Code (1962) divided into two sections, one dealing with income from borrowed capital and the other with income from the investment of capitals in businesses; the Industrial Tax Code (1963), with three sections — big

entreprises were collected on the basis of their effective income; as regards medium-size businesses, it was adopted the presumptive income scheme, and small firms were taxed on their normal income; the Property Tax and Tax on Agricultural Industry (the latter being suspended in 1965, owing to the crisis prevailing in agriculture) Code; the Complementary Tax Code (1963) — intended to be an overlapping tax [levied on the overall income of individuals (section A) and corporate bodies (section B)]; the Code of Capital Gains Tax (1965), which was levied on capital gains, where effective and realised, by referring to typified situations; and the purchase tax (1966), a monophasic consumption tax levied on the value of purchases, either of goods made in Portugal or imported goods, where the operation involved an wholesaler as the seller and a retailer as the purchaser.

The tax system conceived by the commission presided over by Professor Teixeira Ribeiro underwent significant amendments, nevertheless, by virtue of a process known as the *tax counter-reform*. In fact, with regard to certain cases, the normal taxation applied, and the overcharge on income from occupation prevailed in favour of income derived from capital — which was against the fundamental guidelines expressed by the commission. During the life of the reform of 1957-1966, the bearing of the tax revenue on the National Gross Profit increased — to the detriment of the customs duties whose percentage diminished, whilst the tax on production and domestic purchases grew higher. Direct taxes took a small step backwards, which turned out to be more than counterbalanced by the increment in the revenue raised by the contributions for the social security.

## 2. *The New Fiscal System*

### a) *The VAT*

160. In the 1980s, it was necessary to evolve a new tax system in order to comply with the constitutional provisions, on the one side, and to meet the demands of modern economics and the EC requirements, in view of the Portuguese accession thereto, on the other.

Article 107 of the 1976 Constitution, a programmatic provision dealing with taxation, pointed to the adoption of a tax on personal income, seeking to «reduce inequality», «a single progressive tax having regard to family needs and income». On the other hand, it

provided that businesses should be taxed fundamentally on their real income, and the tax on inheritances and donations should be progressive «so as to make for equality among citizens». Consumer taxes would aim «to adapt the structure of consumption to the evolution of the needs of economic development and social justice and the said taxes shall bear heavily on luxury article».

161. The laying of the foundation stone of the tax reform coincided with the adoption of the Value Added Tax Code — dictated by the accession of Portugal to European Communities, account being taken of the latter's financing system which currently is partly linked to a percentage of the VAT collection in each member State.

Established by the Decree-Law no. 394-B/84, of 26 December, the Value Added Tax (VAT) is levied on the transfer of goods and services rendered in Portugal against payment and on import of goods. It is a general multiphase tax on expenditure that replaced the former purchase tax. In principle, «the tax base for the transfer of goods and rendering of services subject to the tax is the value of the consideration obtained or due to be obtained from the purchaser or consignee or a third party» (article 16, paragraphe 1, of the VAT Code), whilst, as a rule, «tax base of the goods imported will be the price paid or due to be paid by the importer where that price constitutes the only consideration» (article 17, paragraph 1, of the said Code).

162. In Portugal, three rates apply: 8 % (as regards certain imports, transfer of goods and rendering of services, relating to mineral water, beer, ordinary wines, didactic material, electricity, petrol, diesel oil, services provided by jurisconsults, lawyers and solicitors, medical-sanitary assistance services, etc.); 30 % (applicable for instance to the purchase of vinic brandy, perfumes, furs, precious stones, gold coins and artifacts of precious or luxury material); 17 % (for imports, transfer of goods and rendering of services at large).

163. Being a tax designed to be calculated only on the basis of the value added in each phase of the trading circuit, the tax payable is computed by deducting from the tax assessed in taxable operations: the tax that has been applied to goods or services acquired from other taxpayers; the tax that has been paid for imported goods; the tax that has been paid for the acquisition of certain services where

the party rendering them has no head-office, permanent premises or domicile in Portugal, provided that the party acquiring them is subject to the tax and that his head-office or domicile is located in Portugal; and the tax paid to the effect of taxable operations effected by taxpayers established outside Portugal, when the latter have no legal representative in Portugal and have not collected the tax (article 19).

164. Several domestic operations and imports are exempt from the tax, namely the provision of services by doctors, nurses, veterinarians, translators and interpreters or services connected with teaching and professional training, and the licencing of copyright — in addition to the provision of services by actors, musicians, professional sportsmen, and tauromachian artists, financial operations and insurance and reinsurance operations, leasing of real estate, and operations subject to conveyancing tax, amongst others (articles 9 and 13).

The exemption scheme also applies to parties subject to the tax who do not have nor are obliged to have organised accounting systems, and are not engaged in import or export operations or allied activities, and whose turnover has not attained a certain threshold (currently 1,200,000 escudos) in the previous year. Also exempt from the tax are parties subject to it with a volume of business over 1200,000 escudos but lower than 1,700,00 escudos who, if they were taxed, would meet the requirements for inclusion under the small retailers' scheme. Included in the latter scheme are those individuals who do not have nor are obliged to have organised accounting for the purpose of IRS and did not have a volume of purchases higher than 7,500,000 escudos in the previous year. They benefit from a more favourable regime, the tax being calculated by applying a coefficient of 25 % to the tax borne on purchases of goods intended for sale without transformation. From this value is deducted the value of the tax borne on purchases of investment goods and other materials for use by the firm itself, except in the case of goods that are excluded from the right to deduction under the law.

#### *b) IRS, IRC, Municipal Tax*

165. As to the remaining taxes, the Commission on Fiscal Reform, chaired by Professor Paulo Pitta e Cunha since 1984, submitted the

outcome of its activities in February 1987; in 1988, it was verified that the Government had not entirely accepted the proposals put forward by the Commission, having disapproved of certain conceptions considered by the Commission to be vital. The collapse of the Government in 1987 and the dissolution of the Assembly of the Republic accounted for the delay in the submission of the bill to Parliament — it was during this period that, under pressure from fiscal authorities, the above-mentioned changes were carried out.

In Professor Pitta e Cunha's view, the Commission on Fiscal Reform had to depart from «a highly debased» system, «brought to light by the structural crisis of the public finances», rooted in the last decade, and from the «flourishing of parallel economy», which «among other deeper causes, would relate to the practice often followed of aggravating the scope of tax incidence as the way, not rarely frustrating, to achieve an increase in revenue». On the other hand, the «growing seriousness of the problems raised by the economic openness to the outside world, entailing certain restraints», prompted the legislator to consider the situation seriously <sup>(1)</sup>.

166. The Personal Income Tax (IRS), the Tax on the Income of Corporate Bodies (IRC), and the Municipal Tax (CA) were created.

The IRS was intended to replace the mixed system of taxation on individual income, by schedules, with the formula of unitary taxation of the individual income as a whole. Thus, in accordance with section 1 of the Code approved by the Decree-Law no. 442-A/88, of 30 November, «tax is levied on all annual income of the following categories, after making the specific deductions and adding the tax credit thereto:

- Category A — Income from employment;
- Category B — Income from self-employment;
- Category C — Income from commercial and industrial activities;
- Category D — Income from agricultural activities;
- Category E — Income from application of capitals;
- Category F — Income from real estate;
- Category G — Capital gains;
- Category H — Pensions;
- Category I — Income from other sources».

