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# Monarchy and Republic in Contemporary Portugal: From Revolution to the Rise of Executive Power

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Em materia de Constituição, pode-se quasi dizer que tudo é velho; ellas representam os estudos dos homens de gabinete, representam a lição e a decepção dos factos e representam tambem a lição adquirida nos campos de batalha. (D.S., 6 July 1911, p. 16, Francisco Correia de Lemos)<sup>1</sup>

## Models of Monarchy and the Republic

These days a monarchy cannot be anything except parliamentary, but a Republic has more alternatives available to it than the two basic formats of presidentialist and parliamentary, and the various combinations thereof. Generally speaking, a Republic can be presidential, parliamentary or mixed. In Duverger's terms the Portuguese Republic would be categorized as semi-presidential, since the predominant variant occurs in the election and functions of the President of the Republic.<sup>2</sup> Direct election provides the system with a double legitimacy which must be combined and coexist in its powers. In the parliamentary system the President is appointed during the same elections as the legislative power, meaning that the two basic political powers (the executive and the legislative) originate from one legitimate source. On the path towards the establishment of the contemporary state there were several models available to Portuguese politicians, but the eventual outcome was the rise of executive power at the expense of legislative power, and that is still the case.

<sup>1</sup> 'As far as the Constitution is concerned, one could almost say that it is all old news; Constitutions are the result of work by men in the Cabinet, lessons and disappointments learned from facts, and furthermore they are the result of lessons learned on the battlefield.'

<sup>2</sup> For a definition and examples of application of this term, see Maurice Duverger, *Instituciones políticas y derecho constitucional* (Barcelona: Ariel, 1970). See particularly: Duverger, 'A New Political System Model: Semi-Presidential Government', *European Journal of Political Research*, 8.2 (1980), 165–87. Duverger systematized the term and its meaning after the 1962 French constitutional reform. In 1986 he edited the proceedings of a conference on the subject in Duverger (ed.), *Les Régimes semi-présidentiels* (Paris: Presses universitaires de France, 1986). See also J. J. Linz and A. Valenzuela (eds), *The Failure of Presidential Democracy: Comparative Perspectives*, 2 vols (Baltimore, MD: Johns Hopkins University Press, 1994); M. Soberg Shugart and J. M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992); Arend Lijphart, *Parliamentary versus Presidential Government* (Oxford: Oxford University Press, 1992).

In the early days of the Liberal revolution,<sup>3</sup> after its first unsuccessful attempts to abide by the strict separation of powers proclaimed by the new political doctrine, the Portuguese monarchy took its lead from the English parliamentary government. Indeed, since it was impossible to elect a monarchy with executive power, another kind of executive power was needed.<sup>4</sup> It would follow the structure of the former *secretários de despacho*, within a Cabinet collectively accountable to the legislative power, with whose majorities it would then govern (subject to changes enforced by those majorities).<sup>5</sup>

The classic model of a republic with a double legitimacy (double election), established on the basis of the strict separation of powers, each acting independently and not interfering with the other, is the presidential republic of the United States of America. Their first constitutional solution had been the most logical: the Confederal. In the absence of a king, the Republic needed to be based as closely as possible upon direct democracy, in accordance with the contemporary definition of the concept.<sup>6</sup> It was the failure of that model to achieve the objectives they were pursuing, the first of which was independence, that led to the model of the union or federation of States, each of which would be represented in the Senate: a legislative chamber through which they could exercise power.

Monarchies were coming to an end in several European countries but, even so, they did not copy that first Republican model. This may have been because the only time it was put into practice was during the French Second Republic, which was rapidly replaced by the reign of Louis Napoleon after his election as President. The monarchical system was passed down to the Republic and in the 1870s the French Third Republic became the model for the new system that would prevail after the First World War. Then, at the turn of the century, at the same time that the 'efficiency' of the presidential system of the United States

<sup>3</sup> The Liberal Revolution took place in Portugal against the backdrop of the European revolutions of 1820 which began with Spain's re-adoption of the 1812 constitution. Developing out of a military uprising in the city of Porto, it led to the establishment of Portugal's first constitution in 1822. João VI returned from Brazil, where the court had been based since the Napoleonic invasion of 1808, leaving behind his son D. Pedro as regent. Pedro I proclaimed Brazilian independence from Portugal in 1822.

<sup>4</sup> In Walter Bagehot's words, royal power was described as 'dignified' and the new executive power as 'efficient'. Bagehot, *The English Constitution* (London: Chapman & Hall, 1867; 2nd corrected edn, Boston, 1873), pp. 77–78.