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<sup>(1)</sup> «A reforma fiscal», *Revista da Ordem dos Advogados*, September 1989, P. I.

167. All the individuals residing within the Portuguese territory are subject to taxation; individuals whose income is obtained in Portugal are liable to the tax, notwithstanding that they do not reside here. When there is a family, «the persons liable to the tax are those responsible for governing the family, in which case the tax is levied on the overall income of the family» (article 14, paragraph 2, of the Code). Taxable income is obtained «by adding the gross income of the various categories that is received every year, after making the specific deductions and adding the tax credits» as set forth in the Code. The tax is levied on a progressive scale — rates range from 16 % and 40 %. Provision is made for a conjugal quotient (splitting) in respect of which «the rates to be applied are equal to the taxable income divided by 2, unless one of the spouses has an income that is at least 95 % of the overall income, in which case the divisor is 1.85» (article 72, paragraph 1, of the Code). Application of the rates must never result in the availability of a gross overall income net of tax that is less than the value of the yearly national minimum wage (*minimum standard of living*).

In certain cases (interest on demand and time deposits; income from any nominative or bearer securities, gains derived from gambling originating in any lotteries, raffles and betting), in view of the difficulty in obtaining the net overall income, the IRS Code provides for the existence of release rates to be applied solely to that sort of operations, the taxpayers being entitled to request that such income be included to the effect of the sole tax.

168. In assessing the taxable income, to the effect of IRS being applied, deductions are likely to be made from the net overall income, with certain limits fixed by the law, namely all health expenses not reimbursed, expenditure on the education of the party subject to the tax and his/her descendants, costs incurred with old persons' homes and similar institutions as regards the ascendants of the party subject to the tax or his/her collaterals to the third degree, interests on debts contracted for the purchase of real estate for housing, life assurance and health or personal accident as well as payments under optional social security schemes.

169. Tax on income of corporate bodies (IRC), the legal system of which was approved by the Decree-Law no. 442-B/88, of 30 November, is levied on income obtained, in the taxation period, by such

taxpayers as are defined by the Code, viz: trading companies or civil companies formed in accordance with the commercial code, co-operatives, public companies, and other legal persons in public or private law with registered office or effective administration within the Portuguese territory; bodies, not recognised as legal entities by law, that have their head-office or effective administration within the Portuguese territory whose income is not taxed under IRS or IRC Codes, directly as an individual or legal person; and the bodies, with or without juridical personality, that have no head-office or effective administration within the Portuguese territory, whose income obtained in Portugal is not subject to IRS. The IRC is levied on profits of trading or civil companies formed in accordance with commercial code, co-operatives, public companies and other such bodies as set forth in the Code, as well as on the overall income of the various categories considered to the effect of IRS, in so far as corporate bodies or entities subject to IRC are concerned.

170. Institutions of social security and assistance, corporate bodies of administrative public utility, including those of mere public utility pursuing exclusively scientific, cultural, charitable, assistance or benevolent aims and private institutions of social solidarity, corporate bodies which are legally equivalent to the latter, and certain types of co-operatives are exempt from IRC.

Currently the rate of IRC is set at 36.5 %, except for the cases expressly set forth in the law and for which it is otherwise provided. As regards income of bodies with no head-office or effective administration in Portugal not any fixed establishment to which the income subject to IRC can be imputable, the rate is set at 25 % — except for the income derived from intellectual or industrial property (15 %), income from the use or granting of the use of agricultural, industrial, commercial or scientific equipment (15 %), and income from the application of capital (20 %), with the exception of income derived from nominative or bearer securities. As concerns «overall income of entities with head-office or effective administration within the Portuguese territory whose main activity is not concerned with trade, industry or agriculture, the rate is fixed at 20 %» (article 69 of the IRC Code).

171. The following are the main innovations of the 1988 taxation on income:

*a)* Introduction of a formula of «progressive, unitary taxation adequate to the taxable capacity», instead of the former *duality* — scheduled taxes of real nature and personal overlapping tax;

*b)* Maintenance of analytical elements (categories), enabling the qualitative discrimination of the income;

*c)* As Professor Paulo Pitta e Cunha put it, «the tendential reception of the patrimonial accretion concept by extending the tax base of the regular flow of income connected with the traditional categories of functional distribution (earnings-profits) so as to cover the increase in acquisitive power, including surplus value and capital gains»;

*d)* Taxation of the family by adding the gross income of differing categories and by dividing in accordance with the conjugal quotient (*splitting*) with a view to attenuating the progressive taxation of the family that would result from overall treatment of all income;

*e)* Articulation of IRS and IRC by enshrining a partial system of integration by means of a tax credit attributed to the holders of profits apportioned among society members;

*f)* Adoption, insofar as IRS is concerned, of a scale of «mildly progressive» (Pitta e Cunha) rates, the delimitation of the scope of tax concessions, namely as regards corporate bodies;

*g)* Extension of the taxpayers' safeguards, in respect of either the principle of the duly substantiated decisions of the fiscal authorities or the enshrinement of the tax return as the basis upon which taxable income is assessed;

*h)* Prime recourse to taxation of effective and actual income;

*i)* Concern for a simplification of income taxation and for the taxpayer's convenience;

*j)* Provision for bringing the moment when income is obtained closer to that when tax is levied, namely by way of payments for account of the tax.

172. Finally, Municipal Tax must be mentioned. It is designed to replace Property Tax and Agricultural Industry Tax and «is levied on the value of property located in each municipal area». Distinction between rural and urban property still remains.

The Municipal Taxes Code was adopted in 1988 (Decree-Law no. 442-C/88, of 30 November). The owner or usufructuary of the property is liable to municipal tax, the taxable value thereof being

its assets value as determined according to the Valuation Code. The following are exempt from the tax: property classified as national monuments or urban property for housing purposes which has been constructed or purchased for consideration for permanent residence of the taxpayer or his/her family, for a period of ten years, provided that the taxable value is not higher than 10,000,000 escudos.

The Municipal Tax rates are set at 0.8 % as regards rural property and at between 1.1 % and 1.3 % insofar as urban property is concerned.

The revenue of the municipal tax is entirely appropriated by municipal authorities, although assessment and collection lie with the Directorate-General of Taxes and the Treasury correspondingly, which act in their capacity as legal representatives of local authorities for remuneration.

173. The Conveyance Tax and Death and Gifts Tax Code pertaining to the 1957-1966 reform is still in force. The *Conveyancing Tax* constitutes in its entirety the local authorities' revenue, whereas the Death and Gifts Tax belongs to the Central Government as revenue for the State Budget.

The *Death and Gifts Tax* is levied on the net value of movable and immovable property, acquired by virtue of a transfer free of charge — as inheritance, legacy or donation. The tax is levied on a progressive scale varying according to the value of the assets transferred and the kinship between testator or donator and heir, legatee or donee. The rate is set at 4 % as far as transfers up to 2,000,000 escudos are concerned, and up to 50 % as concerns the transfers over 50,000,000 escudos in favour of third persons.

The Conveyancing Tax is levied on the transfer, against payment, of ownership of real estate; the applicable rate is currently of 10 % of the price of urban real estate or land for building; 8 % for the remaining cases, except for urban property intended for housing — in which case the tax rate is lower, being applied on a progressive scale until 15,000,000 escudos, and property for profit-taking purposes of national interest — in which case the rate is set at 4 %.

Furthermore, the Portuguese tax system comprises a set of specific indirect taxes — apart from the general tax mentioned above, the VAT. Among those specific taxes, mention should be made of the following: duties on imported articles, levied by Customs; stamp

duty, payable on certain legal acts and documents; tax on oil products; excise duty levied on tobacco; municipal tax on vehicles (motor-cars, motorcycles, pleasure water craft and aircraft); the automobile tax levied on the purchase of motor vehicles.

174. In Portugal there is an outstanding predominance of indirect taxation which represents about two-thirds of all taxes collected by the Central Government as a whole — not to include the social security contributions which we will see below. Bearing in mind the specific character of the several direct and indirect taxes, we may conclude that the VAT accounts for about one-third of the total revenue of the Central State, the IRS amounting to one-fifth thereof — the revenue raised by taxing wealth, such as the Death and Gift Tax is marginal <sup>(2)</sup>.

### 3. Social Security

175. In Portugal, a social security system was belatedly organised. Besides the welfare antecedents of a fragmentary character, heirs of the ancient corporations, of the charities and friendly societies, it deserves being mentioned that only the 1911 Constitution did recognise the right to public welfare — as a suppletive and occasional activity of the State, simply designed to attack the situations displaying a great need (article 3, paragraphe 39, of the 1911 Constitution and Decree of 25 May 1911, which established the National Welfare Fund). In May 1919, very ambitious legislation was enacted, aimed at creating a social insurance system (against sickness, industrial accidents, invalidity, old age, and providence; an attempt was made to set up the Institute for Compulsory Social Insurance and General Welfare). Nevertheless, such legislation was not implemented; and, ironically, it was opposed by both trade-unionists

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<sup>(2)</sup> On the theme, besides the indispensable texts and reports by Professor Paulo Pitta e Cunha about the fiscal reform of the 1980s, read: António Braz Teixeira, *Princípios de Direito Fiscal*, 2 vols., Coimbra, 1985-1986, and Pedro Soares Martinez, *Manual de Direito Fiscal*, Coimbra, 1983. For an outlook of the whole question, articulating the reform of the 1950s, its implementation and the guidelines of the transformation which the system has recently undergone, do read: J. J. Teixeira Ribeiro, *A Reforma Fiscal*, Coimbra, 1989, *passim*.

who refused the State initiative in a field which they considered as pertaining to them, and employers who were not willing to bear the additional charges of a social insurance.

176. The Constitution of 1933 contained a provision whereby the State encouraged and fostered the institutions of solidarity, welfare, co-operation and mutual aid (article 41). However, the welfare system was based on a contract of insurance, made compulsory by the State with regard to certain categories. It presupposed the previous payment of a fee and coexisted with mutual aid and social welfare schemes. The corporativism of the State was in force at that time — exerting influence on a plurality of schemes and the preference for the public initiative. «From a financial point of view — says Professor Sousa Franco — it corresponded with a situation of capitalising self-sufficiency on the part of the welfare institutions that resulted from the light pecuniary burden of welfare charges and from the fact that the need for social protection support was confined to a small number of workers of industry and services <sup>(3)</sup>.»

The organic structure started by resting upon the *caixas sindicais de previdência* (Welfare Boards), based on collective contracts at national level, and the *caixas de reforma e previdência* (Retirement and Welfare Boards), created by those concerned and the Government. After 1962, the *caixas de previdência e abono de família* (Welfare and Family Allowance Boards) were set up in each district and provided immediate benefits, including the social and medical care; and the *Caixa Nacional de Pensões* (National Pension Board) for the payment of deferred benefits, such as the retirement pensions. The civil service had a welfare system of its own — and still has —, which is entrusted to the *Caixa Geral de Aposentações* (Retirement Board) and to the *Montepio dos Servidores do Estado* (Civil Servant's Pension Fund), under the management of the *Caixa Geral de Depósitos*, and the ADSE (Assistance of State Agents in Sickness).

177. Under the 1976 Constitution, «everyone shall be entitled to social security» (article 63, paragraph 1); it is incumbent upon the State «to organise, coordinate and subsidise a unified and decentra-

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(3) *Direito Financeiro e Finanças Públicas*, II, Lisbon, 1982, p. 15.

lised social security system with the participation of the trade union associations, other organisations representing the workers and the associations representing the other beneficiaries» (article 63, paragraph 2).

It is thus pointed to a *universal* conception of the system — and that means a great leap forward with regard to the situation prevailing in 1974 when a mere labour-oriented system was in force. Understandably, for the past fifteen years the task of transforming the system has been faced by numberless hindrances — we can say that we are still a long way from achieving the objectives set forth in the Constitution, owing to the fact that it is difficult to finance a universal system, apart from the obstacles of an institutional nature. Anyway, the basic law makes it clear as it points towards a social security system which will protect «citizens in sickness, old age, disability, widowhood, and orphanage, as well as unemployment and all other situations in which the means of subsistence or capacity to work are lost or reduced» (article 63, paragraph 4). Moreover, the 1989 Amendment Act added — to obviate the difficulties arising out of schemes which have mushroomed without any linkage among them — that «all the periods of time spent working, regardless of the sectors of activity where the work was performed, shall be taken into account for the purposes of calculating the amount of old age and disability pensions, in accordance with the law» (article 63, paragraph 5).

178. The Social Security Act (Law no. 28/84, of 14 August), along these lines, laid down the objectives that the system is due to achieve: to protect workers and their families in case they are no longer fit for work or if their capacity has been reduced, or in case of involuntary unemployment and death, and to ensure their family allowances; and to protect people when they are in a situation of loss or reduction of their income (article 2). Hence, the system (which comprises the social security schemes and institutions) complies with the principles of universality, unity, equality, efficiency, decentralisation, access to justice, solidarity, participation (article 5, paragraph 1). Those principles presuppose the gradual extension of the personal application of the system, the joint action of the various schemes and their respective administrative apparatus, eradication of discrimination, an adequate and timely cover of social risks, as well as the institutions' autonomy and the proximity of the populations covered, the access

to justice and the courts with a view to asserting the rights and interests which are protected by law, the community responsibility, and the intervention of those concerned in the planning, management, follow-up, and appreciation of the system and the way it operates.

Management of the social security system lies with the State; the administrative apparatus of the system is composed of both bodies integrated in the direct public administration and social security institutions which are corporate bodies in public law.

The system is basically financed by contributions made by employers and beneficiaries alike, and State allocations as well.

179. Under the law, there are two social security schemes: the *general* welfare scheme and the *non-contributory* one. All citizens enrolled in the former are beneficiaries thereof; those people who are in financial or social need and have not contributed to or are not covered by the general schemes will benefit from the non-contributory scheme. Social security benefits may be pecuniary or in kind, in the latter case encompassing the use of services and social equipment. Benefits derived from the same fact are not cumulative in principle if the same protected interest is at stake.

Enrolment in the general welfare scheme is compulsory for either employed or self-employed people, and, in case of workers whose activity is subordinated to another entity, the respective employers. The latter are moreover responsible for the enrolment in the general welfare scheme of those people working for them.