<sup>5</sup> See also the author's publications on this topic: Ángeles Lario, 'Monarquía y Constitución: la teoría constitucional y la práctica política', in *El Rey, piloto sin brújula: la Corona y el sistema político de la Restauración (1875-1902)* (Madrid: UNED-Biblioteca Nueva, 1999), Chapter I.1. Id. 'Monarquía Constitucional y gobierno parlamentario', *Revista de Estudios Políticos*, 106 (1999), 277–88. Id. 'El modelo liberal español', *Revista de Estudios Políticos*, 122 (2003), 179–200. Id., 'La Corona en el Estado Liberal: Monarquía y Constitución en la España del XIX', *Historia Contemporánea*, 17 (1998), 139–57; *El Estado en España*. Id., 'La Monarquía, del Liberalismo a la Democracia', and Id., 'Los estudios sobre Monarquía y República: nuevos paradigmas interpretativos', in Id. (ed.), *Monarquía y República en la España contemporánea* (Madrid: Biblioteca Nueva-UNED, 2007).

<sup>6</sup> On the influence of classical republicanism in the early revolutionary period see Ramón Ruiz Ruiz, *La tradición republicana* (Madrid: Dykinson, 2006). J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, intro. by Richard Whatmore (Princeton, NJ: Princeton University Press, 2016).

was being admired, parliamentarism underwent a crisis. In the first decades of the twentieth century, then, several variations of the parliamentary model approximating presidentialism began to be put into practice. The balance was still unclear, but the aim was to improve the model and overcome not only the problems of parliamentarism but the crisis with the monarchy. This was the case in Portugal, where the First Republic was considering the different variations, and this continued to be so in subsequent administrations, right up to the present day and the current, distinctly 'semi-presidential' model.

In the parliamentary system, the President is regarded as a moral magistrate, a neutral, apolitical, moderating power in line with the three roles described in Bagehot's classic analysis of the English constitution, which grants the political leader 'the right to be consulted, the right to encourage, the right to warn'.<sup>7</sup>

In the presidential system and its variants, the President is not neutral but plays an active role and is the head of the executive power, which influences her/him in the process of governing and the running of other state organizations. In a mixed system, depending on the duties and responsibilities of the other powers, her/his role can change, as happened in the French Fifth Republic after 1986, when cohabitation became necessary. In that case the President had to act more as an arbitrator and leave political leadership to the head of the government.

### The Portuguese Monarchy:<sup>8</sup> From the Revolutionary to the Post-revolutionary Model

#### *The 'legisladores das Necessidades' [legislators of the Palace of Necessities]*<sup>9</sup>

The Portuguese constitution of 1822 was comprised of 240 articles, 140 fewer than Spain's constitution of 1812. They showed similar leanings and origins in doctrine even though they were written ten years apart. But just like the Spanish constitution, the Portuguese one includes references to earlier

<sup>7</sup> Bagehot, op. cit., p. 139. Bagehot's study explores the constitution of the United Kingdom, specifically the functioning of Parliament and the British monarchy and the contrasts between British and American systems of government.

<sup>8</sup> See José Mattoso (ed.), *História de Portugal*, v: *O Liberalismo (1807–1890)*, coordinated by Luís Reis Torgal and João Lourenço Roque (Lisbon: Círculo de Leitores, 1993). J. Joaquim Gomes Canotilho deals with the Charter and the 1838 constitution. Maria de Fátima Bonifácio, *A Monarquia Constitucional (1807–1910)*, (Lisbon: Texto Editores, 2010). António Manuel Hespanha, 'Qu'est-ce que la "constitution" dans les monarchies ibériques de l'époque moderne?', *Themis*, 1.2 (2000), 5–18. Id., *Guiando a mão invisível: direitos, liberdade e lei no liberalismo monárquico português* (Coimbra: Almedina, 2004). On the modified version especially for Vintism see *Hércules Confundido»: sentidos improváveis e variados do constitucionalismo oitocentista, o caso português* (Curitiba: Juruá, 2009). António Pedro Mesquita, *O pensamento político português no século XIX: uma síntese histórico-crítica* (Lisbon: Imprensa Nacional–Casa da Moeda, 2006). Id., *Direitos, liberdade e lei no liberalismo monárquico português* (Coimbra: Almedina, 2004).

<sup>9</sup> The Palácio das Necessidades in Lisbon was the location for the meeting of the Cortes Gerais e Extraordinárias da Nação Portuguesa, which became the Portuguese Parliament, between 24 January 1821 and 4 November 1822. The location symbolizes radical liberal idealism.

legislation, which was blamed for enabling ministers to become despots. The radical Liberal politician Castello Branco asserted this theory clearly: ‘Chegou finalmente o feliz momento em que a Nação póde recuperar a sua soberania; então se declarou roto o pacto social [...]’<sup>10</sup> [At last the happy moment has arrived when the Nation can recover its sovereignty; the social pact is therefore declared broken].<sup>11</sup>

The revolutionary Liberals in the Cortes Gerais e Extraordinárias da Nação Portuguesa (Borges Carneiro and Fernandes Thomaz)<sup>12</sup> had similar ideals to those of the Spanish Gaditanos Liberals. They were also, like the Spanish Liberals, simultaneously advocates of radical liberalism and nationalist historicism (they evoked the Cortes of Lamego, of whose existence there could be no doubt, according to Almeida Garrett),<sup>13</sup> which they intended to adapt to their own times. In the words of Pereira do Carmo (who drafted the constitution): ‘e levado deste principio he que procuro, quanto o permittem as luzes do seculo em que vivemos, conciliar as nossas novas instituições com os nossos bons, e antigos usos, e costumes’<sup>14</sup> [and guided by this principle I seek to reconcile our new institutions with our good and long-standing practices and customs, to the extent that the notions of the century in which we live permit it].