The non-contributory scheme, financed by State allocations, covers national citizens; it may nevertheless be extended, upon the conditions laid down in the law, to refugees, stateless persons or aliens residing in Portugal.

Anyone who is denied a benefit which he is entitled to, or enrolment in the general welfare scheme, may appeal to the administrative courts with a view to securing his the acknowledgement of his rights. Failure to comply with legal obligations concerning the enrolment in the social security schemes as well as benefits obtained by fraud are liable to *coimas* (monetary administrative penalty). The deviation by employers of the amounts deducted from wages that represent the contributions to the general scheme is punished as misappropriation. On the other hand, allowances owed by social security institutions are unseizable and non-transferable.

180. The Social Security Budget, being an integral part of the State Budget, is therefore submitted by the Government to the Assembly of the Republic for approval. Here we see a *specific budget* that is drawn up and implemented by specific bodies. The contributions to social security are not, however, subject to a constitutional treatment, unlike taxes. Hence, it is not applicable the provision of article 168, paragraph 1, subparagraph *i*), of the Constitution, which entrusts the Assembly of the Republic with the relatively reserved powers with respect to tax creation (rules of tax incidence, exemption, rates, tax concessions and safeguards of taxpayers) as well as to the tax system. Yet the parliamentary intervention, in so far as the Budget is concerned, is the first step in that direction, which is confirmed by article 53 of Law no. 28/84, that establishes: «[ . . . ] the rates of the contributions to the general scheme are laid down in the social security budget» — by the Assembly of the Republic, in the exercise of a power which it is not allowed to delegate [article 164, *b*), of the Constitution].

181. The social security institutions are the following: *at national level*, the Institute for Financial Management of Social Security, the National Centre for Pensions, the Centre for International Relations and Social Security Conventions, and the National Centre for Protection against Professional Risks; *at district level*, the regional social security centres. The law provides for the right of those concerned to create schemes supplementing the benefits secured by the general welfare scheme; such schemes may be under management of mutual aid associations, insurance companies and other corporate bodies set up to that effect. There is in addition the private institutions pursuing social security objectives (article 63, paragraph 3, of the Constitution, and article 66 of Law no. 28/84), subject to State supervision which «aims to promote the conciliation of their ends and activities and those pertaining to the social security system, to ensure compliance with the law and to defend the interests of beneficiaries» (article 66, paragraph 2, of the said law). There is a trend in the system towards gradually integrating the different existing schemes, namely the one which concerns farm workers and agricultural producers who exclusively or mainly do the farm-work (Law no. 2144, of 29 May 1969). The social assistance schemes con-

cerning the members of Public Administration still persist, despite the fact that the law makes express provision for their integration «together with the general social security scheme in a unitary system» (article 70, subparagraph 1, of Law no. 28/84).

As to social security contribution (single social fee) it must be said that workers are collected 11 % of their wages and employees make a contribution of 24 % of the wages paid.

To complement the social security system, the Portuguese Constitution, by providing that «everyone shall have the right to protection of his/her health and the duty to defend and foster it», stipulates that the right to health protection shall be met by «a universal and general national health service that, taking into account the economic and social condition of the citizens, shall tend to be free of charge» and «the creation of economic, social and cultural conditions securing the protection of children, the young and the old; the systematic improvement of living and working conditions; the promotion of physical fitness and sports in school and among the people; the development of the people's sanitary education» (article 64, paragraph 2).

182. Welfare State? The question is often raised and the doubt persists as to whether or not it exists in Portugal. First and foremost, a great distance separates the wording of the Constitution and law from reality. The system is not by far universal and the State is still acting shyly as a regulating external force, influencing the private ways of covering, in a complementary manner, the social risks. The Welfare State is making the first steps — succeeding the welfaring and timidly labour-directed conceptions. But signs of centralism and bureaucratisation do not cease to make themselves felt. . . And it is certain that the crisis of the Welfare State — as Rosanvallon puts it — «or rather, what it displays, reflects indissociably both a reaction to the management of solidarity thought of as being much bureaucratic and a question on the legitimate norms, thereof. Neither the adoption of Social Security nor the commonness of the welfare solved the philosophical issues arising out of the French Revolution, as concerns the legal elaboration of social rights. But democracy may perhaps be defined precisely by the acceptance of an activity inquisitive, determined and endless, searching for forms of equality and rules of justice» (4).

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(4) *L'État en France*, cit., p. 195.

## EDUCATION AND CULTURE

*«O homem, filho do tempo, reparte com o mesmo tempo  
ou o seu saber ou a sua ignorância; do presente sabe pouco,  
do passado menos, do futuro nada.»*

PADRE ANTÔNIO VIEIRA, *Livro Antepimeiro  
da História do Futuro*, chapter I

## Education and Culture

183. «Everyone shall have the right to education and culture», reads article 73 of the Portuguese Constitution; the State undertakes to ensure full realisation of this right by promoting a democratic system of education, securing the access to the fruits of culture and cultural creation, and by encouraging and assisting scientific creation and research. The right to education emerges then as a safeguard of the right to equality of opportunities of access to and success in schooling — education must contribute to «overcome economic, social and cultural imbalances to enable citizens to participate on a democratic basis in a free society and to promote mutual understanding, tolerance and a spirit of solidarity» (article 74, paragraph 2).

By virtue of the Portuguese Constitution, the democratic State is assigned a set of duties: to ensure basic education, compulsory and available free to all; to ensure permanent education; to abolish illiteracy; to insert the schools in the community they are supposed to serve; to secure equality of opportunity for all, namely the disabled persons, by establishing «a network of public education institutions to meet the needs of the whole population» as well as by recognising and supervising private and co-operative education. Actually, it is a responsibility oriented towards the future — which is all the more important as the State grows more and more *cul-*

*tural*, besides being *social*, in the contemporary society. And that in the sense of its vocation to encourage either the personal and social creativity of the open society, or the diversity and free circulation of ideas — in a word, of the pluralistic identity, willing to develop a dialogue.

### 1. *Educational System*

184. The Portuguese educational system comprises three main stages: *pre-school*, *school proper*, *extra-school*.

Pre-school, or education supplementing the family's educational action, is intended for children below school age, but older than 3. Under the Basic Law of Education — LBSE (Law no. 46/86, of 14 October), «pre-school education network consists of its own institutions, created upon the initiative of central, regional or local authorities and other bodies, corporate or individual, such as parents or neighbours associations, civic and religious organisations, trade unions and businesses, and social solidarity institutions» (article 5, paragraph 5, of the said law). Schooling is however optional at this level, «having due regard to the irreplaceable role of the family in the pre-school stage» (article 5, paragraph 8, of the said education law), yet, the State supports the institutions integrated in the public education network.

*School proper* encompasses *primary*, *secondary*, and *higher* education. The primary education — universal, compulsory and free of charge — lasts *nine years*. Every child aged 6 by 15 September of the year of application is required to attend a primary school; a child who will be 6 years old between 16 September and 31 December may enroll, upon request of their parents. All children must receive full-time education until the age of 15. Free education covers «costs, duties and emoluments relating to enrolment, attendance and certificates; children may have books and other school articles, transport, lodgings and food free of charge, too».

185. The *primary education* is divided into three periods: the *first period*, intended to last four years, is entrusted to one single teacher who may be assisted by other teachers in specialist areas; the *second* is organised in «interdisciplinary areas for the basic education», and there is usually one teacher per area; the *third period*, which

lasts three years, is organised «according to a unified curriculum which contains different vocational areas», each subject or group of subjects being entrusted to one teacher. The first period aims to ensure «the development of oral expression and the initiation to reading and writing, to elementary notions of arithmetic and calculus, of physical and social environment, the expression of the arts, dramatics, music, body movement and progressive mastering thereof»; the second period is designed for «humanistic and artistic, scientific and technological training, physical education and sports, moral and civic education, aimed at enabling the children to assimilate and interpret criticism and information in a creative manner so as to render possible the acquisition of methods and tools for work and knowledge that makes it possible for them to pursue their education, in the perspective of the building up of a positive and conscious frame of mind towards society and the important and real problems thereof». The third period is aimed at providing «the systematic and diversified learning of modern culture, in its humanistic, literary, artistic, physical, sports, scientific and technological dimension, as required for integration into active life or for access to higher education, as well as the educational and vocational guidance which may help in the choice between higher level training and active life, with due regard to the autonomous realisation of human being» (cf. article 8 of the Basic Law of Education).

In the primary stage, several components — such as artistic training, physical education and sports — may be reinforced, although at «specialist schools».

186. *Secondary* education, which lasts three years, is organised in a different manner. Its courses are intended mainly to prepare the students for active life or higher education — and are made up of «technical, technological and vocational components as well as the teaching of the Portuguese language and culture, adequate to the character of the various curricula». There is intercommunicability or permeability as far as the courses are concerned — whether they are oriented towards active life or to higher education.

In a secondary school, each teacher is responsible for a subject, on principle; specialist establishments may be created to «provide regular training and practical work or artistic matters».

187. *Special education, adult education, teaching by correspondence course, Portuguese education abroad, and vocational training* are the «special features of schooling». Therefore, a specific treatment of certain categories of students, as is the case of the special education, takes account of educational needs, owing to physical or mental handicaps. *Special education* is thus secured by specific institutions «in so far as the type and degree of disability so require», but special education designed for the vocational resettlement of the disabled person is ensured too.

Provision is also made for the «recurring teaching of adults» to serve the interests of people who are no longer of school age to be subjected to the primary or secondary compulsory education — available to people over 15 and over 18, with regard to the primary and secondary levels, respectively. On the other hand, teaching by correspondence, which «will make use of the *multimedia* and the new technologies» is provided — on a supplementary basis to the existing educational system or as an alternative to schooling. Teaching by correspondence courses, in the framework of which stands the Open University, are intended for the teaching of adults and continuous training of teachers.

188. Bearing in mind that the Portuguese language has spread all over the world and that the flourishing of Portuguese emigrant communities have flourished, the State encourages «the setting up of Portuguese schools in the new Portuguese-speaking countries and near the Portuguese emigrant communities» (article 22, paragraph 2, of the Basic Law of Education). The «teaching of the Portuguese language and culture to emigrant workers and their children» will correspond to «the promotion of courses and activities in the host countries with a view to their integration in the educational system of foreign countries or on a complementary basis» (article 22, paragraph 3, of the said law). Furthermore, the State promotes the dissemination of and training in the Portuguese language and culture abroad by way of diversified actions and means, aimed, in particular, to favour inclusion into the curricula of other countries and to establish and maintain lectureships in Portuguese, under the supervision of Portuguese teachers, at foreign universities.

189. Occupational qualification obviously requires *vocational training* — in its various forms — which is considered a special feature too. It is intended to cater for people who failed to complete the

whole period of compulsory education, and those who have achieved their compulsory education — as to the latter, aspects related to improvement and re-training are attached a particular importance. The Portuguese educational system makes express provision for vocational training, within the framework of *school*, upon the combined action of the departments of education and the bodies specifically in charge of employment and vocational training matters.

Extramural education is also worthy of mention — it comprises the drive to eliminate true and functional illiteracy, the need to remove educational and occupational inequalities of opportunity, the fostering of a sense of social solidarity and participation in community life, vocational and technical training and leisure time activities. This is the *permanent on-going education*; its goals are to provide further education action, to improve knowledge, to develop the potentialities of the individual and to meet educational needs.

190. The *plans for the curriculum* pertaining to the primary and secondary education, despite being devised at national level, are drafted in such a way as to contain flexible components that are applied on regional and local levels. Each period includes an individual and social training field — which may comprise components concerning such matters as environment, consumer's rights, family and sexual education, prevention of accidents, education for health, civic education for the participation in the institutions. Catholic moral and religious instruction is provided for in the curricula, but it is an optional subject — in conformity with the constitutional right to freedom of religion.

191. Administration and management of educational institutions are guided by democratic principles of participation by all the people involved in the educational process. Every institution or group of institutions of primary or secondary education are run by their own bodies — made up of elected representatives of teachers, students and the remaining staff. By virtue of the existing law, participation by the students is confined to the secondary level. Whereas the governing bodies must comply with the democratic representation and involve the community into which schools are integrated, the bodies charged of the management are under control of the formed, being assigned a mainly executive part.

The Basic Law of Education established the *National Council for Education* which is vested with consultative duties, in so far as the educational policy is concerned, and which comprises representatives of the Assembly of the Republic, of social, cultural and economic forces «seeking a wide consensus».

The State recognises a special status to the private and co-operative education, «as the tangible expression of the freedom to learn and teach, and the right of parents to ensure the education of their children» (article 54 of the above-said law). Moreover, «private and co-operative institutions which conform to general principles, aims, structures and goals are deemed to be an integral part of the educational net» (article 55). When private or co-operative educational institutions adopt their own plans and programmes, recognition thereof calls for an analysis, case by case, considering the quality of their curricula and the pedagogical conditions of their application. The State exercises some supervision and gives its assistance, under these parameters, either pedagogically or technically, to the private and co-operative education.

It is in compliance with such principles and guidelines that the reform of the educational system is being carried out — in its general structure, and curricula and programmes as well.

## 2. Higher Education and Universities

192. The higher education comprises the University and the Polytechnics. Under the law currently in force, the former «aims at ensuring a sound scientific and cultural education» and providing an adequate technical training; the latter «aims at providing a sound cultural and technical higher level education» (article 11, paragraphs 3 and 4).

Access to higher education is granted to all students that have the basic qualification in the form of a certificate of secondary education or a certificate to the same effect and that, cumulatively, demonstrate their aptitude for university admission. Such aptitude is revealed by means of a general examination (conducted by the State) and an examination taken in specific syllabuses set by the universities or politechnic schools. Higher education is also made accessible to all people aged over 25, on the basis of their capacity to attend a higher education school.

The number of people who can enter universities is limited, account being taken of «the needs in qualified graduates required and the raising of the level of educational, cultural and scientific training»; the number of new entrants may be restricted so as to ensure a higher standard of training (cf. article 12, paragraph 3, of the Basic Law of Education).

Portuguese higher schools give the following degrees: *Bachelor*, *Graduate*, *Master*, and *Doctor*. Specialist higher education diplomas and certificates may be awarded at the end of short courses. Politechnic institutions give a *Bachelor's* degree and award a specialist higher education diploma or a short-course advanced studies certificate. University education leads to the remaining degrees. The specialist higher studies diploma is equivalent to a university degree.