In the Portuguese constitution of 1822, the Holy Trinity was invoked and reference made to the traditional laws. A revolutionary constitutional monarchy, or assembly monarchy (known at the time as a ‘temperate’ monarchy) was being designed. It was the model that had emerged from this revolutionary moment: assembly-based, distrustful of the executive and therefore precluding compatibility between the positions of secretary to the king or minister, and

<sup>10</sup> *Diário das Sessões das Cortes Gerais e Extraordinárias da Nação Portuguesa* (DSCGENP), 1821, 8 March 1821, p. 1847. ‘Rousseauian inspiration’ in the thought of Castello Branco is highlighted in Benedicta Maria Duque Vieira, *O problema político português no tempo das primeiras cortes liberais: estudo e documentos*, A crise do antigo regime e as Cortes Constituintes de 1821–1822, 1 (Lisbon: Centro de Estudos de História Contemporânea Portuguesa/ISCTE, Edições João Sá da Costa), p. 26.

<sup>11</sup> On the constitution as a pact and its importance for the contemporary state, see Lario, ‘El pacto en el constitucionalismo ibérico: la constitución como pacto’, *Aportes*, 92.3 (2016), 7–32.

<sup>12</sup> Manuel Fernandes Thomaz was a magistrate and politician who played a key role in the organization of the first Liberal movements in Portugal, as well as participating actively in the establishment of the new constitution. Manuel Borges Carneiro was also a magistrate and Liberal politician; he was one of the main theorists of the Liberal state.

<sup>13</sup> At the end of the eighteenth century, António Ribeiro dos Santos defended a ‘historical constitutionalism’, as a re-reading of Portuguese tradition in the light of natural law. In doing so he reimagined the Cortes de Lamego, where the constitution of the kingdoms of León and Asturias would have been upheld. Those were kingdoms where the king was limited by the Cortes, drawing a link with contemporary constitutionalism; the press of the liberal émigrés talked again of the ‘constituição antiga de Portugal’: José Esteves Pereira, *O pensamento político em Portugal no século XVIII: António Ribeiro dos Santos*, Temas portugueses (Lisbon: Imprensa Nacional–Casa da Moeda, 1983), pp. 260–67. Nuno Gonçalo Monteiro, ‘Constitución-Portugal’, entry in *Diccionario político y social del mundo iberoamericano: la era de las revoluciones, 1750–1850* (Iberconceptos-1), ed. by Javier Fernández Sebastián (Madrid: Fundación Carolina, 2009), pp. 404 ff. See the interesting preface by de Mendo Castro Henriques, ‘Um prefácio ideológico’, in Luís Loia, *Liberalismo Constitucional, 1826–1926: o pensamento político de Luís de Magalhães*, Tribuna de Historia (Lisbon: Pedro de Avelaz, 2008).

<sup>14</sup> DSCGENP, Pereira do Carmo, 24 February 1821, pp. 139–40.

representative of the nation or Deputy. At the same time the king was prohibited from intervening in the business of the Cortes. The new constitution also established that no further constitutional reform should take place for a specific period of time, both in Portugal (four years) and Spain (eight years). The king still held full executive power, although he was radically distanced from the legislative power in which he could not participate and which he could neither dissolve nor convene nor suspend. At the same time the legislative power could not demand political accountability from the king or his Secretaries.

It was not the monarchy itself that was under discussion but how to limit its role through a constitution; it would continue to be one of three powers proposed by the new theory of governance. This would not mean a break with tradition but a reworking and updating of traditional practice: tradition was not being discarded, but reembraced and brought up to date. The model corresponded to the 'Assembly' or revolutionary monarchy, and it was common at the time, operating in France in 1791 as well as in the Cádiz model. Indeed, here, just as elsewhere in Europe, Portugal was not considered a Republic because at the time, in accordance with classic republicanism — the prevailing political culture of the day — the term connoted direct democracy in small city-states.<sup>15</sup>

In this article I am interested in exploring the ways the monarchy was adapted to constitutional government, that is, to representative government, when that was possible. The ancient republics were only mentioned to help differentiate between their use of direct democracy and the representative democracy necessary in every great contemporary State. This can be understood as asserting that all those who act on behalf of the nation should be called its representatives, or, as one politician put it:

todos sabem que em muitas partes o Poder legislativo, foi exercitado immediatamente pela Nação, nem póde alguém duvidar que os Romanos, e Gregos nunca tiverão Representantes para o Poder legislativo. Mas hoje em dia não só senão os povos exercitar o Poder legislador por, não se poderem unir como se união nas republicas antigas; por isso a Nação delegou o seu poder em mandatarios.<sup>16</sup>

[everybody knows that in many places Legislative power was exercised immediately by the Nation, nor could there be any doubt that among Romans and Greeks there were never Representatives of Legislative power. But today it remains for the people to exercise legislative power so they shall not unite as happened in the ancient republics; therefore the Nation delegated its power to designated leaders.]