193. Co-operation between higher education and scientific research is particularly emphasised by the Portuguese educational system. Therefore, the Basic Law of Education provides that «higher institutions shall create conditions in which scientific research and activities are to develop» (article 15, paragraph 2). The State is thus assigned the task of «facilitating the co-operation between public, private and co-operative bodies with a view to encouraging the development in science, technology and culture, for the sake of community interests» (article 15, paragraph 5). Moreover, there are two Central Government departments which were granted specific powers in that field — the National Junta for Scientific and Technological Research (JNIC) and the Scientific Research National Institute (INIC). Whereas the latter is under the supervision of the Ministry of Education, the former is dependent on the State Secretariat for Science and Technology of the Ministry for Planning and Administration of the Territory.

194. The Portuguese public universities are autonomous — they «are legal persons in public law and shall be autonomous with respect to the adoption of their rules or enjoy scientific, pedagogical, administrative and financial and disciplinary autonomy» (article 3, paragraph 1, of Law no. 108/88, of 24 September). This autonomy finds its roots in the Portuguese university historic tradition, dating back to King Dinis, the founder of the *Estudo Geral* (General Study) by about 1290, which was first set up in Lisbon and later transferred to Coimbra (1308). Up to the 16th century, the University «travelled»

a lot between the capital and the city in which it would be eventually established: in 1338 it came back to Lisbon, in 1354 it returned to Coimbra and from 1377 to 1537 it operated in Lisbon again. Finally, King João III installed the University in Coimbra. In 1598 this institution was provided with new Statutes, which were in force, with slight amendments, until 1772, the time of the so-called «Pombalist reform», carried out under Sebastião José de Carvalho e Melo (Marquis of Pombal), in an enlightened and centralising line, which was crucial to the Portuguese university life, thenceforth. It must be mentioned that the *Evor Estudos* were founded in 1558 and placed under the control of Jesuits.

The modern University of Lisbon and the Oporto University came into existence early in the 20th century, both by the decrees of 22 March and 19 April 1911; the Technical University of Lisbon was established by a decree of 2 December 1930. The past few years have witnessed the setting up of new public and private universities, notably outside the big centres. In the 70s, it is to be mentioned the creation of the New University in Lisbon, and, by virtue of article XX of the Concordant between Portugal and the Holy See, the Portuguese Catholic University was founded. Since 1974, universities have been established in Azores, Algarve, Aveiro, Beira Interior, Évora, Madeira, Minho and Trás-os-Montes and Alto Douro.

195. Today, following the publication of Law no. 108/88, of 24 September, the public universities are empowered to draw up their own statutes which must be approved by the Minister for Education. The approval will be refused only on the grounds of violations of the provisions of the Constitution and the laws.

The Council of Rectors of the Portuguese Universities is entrusted with the duty to co-ordinate and represent the universities. These participate in the determination of national policies in the domains of education, science and culture, and give their opinion on the creation by the State of new universities.

The university autonomy encompasses the following matters:

- a) The powers to freely organise, plan and implement research and other scientific and cultural activities (scientific autonomy);
- b) The power to create, suspend and abolish courses, as well as to arrange the curricula and programmes thereof and to adopt the teaching methods, the medical training being subject to a specific legislation (pedagogical autonomy);

c) The power to dispose of its assets, to administer its annual funds, allocated by the State Budget, to raise its own receipts (fees, for instance) and to administer that revenue every year by way of private budgets — in the framework of its administrative and financial autonomy;

d) The power to punish, in accordance with the law, the disciplinary faults committed by teachers, researchers and remaining officials and agents (disciplinary autonomy).

It is incumbent upon the State to provide the universities with the financial support required to the running of the universities, within the limits stipulated in the Budget.

196. Each university is governed by the following bodies: *University Assembly*, the *Rector*, the *Senate*, the *Administrative Council*. The Assembly is the representative of the University, deriving its authority from being elected by the different bodies (professors and other teachers, researches, students, and officials), teachers and students are elected in an equal number and, likewise, the organic units are represented in a balanced proportion, regardless of their dimension. There will also be members *ex officio* (such as the rector, deputy-rector, chairmen of administration bodies of the organic units and of the governing boards of incorporated institutions, president of students union). It falls within the competence of the Assembly to discuss and approve the University statutes and respective amendments, to elect the rector and decide on his dismissal. The *Rector* is elected, from among the definitely nominated professors, by the Assembly in a secret ballot for a four-year term of office, according to the provisions of each University statute. The Minister of Education will refuse to appoint the rector only by reason of illegality on grounds of form of the electoral process. The deputy-rectors are appointed by the Rector. The latter represents and leads the University, namely by submitting to the Senate the general lines of University life, by ensuring that laws and regulations are observed, and by supervising academic, administrative and financial management.

The *University Senate*, in particular, approves the University general lines; the draft budgets, the reports and accounts; the creation, suspension and abolition of University courses, units and structures. It is vested with the disciplinary power and it falls within its competence to fix the amount of the fees payable by the students.

The composition of the Senate is laid down in statutes of each university; the rules pertaining to representation in the University Assembly apply to representation in the Senate of the several bodies of the University.

The *Administrative Council* has the charge of the administrative, patrimonial and financial management; it is made up of the rector, a deputy-rector or an administrative official of the highest rank, and a representative of the students.

Each University Faculty or organic unit must contain the following boards: Assembly of Representatives, Executive Council, Pedagogical Council, and Scientific Council or Pedagogical and Scientific Council.

With a view to ensuring the institutional and organic stability of the universities, the above-examined Law no. 108/88, of 24 September, provides that their statutes will not be amended until four years have expired from the date of publication thereof or at any time by a decision of two-thirds of the members entitled to sit in the University Assembly.

197. Private and co-operative higher education is governed by Law no. 271/89, of 19 August, which does not apply to the Catholic University in view of its concordatory nature. The existence of private and co-operative higher education schools depends on the approval of the Minister for Education who likewise approves the inauguration of the courses and the degrees to be awarded. The private higher education schools may be erected into or grouped in universities, provided that they offer, in the whole, at least, courses leading to graduation in three different fields, that they cover about 1,500 students, have the minimum of fifteen full time doctorate professors, and provided that they have been in operation for as many years as the years pertaining to the longest course plus two.

Higher education — both at University and Politechnics, public and private — has been visibly expanding for the past few years, which corresponds to the tendency in the Portuguese educational system towards an increase in schooling, on all levels of education, naturally with repercussions in the higher stages, although the proportion of students attending it is as yet far from equalling those of the more developed countries in the European Community.

### 3. Cultural Policy

198. Since 1976, the authority of the Government with respect to cultural matters has been vested in the Minister for Education or in a minister entrusted with the culture portfolio. At present (1991), it is the Prime Minister himself that performs such a task, and the cultural departments have been integrated into the Council of Ministers. In that work the Chairman of the Government is assisted by a secretary of State for the Culture and an under-secretary of State, both exercising delegated powers.

Of all the public bodies with a cultural vocation, some will deservedly be noted, as follows: the Portuguese Institute for the Cultural Heritage (IPPC) which has the responsibility for the preservation, maintenance and enhancement of the country's cultural heritage, and directs and supervises national monuments; the Portuguese Institute for Museums (IPM) which has the responsibility for the administration of national museums; the Portuguese Institute for Archives (IPA) which is vested with the duty to supervise the archives and the departments of documentation covering the whole country; the Portuguese Institute for Cinema (IPC) which assists and encourages the national cinematographic creation; the Portuguese Institute for Book and Reading (IPLL) which is assigned the task of fostering and promoting books in so far as they act as a vehicle for the dissemination of culture; the Secretariat for Audio Visual Technology which handles the coordination of activities and initiatives in audio-visual matters; the Portuguese *Cinemateca* which is responsible for the compilation, maintenance and deposit of Portuguese and foreign films; the National Library; the S. Carlos (state-owned company) and the D. Maria II National Theatres; and the Directorate General for Cultural Action — whose duties are to create the necessary conditions in which the country's cultural potentialities may develop and to encourage the access by citizens to cultural activities— and the Directorate General for the Rights of the Author which deals with the supervision of public shows and entertainment, the safeguarding of good quality standards with respect to public places of entertainment, and is charged of matters concerning the protection of copyright. Furthermore, there is the International Relations Board for Culture and the Regional Secretariats for Culture, in the North, Centre and South of Portugal.

Owing to their own nature and transdisciplinary character, cultural matters are also dealt with by other ministries, such as the Ministry of Foreign Affairs, the Ministry of Education and the Youth Ministry. Furthermore, it should be mentioned that the Portuguese Culture and Language Institute (ICALP) has the responsibility for the dissemination of culture and language abroad, particularly as far as the teaching of the Portuguese language and the support to Portuguese studies are concerned.

#### 4. Portuguese Language

199. Shared by seven sovereign countries —Portugal, Brazil, Angola, Cabo Verde, Guiné-Bissau, Mozambique and S. Tomé e Príncipe—, spoken by 170 million people who are likely to increase by 200 million until early in the next millennium, according to demographic projections, the *Portuguese* language is the axis of the Lusian world. From end to end, all over the world, the Portuguese language is such a lively communication link that can not help being emphasised, at a moment when the increasing frequency of *various languages* being spoken meets the needs to counteract the tendency towards a standardisation of international life by ensuring spaces of cultural and linguistic differentiation. It is not merely an official language of some states that is at stake, but rather a vehicle for the dialogue between the innumerable emigrant communities and, even more than this, between ancient cultures and societies scattered over the world, wherein reminiscences of the Portuguese language constitute bonds and signs of civilisational wealth.

There are multifarious expressions of presence and openness which make the *Lusian linguistic world* a complicated and enchanting reality, since therein coexist linguistic official codes like the *creoles*, dialects stemming from the Portuguese spoken in Brazil and in África, not to speak of the several *papeares* (derived from the *papear cristan* which is synonymous with Portuguese —a *língua franca* of the 16th century)—tenuous but assuredly revealing the presence of the language in ancient times, still capable of striking us with most unexpected surprises. As António Alçada Baptista recently remarked, all this can not make us forget that the Portuguese-speaking world is a multifaceted reality with natural barriers therein «which continue

to be difficult to surmount and it may be said that most of the existing intercommunication is indebted mainly to the initiative of people or social groups and to their affinity, rather than to appropriate policies of governments» (1).

Actually, language policies have relied on words and met with difficulty in conciliating the various public initiatives. At the beginning of 1990, the intention expressed by the highest incumbents of the seven Portuguese-speaking countries, assembled in S. Luís do Maranhão, to found the *Portuguese Language International Institute* and to create the *Camões International Award* may have been important steps in the path towards a more effective co-operation. The heralded signature of the Orthographic Agreement, which will take place shortly and which is expected to be fairly flexible and open to the creative power of the differences, may well be a step in the strengthening of the intercourse. Nevertheless, Alçada Baptista is right when he predicts and alerts: «I believe that the fortunes of our culture depend, in a way, on this intercommunication, which bears no transcendent issue, and, besides the plans for an intelligible and operative information, the need is felt to tune up the instruments necessary for a broader communication, which is obtained by way of actions that either arise out of the scope of mere conventions — as is the case of the orthographic agreement — or take place within the framework of vocational training, as is the case of the art of speech, in the dramatic or cinematographic expression. The Portuguese-speaking world is thus the first and the most natural forum for the creation and the receiving of the expressions of our culture.»

200. Portuguese-speaking world? Lusiad world? Either phrase tend to be usually accepted, despite the natural differences and feelings. But the Brazilian linguist António Houaiss makes clear what must be clarified: «It is necessary always to bear in mind that 'my' language the more it is of others the more it is 'mine': for it is a social property, a *res communis* that is more common when it is more commonly used. There are no owners of a language, since all those who speak it are co-owners, and neither can claim any privilege or absolute superiority over it (2).»

(1) *Revista do Património Histórico e Artístico Nacional*, special issue, 1990, p. 24.

(2) *Op. cit.*, p. 8.

The problem could hardly be posed in a different manner. Thus, the repeatedly quoted Fernando Pessoa/Bernardo Soares's assertion «my mother country is the Portuguese Language» can be understood in the opportune reading by Mário Soares — «Portuguese Language, Country of various Nations».

Yet, a question must be asked: which policy or policies are appropriate? There is nothing better than the dialogue and the inter-communication, nothing better than facing this common heritage, *res communis*, as a reality tied to the world of life, an expression of feelings and affection, but also an up-to-date and effective means to keep up with the scientific and technical improvement. A language which shuts upon itself dies — and the Portuguese Language is going through a time of great energy, as its vitality demonstrates. The language of Camões and Vieira, Machado de Assis and Eça de Queiroz, of Ruy Barbosa and Ramalho, Guimarães Rosa and Vitorino Nemésio welcomes the new African literatures of Luandino Vieira and Pepetela. This is a large and enriching embrace. Here is a European language which has grown Afro-American too, extending its branches and reminiscences to all continents — to Macao, and to the martyrised East Timor.

What is there to say and think? There it is, a living language, without owners or privileged guardians. To protect it is a joint task of all those who share it. It is quite understandable, therefore, that it continues to be a factor for the dialogue between mother countries <sup>(3)</sup> —

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(3) As far as education in Portugal is concerned, more precisely its historical background, it is of primordial importance to read the work by Rómulo de Carvalho *História do Ensino em Portugal — Desde a Fundação da Nacionalidade até ao Fim do Regime de Salazar-Caetano*, Fundação Calouste Gulbenkian, Lisbon, 1986, which contains much information and detailed bibliography. The educational system in force until the reform currently under way is described in the collective work *Sistema de Ensino em Portugal*, Fundação Calouste Gulbenkian, Lisbon, 1981. On the changes being carried out at present, see the *Documentos Preparatórios*, already made public by the Commission on Reform of the Education System.

## EPILOGUE

*«É porque a moradia que então era costume dar-se nas casas dos príncipes me não bastava para minha sustentação, determinei embarcar-me para a Índia, inda que com pouco remédio, já oferecido a toda ventura, ou má ou boa, que me sucedesse.»*

FERNÃO MENDES PINTO, *Peregrinação*, chapter 1

Is there an art in how to be Portuguese? The question is posed many a time, despite the answer being hard to find. And it is certain that nobody doubts of the existence of specificities which, without effort, define an identity — capable of placating the spirits, fearful of the standardising wave in the contemporary world. What is Portugal's European vocation if not a logical consequence of history and geography, of its own values and common interests? What is the atlantic tendency if not a natural corollary of a country facing the ocean, of a motherland called to the maritime dialogue? What is the universalist sense if not the result of an ancestral drive, born of the diversity of the peoples responsible for the settlement of the Portuguese territory and of a permanent appeal to go in search of other cultures — clearly visible in the effort, of economic and spiritual sense, of the Discoveries?