The ancient republics were also mentioned in the Portuguese constitution, in

<sup>15</sup> Ángeles Lario, 'El papel de la Monarquía en el desarrollo constitucional europeo. El caso español. Del régimen de asamblea al parlamentarismo-versus presidencialismo americano', *Alcores*, 3 (2007), 237–54 (pp. 243–44).

<sup>16</sup> DSCGENP, Pessanha, 8 March 1821, p. 1850.

order to justify direct elections, in the belief that they were the best way to avoid any influence of the executive. According to the Constituent Deputy Sarmiento, then:

Isto só se consegue pela eleição directa. He verdade que se argumenta que segundo semelhantes principios não deveria haver representantes da Nação, porque ella mesmo deveria manifestar a sua vontade; mas como não he possível que isto podasse ter lugar senão nas republicas pequenas, por isso [...] a delegação directa he a delegação mais legal, ou liberal possível.<sup>17</sup>

[This can only be achieved by direct elections. It is true that it can be argued that according to similar principles there should be no representatives of the Nation, because the Nation herself should manifest her own will; but since it is not possible for this to take place except in small republics, [...] direct delegation is the most legal, or liberal procedure, possible.]

On one hand, the Republic was feared as being synonymous with anarchy and unfeasible democracy in great States, while, on the other hand, the monarchy was presented as a temperate, mixed government, with a balance of powers which suited the Liberals and, although it limited its powers, did not harm the monarchy. The Liberals even found significant advantages in this new role of the monarchy over the effective powers; advantages which were clear if the main intention was to maintain the monarchy in the constitutional system, benefitting from the increased dignity and respect the association brought with it. Furthermore, the king was not subject to political accountability and was inviolable, as the radical liberal deputy Margiochi summarized:

Dir-se-ha, que assim fica o poder do Rey diminuido; porem quem disser isto engana-se: se o Rey assim perde o poder despotico, tambem assim alcança mui superiores condições; alcança a inviolabilidade da sua pessoa, alcança a propriedade de ser inculpável [...].<sup>18</sup>

[Some may say that the power of the King will now be diminished; however whoever says so is mistaken: if the King thereby loses despotic power, he also achieves much greater conditions; his personal inviolability is achieved, he achieves blamelessness [...].]

Although there were frequent references to what was being done in other countries such as France, Spain and England (the birthplace of the new political culture), the main model was undoubtedly the Cádiz constitution.<sup>19</sup> It was

<sup>17</sup> DSCGENP, Sarmiento, 27 August 1821, p. 2030.

<sup>18</sup> DSCGENP, Margiochi, 26 February 1821, p. 160.

<sup>19</sup> DSCGENP, Correa de Seabra, 24 February 1821 and Borges Carneiro 14 February 1821, p. 83. On that same day Fernandes Thomaz said: 'Não entendo que por estar na Constituição Hespanhola, seja hum artigo de fé para o declarar em a nossa. A Constituição Hespanhola não he Evangelho: eu sou Portuguez, e estou neste Congresso para fazer a Constituição Portuguesa' [I don't see that because it's in the Spanish Constitution it should be an article of faith to declare it in ours. The Spanish Constitution is not the Gospel: I am Portuguese, and I am in the Congress to make the Portuguese Constitution] (p. 83). Ángeles Lario, 'España y Portugal: análisis comparado de los cambios político-constitucionales', *e-SLegal History Review*, 7 (2009) <[http://www.iustel.com/v2/revistas/detalle\\_revista.asp?id\\_noticia=407225](http://www.iustel.com/v2/revistas/detalle_revista.asp?id_noticia=407225)> [consulted 15 September 2017].



taken as an authority and used largely in order to reject moderate amendments, arguing that moderate reform was not feasible on the grounds that the outcome would be a Portuguese constitution less liberal than the Spanish one, which would in turn mean that ‘ficava tudo nullo de direito, e não tardaria a sêllo de facto’ [it would all become null in law, and soon null in fact].<sup>20</sup> Almost certainly because its authors felt compelled to write a constitution more liberal than the Spanish one, the 1822 constitution was in many ways more advanced, for example in the matter of religious freedom and the definition of legislative and executive powers.

In the early days of revolution it was not the concept of monarchy that was in question, but how to accommodate it within the system, in other words how to design a constitutional monarchy. The power of the king, absolute until then, bred mistrust and for that reason it was of paramount importance to limit it so that he could not intervene in the activities of the other powers. The executive should not be able to intervene in the legislative, and therefore the king’s secretaries could neither speak nor vote in Parliament. Besides, the real goal was the unity and indivisibility of national sovereignty, described by Margiochi as an axiom:

A Soberania reside essencialmente na Nação: este o principio que já foi adoptado nesta Assembleia, e principio de natureza tal que não precisa demonstração, he daquelles a que em algumas sciencias se chama axiomas.<sup>21</sup>

[Sovereignty resides essentially in the Nation: this is the principle which has already been adopted by the Assembly, a principle of a nature such that needs no demonstration, it is amongst those known in some sciences as axioms.]