Diversity, openness, the adventure of plurality and novelty made us receive, constantly, influences from the outside world and have a fascination for all that is cosmopolitan: note the phenomenon, not always well understood, of the influence exerted by the *estrangeirados*. They were Portuguese who, once they came back to their homeland, engaged themselves in the challenge of modernisation, striving to bring the eccentric and peripheral Portugal closer to Europe and the «civilised» world. At times, that challenge was too simplistic, the temptation to transfer solutions rose above reality and

the understanding of our peculiarities. Nevertheless, the will to change managed to prevail over inertia. How far did we lose our identifiable character? What are living languages if not a permanent repository of all sorts of influence? What are creative cultures if not crossroads of multifarious paths, enriched by the originality of their own contributions? The eccentric and peripheral situation hindered the cosmopolitanism of some from developing into a wide innovative movement — but the thirst for openness and the will to reform have left a tolerance and the comprehension of the importance of diversity. Thence, understandably, despite the Portuguese culture being so homogeneous in its essential features, the greatest respect for the importance of plurality exists.

The art of being Portuguese — the kernel of the reflection by Teixeira de Pascoaes — can not be seen, thus, as a subtle combination of the «yearning» and the «Sebastian myth», as if the Portuguese confined himself to the paradigm of sentimentality or to the mythical illusion of temporal messianisms. Let us be clear: the Portuguese is not understood as tending either to indulge in the vision of the eternal return, impossible, morbid, retrospect, pessimistic and decadent, or to dream of a future of redemption and glory — fruit of a biased reading of the Pentecostal Joachimite theses, confusing the will to improve with complacency and apathy in relation to fate. Truly, either path has virtually nothing to do with the «art of being Portuguese». He is wrong who has the intention to generate the false, dangerous and poor idea that a certain Portuguese philosophy may be reduced to that nostalgic look and to a quasi-conformist sentimentalism. Sentimentalism that has nothing to do with the enhancement of the human being and his affections, nor with the eulogy of imperfection to which the Portuguese adheres as a signal of an understanding of the tangible problems — seen ahead of the tyranny of abstractions. Hence the proverbial generosity, but also the mistrust of the combination of efforts. The open-mindedness and a certain cosmopolitan liking for adventure coexist thus with individualism — the isolated gesture makes itself felt side by side with the eagerness to gather. A paradox? So it is. The Portuguese relies much on himself and on his energies — at times he tends to give an exalted idea of himself indeed. Generosity is then more individual than shared. But there are moments when, confronted with difficulties or barriers, he seeks consolation in the appeal to a messianic power or in the election of a scapegoat. As Professor Maria

de Lourdes Belchior said: «We can [...] it seems to me, put it plainly that there are two ways in which the Portuguese define themselves. They oscillate between masochistic underestimation and negative judgements, and self-esteem, praising the Portuguese virtues. Do praise and underestimation always alternate against the background and in justification of an embedded love for homeland? We know how the generation of 1870s (Eça, Antero, Oliveira Martins) was ironical in approaching topics connected with the national character, all taking, simultaneously, root in the concept of decadentism [...] It is symptomatic, and it would be a theme to examine thoroughly, in an attempt to find an explanation for Portugal, that compensatory and exalting utopias, 'fifth empires' emerge at critical moments (1).» And we go on to say that one thing is certain: the self-critical irony becomes even more caustic in times of more stability and less problems . . .

Inclination for a certain decadence? Propensity for escapes and compensations? At the close of the 19th century, the above-mentioned generation of the 70s lived that drama intensely. Many prefer to see its decadent tendency. This is, however, a biased view of the events and an erroneous interpretation of the postures. The severe criticism — which some sought to translate into doctrine of action — was nothing but a call of reality. That Portugal is condemned to periphery is not an inexorable datum of fate; forces and energies exist enabling us to act and create, to transcend ourselves. The generation of the 70s placed itself, thus, in line with those who, from the 16th century, and the 17th century as well, believed in the possibility of accelerating the beat of the country's heart in order for Portugal to keep pace with Europe and the «civilised world». Portugal would only gain if it followed a path capable of conciliating the best advantage of internal energies and resources (through the confluence of public power with private society) and the cultural, scientific, technological openness to the outside world. António Sérgio's «forward-looking patriotism» shared this idea, and Fernando Pessoa himself, if read thoroughly, contributed to such a positive outlook, despite his overtly messianic concessions. Therefore, decadentism does not erect into a doctrine, but stands as a dramatic appeal

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(1) «Sobre o carácter nacional ou para uma 'explicação' de Portugal», in *Nação e Defesa*, January-March, 1982, p. 82.

to the «regeneration» (a recurrent term in our 19th century, from 1820 to 1851) or to «renaissance» (the common stem of the «Portuguese Renaissance», an Oporto cultural movement of the beginning of our century, which gave rise to the *saudosismo*, modernism and to the critical rationalism, liberal, democratic and socialistic of the *Seara Nova*, a posthumous child of the generation of the 70s, of a similar spirit) . . .

The life of the Portuguese institutions has participated in such a cyclical fluctuation between the voluntaristic optimism of the great founder moments (1820, 1834-1836, 1851, 1910, 1974), when everything seemed possible, and the strong, dramatic pessimism, too manifest during the crises of 1846-1847, 1890-1892, or 1924-1925, when everything looked as if it was to crumble away — the decadent stance being an escape and the severe criticism a way of purging faults and exorcising ghosts. Certainly, the scathing and defeatist irony has ever had its adherents. Nevertheless, today, with the irreversible overcome of the isolationist and protectionist models, and with an awareness of the need to supplement the love for what is Portuguese, and for that which identifies such an *art of being* with cosmopolitanism and openmindedness — like the Queiroisian character Fradique Mendes, paradigm of a 19th century generation which projects itself into the future — it is time to look through other eyes at the place of the democratic and open-minded Portugal in a changing world, particularly in Europe. The alternative is no longer between decadentism and renaissance — rather, it is to assert ourselves more fully with the others and to assume, naturally, that the identity of a people requires determination in the defence of what is peculiar and distinctive, and the necessary openness to receive from the outside enriching contributions. The *estrangeirado* ceases to have a reason for existing — because the intercultural dialogue will develop in day-to-day life. And the democratic institutions will take advantage of that interchange and that civic consciousness, not merely national . . . «The art of being Portuguese», thus grows wealthier <sup>(2)</sup> . . .

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(2) For further information on the theme: Jorge Dias, «Os elementos fundamentais da cultura portuguesa», Lisbon, 1960, repr. and ref. in *Estudos do Carácter Nacional Português*, Lisbon, 1971; Agostinho da Silva, *Reflexão*, Lisbon, n. d., and António Quadros, *O Espírito da Cultura Portuguesa*, Lisbon, 1967.



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a set of texts that, according  
to a simultaneously theoretical  
and historical perspective, help to identify  
the main features of a culture

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