It was not wise to split the legislative lest its power be weakened. Thus, the first revolutionary model was one of strict separation of powers and assembly:

diz-se que para haver Liberdade Politica, he necessario que o Poder legislativo, Judiciario, e Executivo estejam bem divididos, e diz-se no fim deste artigo, que cada hum destes Poderes seja exercitado de modo, que nenhum se possa arrogar as attribuições do outro.<sup>22</sup>

[It is said that in order to have Political Liberty, it is necessary for Legislative power, the Judiciary and the Executive to be clearly separated, and at the end of this article it is stated that each of these Powers should be exercised in such a way that none can boast having the attributions of the other.]

Although the king was free to choose his own ministers, it was made clear to him that he should be guided by public opinion:

<sup>20</sup> DSCGENP, Gyrão, 26 February 1821, against representation in two chambers, p. 155.

<sup>21</sup> DSCGENP, Margiochi, 26 February 1821, p. 160.

<sup>22</sup> DSCGENP, Camelo Fortes, 22 February 1821, p. 135.



O tempo he chegado em que El Rei se deve persuadir que a utilidade publica he o unico fim a que elle deve dirigir todas as suas acções; que he por consequente com a mira na utilidade publica que elle deve fazer a eleição dos seus ministros [...].<sup>23</sup>

[The time has come for the King to allow himself to be persuaded that his public role is the only end towards which he should direct all his actions; it is therefore with his public role in mind that he should select his ministers.]

According to the idea of indivisible sovereignty, it seemed unavoidable that legislative power would be dominant, but it was essential that the executive consented to govern as proposed, and that the executive power's capacity to sanction and veto was understood. This was an issue which the French revolutionaries had already discussed, as well as the extent of the veto, which could by no means be absolute.<sup>24</sup>

At the time when the first Portuguese constitution was being drawn up, fears about executive power were gradually giving way to fears about the legislature. So, although a single-chamber parliamentary structure was approved by 59 votes against 26, bicameralism was upheld as a defence against the potential 'despotism' of the legislature, an argument which was to find success in the future, and with it the rise of executive power, as Deputy Guerreiro, a member of the Legislation Commission, and Francisco Soares Franco, a member of the Commission which drafted the Project of the Constitution, had already foreseen:

Duas Camaras não as posso admitir [...]. Duas Camaras tenderião a dissolver a unidade que deve haver. O estabelecimento de duas Camaras facilita muito mais ao Poder Executivo, o poder de ascender á arbitrariedade; [...] porem n'hum Camara não ha perigo algum.<sup>25</sup>

[I cannot agree to the idea of two Chambers [...]. Two Chambers would tend to dissolve the unity which should reign. The establishment of two Chambers would make things much easier for the Executive Power, the power to rise towards arbitrariness; [...] whereas in a single Chamber there is no such danger.]

The growing fear of the legislative reflected an apprehensiveness about the possible consequences of establishing a Republic, because the concept was still associated with the potential for anarchy that a single-chamber Parliament and a radical exercising of national sovereignty might trigger. In the words of Benito

<sup>23</sup> DSCGENP, Castello Branco, 31 August 1821, p. 2104.

<sup>24</sup> Archives Parlementaires. *Assemblée nationale*. Paris (APPAN), Debates of August and September 1789. 4 September, pp. 554–64. François Furet and R. Hálevy, *La Monarchie Républicaine: La Constitution de 1791*. (Paris: Fayard, 1996), pp. 13 ff.

<sup>25</sup> DSCGENP, Guerreiro, 22 February 1821, p. 135. Soares Franco 23 February 1821, p. 149: 'mas deixemos aos nossos filhos o cuidar do futuro, e dos seus interesses; trata-se do tempo actual, e no tempo actual he muito complicado, e perigoso semelhante método' [but let our children take care of the future, and of their interests; this problem concerns the present, and at the present time such a method is very complicated and dangerous].

Pereira do Carmo, a member of the Commission that drafted the constitution:

dando-se huma só Camara legislativa, e sujeita a facções, e a partidos, era muito de reoar, que se precipitasse sobre o poder Real, fazendo então degenerar a Monarchia Constitucional (o só Governo que eu desejo, e todos nós desejamos) em Republica, e por consequencia em Anarchia.<sup>26</sup>

[if there were only one legislative Chamber, subject to factions and parties, there is a danger that it would impinge upon the Royal power, meaning that the Constitutional Monarchy (the only Government which I desire, and which we all desire) would degenerate into a Republic, and subsequently into Anarchy.]

The linear association between single chamber, Republic and anarchy, which developed during the French Revolution, is crystal clear here. At that time, in western culture, 'Republic' meant direct democracy, something which threatened to usher in the radicalism of a single chamber, the end of monarchy and the Terror of the French Convention that had shocked Europe.<sup>27</sup> Thus, a series of arguments began to be put forward against the predominance of legislative power, which soon replaced the king as the object of mistrust. The first steps were taken along the path to reforming the system, stimulated by international events and the establishment in France of the *Charte Octroyée* [royal charter] regime of Charters, the first continental adaptation to Parliament of a constitutional monarchy, borrowed from the English model:

pela historia de todas as Cortes se vê que as suas decisões podem ser feitas com precipitação, sem maduro exame: pela historia de todas as Cortes se vê, que os Representantes querem legislar sobre tudo, são amigos de cousas novas, legislação sobre as cousas mais pequenas; legislando sobre tudo, o seu poder he illimitado, e por isso he necessario que haja embaraço á esta precipitação, e que, haja quem estorve a sua demasiada legislação: por isso, se o Poder legislativo póde arrogar a si preponderancia sobre o Executivo, aquelle vem a ser illimitado, e este limitado, em quanto não faz mais que executar a Ley: temos huma Legislação contraria á Liberdade Politica, e por isso he necessario pôr-lhe barreiras.<sup>28</sup>

[from the history of all the Cortes it can be seen that their decisions can be made precipitously, without mature examination: from the history of all the Cortes it can be seen that the Representatives wish to legislate on everything, they like everything to be new, they legislate on the smallest things; legislating on everything means their powers are unlimited and that is why it is necessary that there should be a block on impingement and that there should be somebody to impede excessive legislation. If the Legislative power can claim its preponderance over the Executive, the former becomes

<sup>26</sup> DSCGENP, Pereira do Carmo, 23 February 1821, pp. 139–41.

<sup>27</sup> On classic republicanism, apart from the works mentioned above, see Quentin Skinner, *The Foundations of Modern Political Thought*, vol. I, *The Renaissance*; vol. II, *The Age of Reformation* (Cambridge: Cambridge University Press, 1978), Emilio Castelar, *Historia del Movimiento Republicano en Europa*, vol. I (Madrid: Manuel Rodríguez, 1874).

<sup>28</sup> DSCGENP, Camelo Fortes, 22 February 1821, p. 135.

unlimited and the latter limited, when it should only execute the Law: we have a Legislation contrary to Political Liberty and that is why we must put up barriers against it.]

### *The Legislators of São Bento*

Thus, there was a shift from the model adopted by the 'legisladores das Necessidades' to the one set up by the legislators of the Palace of São Bento.<sup>29</sup> The first Liberal experiment in Portugal came to an end in 1823,<sup>30</sup> but, unlike the Spanish case, Marshal Saldanha proposed a constitutional compromise that would partially restore the king's powers: a moderate regime and João VI's promise of a new constitution. It was, however, only in 1826, after the king's death, that his heir Dom Pedro drew up a Charter (as he had done in Brazil in 1824), before abdicating the Portuguese throne in favour of his daughter Dona Maria da Glória.<sup>31</sup>

The Charter represented the king's acceptance of the constitutional regime and, along with it, a change in the political model used in Portugal. It was later endorsed by national sovereignty in a constituent process which eventually produced the 1838 constitution. Just as in Spain, the fact that there was a branch of the royal dynasty (Pedro's brother, Dom Miguel) that supported Absolutism, which sparked off the civil war,<sup>32</sup> led the heir to rely on support from the Liberals and, therefore, to accept the constitution they proposed.<sup>33</sup>

Thus, Portugal adopted the model of European Restoration, based on the system of monarchy in place in England, the training ground for all the political exiles of the time. However, the new Portuguese constitution set out something which, although recognized in practice and theory, was not yet set out in writing in any constitution: the king's moderating power as a fourth power, which did not remove him from the executive power as Benjamin Constant's doctrine had proposed.<sup>34</sup>

<sup>29</sup> The Palácio de São Bento has been the headquarters of the Portuguese Parliament since 1834 and here it represents the post-revolutionary model: moderate liberalism. A comment made by Deputy Macário de Castro, 25 April 1837, p. 24; repeated by Leonel, 26 April, p. 60 (DSCGENP).

<sup>30</sup> On the failed 1823 constitutional project, see *Projecto de Constituição de 1823*, a manuscript which belonged to Prof. João Tello de Magalhães Collaço, with a prologue by Paulo Merêa, Separata do *Boletim da Faculdade de Direito da Universidade de Coimbra*, vol. XLIII (1967).

<sup>31</sup> See also José Joaquim Lopes Praça, *Direito constitucional português: estudos sobre a Carta Constitucional de 1826 e Acto Adicional de 1852*, vol. III (Coimbra: Imprensa Literária, 1878). José Ferreira Marnoco e Sousa, *Direito político, poderes do Estado: sua organização segundo a sciencia politica e o Direito Constitucional português*, ed. by França Amado (Coimbra: França Amado, 1910). José Miguel Sardica, 'A Carta Constitucional portuguesa de 1826', *História Constitucional*, 13 (2012), 527–61 <<http://www.historiaconstitucional.com>>.

<sup>32</sup> See Hespanha, 'Qu'est-ce que la "constitution"...?'

<sup>33</sup> Macário de Castro remarked on this fact. See Ángeles Lario (ed.), *Monarquía y República en la España contemporánea*, p. 184.

<sup>34</sup> Benjamin Constant, a liberal politician active during the French Revolution and the great theorist behind post-revolutionary political doctrine, in his search for a system similar to the English constitutional monarchy, outlined a fourth power which he called moderating or neutral power, thus distancing the king from the three classic branches of power. See Joaquín Varela Suanzes, 'Principios

Unique among nineteenth-century constitutions, then, the Portuguese Charter contains a Chapter (V), dedicated to the king, which reads ‘*Do Poder Moderador*’ [On the Moderating Power]. The first article (71, of 71–74) sets out the following:

O Poder moderador é a chave de toda a organização política, e compete privativamente ao Rei, como Chefe Supremo da Nação, para que incessantemente vele sobre a manutenção da independência, equilíbrio e harmonia dos mais Poderes Políticos.

[The Moderating Power is the key to the whole political organization and is incumbent exclusively upon the King, as Supreme Chief of the Nation, so that he shall watch incessantly over the maintenance of independence, equilibrium and harmony of the other Political Powers.]

Under Article 74, the powers of the king, in accordance with this new constitutional power, were as follows: the appointment of peers (an unlimited number until the reforms of 1885 and 1895–96, which limited them to 100 and 90, respectively); the power to convene, extend, suspend and dissolve the Cortes; the sanctioning of laws; the appointment of ministers; the right to grant pardons and amnesties; and the suspension of magistrates (under the terms laid out in Article 121). All these were traditional functions which allowed the king to moderate and intervene in the business of the other three powers (the executive to appoint ministers; the legislative to appoint peers, run the Cortes and sanction laws; the judiciary to grant pardons and amnesties).<sup>35</sup>

It was indeed the first step towards a mixture of moderating power and executive power; however it did not take the model to its extremes. It was undoubtedly too early for the king to abandon his political powers and hold a fourth power, an apolitical power at the apex of the state structure from where he could moderate the other powers. Indeed, this role was only established constitutionally in the twentieth century. Therefore, in the Charter the king held the moderating power (art. 74) while at the same time being head of the executive power (art. 75) which he exercised through his ministers.<sup>36</sup> In 1885 and

de Política y otros escritos de Constant’, *Historia Constitucional* (revista electrónica), 3 (2002), <<http://hc.rediris.es/o3/index.html>>.

<sup>35</sup> This original feature of Portuguese constitutionalism won Dom Pedro the title of ‘sublime legislator’ from the illustrious writer Almeida Garrett, who considered that moderating was more of a principle than a power: ‘Foi este methodo adoptado por um grande, e sublime legislador, o Senhor D. Pedro IV, na sua Carta. [...] A questão toda está em saber a quem, e como se ha de dar a exercer esse principio moderador: creou-se para elle um poder distincto; e deu-se o poder á Corôa’ [This was the method adopted by a great, sublime legislator, King D. Pedro IV, in his Charter. [...] The key issue is knowing to whom and how this moderating principle should be given to exercise: he created for himself a different kind of power; and power was granted to the Crown.] DSCGENP, Almeida Garrett, 24 April 1837, p. 16.

<sup>36</sup> See Marnoco e Sousa, *Direito político*, p. 685, where he points out that Article 75, which sets out that the king was chief of the executive power, is in keeping with Article 102 of the Charter which stipulates that ‘os ministros referendarão e assignarão todos os actos do poder executivo, sem o que não poderão ter execução’ [the ministers will reference and sign all acts of executive power, without which they cannot be executed.]

1895–96 the *Actas Adicionais* [Additional Provisions] introduced the necessary accountability of the ministers (Articles 7 and 6 respectively) for all the king's actions, also in his role as moderating power.<sup>37</sup>

The Charter was suspended twice: first in 1828 by the Absolutists, and again in 1836 by the radical Liberals. The 1836 revolution, in parallel to what had happened in Spain, paved the way for the constituent process of reform of the *Vintista* (1820) revolutionary model towards a post-revolutionary model and resulted in the latter being backed in a constituent process.

The Charter introduced an article decisive for the change of model as it eliminated the strict separation of powers and the distrust towards the executive power by establishing compatibility between the positions of ministers and deputies (art. 28),<sup>38</sup> thereby bringing the system of parliamentary government to Portugal. This was the constitutional role put together specifically for the monarchy in order to overcome the anomaly that one of the governing powers was lifelong and irremovable. It was achieved through the double executive, placing alongside the king the cabinet which, appointed by the king, was elected by parliamentary majorities and could be changed by them. Thereby, part of the monarchical executive could definitely be changed, granting it the necessary flexibility, similar to that of the legislative power. In consequence, the former secretaries of the king, then ministers, became parliamentarians and shared the legislative power for which they bore political accountability.<sup>39</sup>

The rest of the elements which had made up the revolutionary model in Europe were also introduced in Portugal: bicameralism, the strengthening of the Crown's powers, the coexistence of powers, cabinet government and a censitary suffrage system (i.e. one based on property or other qualifications), indirect in this case although these were exceptional circumstances. This implied the transformation of the Assembly into a bicameral parliament when the second chamber, the Chamber of Peers,<sup>40</sup> was introduced. Its members (of no fixed number) were appointed by the king, for life, and on a hereditary basis (Article 39, reformed in 1895–96 and again in 1907). Any legislative initiative was to be discussed by this chamber and it had the sole jurisdiction to judge members of the royal family, ministers and secretaries of state, as well as deputies and peers.

<sup>37</sup> See <<http://www.arqnet.pt/portal/portugal/liberalismo/c1826aa3.html>>.

<sup>38</sup> 'Os Pares e Deputados, poderão ser nomeados para o Cargo de Ministro de Estado, ou Conselheiro de Estado, com a diferença de que os Pares continuarão a ter assento na Câmara, e o Deputado deixa vago o seu lugar, e se procede a nova eleição, na qual pode ser reeleito, e acumular as duas Funções' [The Peers and Deputies can be appointed to the role of Minister of State, or Councillor of State, with the distinction that the Peers will continue to have a seat in the Chamber, and the Deputy will leave his seat vacant, and a new election will take place, to which he can be re-elected, and thereby hold two Functions]. Article 28 of the Constitutional Charter of 1826: <<http://www.arqnet.pt/portal/portugal/liberalismo/c1826t4.html>> [consulted 26 July 2017].

<sup>39</sup> See María Luisa Sánchez Mejía, 'Liberalismo y república en la revolución francesa', in Ángeles Lario (ed.), *Monarquía y República en la España contemporánea*, pp. 69–84.

<sup>40</sup> See Marnoco e Sousa, *Direito Político*, pp. 431–33. Alberto José Belo, *A Câmara dos Pares na época das grandes reformas políticas, 1870–1895* (Lisbon: Imprensa de Ciências Sociais, 2015).

The *Príncipe Real* (heir apparent) and the *Infantes* (the king's other children) were Peers *ex officio*.<sup>41</sup>

This parliamentary government established in 1826 was ratified in the 1838 constitution, by a constituent process in which several significant aspects were changed, such as the characteristics and composition of the upper chamber, the moderating power, and the system of elections, which became direct, as set out in the model.<sup>42</sup>

The revolutionary uprising of 9 September 1836, in support of the 1822 constitution, put an end to the Charter, which had been reinstated after the end of the Civil War in 1834. The constitution of 20 March 1838, signed in the Palace of São Bento (still home to the Portuguese parliament), was the result of a compromise between the constitution of 1822 and the Charter of 1826: 'da maioria da nação, que o encarregou por seu mandato de fazer uma Constituição tendo por base a Constituição de 22, e a Carta de 26' [by the majority of the nation, which charged it, via its mandate, to prepare a constitution based on the constitution of 1822 and the Charter of 1826].<sup>43</sup>

The moderating power was not maintained in the 1838 constitution but the king remained in charge of the executive power. This was the first opportunity that the Portuguese constituents had to impose reform on a parliamentary government and all kind of issues were discussed, even how to organize the reply to the Speech from the Throne. National sovereignty ratified the shift from the 1822 revolutionary model of an assembly to a parliamentary government. These were times of great change: in France the 1830 revolution was sparked off by the French Charter which regulated Louis-Philippe's monarchy; new-born Belgium would be regulated as a monarchy by its 1831 constitution; in England, in 1832, the Whigs introduced liberal reform which improved parliamentary representation to an extraordinary extent; in Spain, the 1837 constitution had just gone through the same process and a change of model previously introduced by the Statute of 1834. Furthermore, Great Britain, France, Spain and Portugal had united to form the Quadruple Alliance.

In Portugal, the constituents backed bicameralism and all the fundamental elements of parliamentary government but the Chamber of Peers was renamed the *Câmara dos Senadores* [Chamber of Senators] (1838–42), became elective and temporal (although its census was different from that for the Chamber of Deputies), and there were half as many senators as deputies. The senators participated fully in legislation and their approval of legislative initiatives was mandatory; their powers as a Court of Justice remained unchanged. Despite its short life, the chamber's activity was extensive and it enacted 195 'cartas de lei'

<sup>41</sup> Article 40 of the *Carta constitucional da monarchia portugueza*, available at: <[https://books.google.es/books?id=1AtaAAAACAAJ&dq=carta+de+1826,+art%C3%ADculo+40&hl=es&source=gbs\\_navlinks](https://books.google.es/books?id=1AtaAAAACAAJ&dq=carta+de+1826,+art%C3%ADculo+40&hl=es&source=gbs_navlinks)> [accessed 15 August 2017].

<sup>42</sup> Júlio Rodrigues da Silva, 'A Constituição de 1838', *Historia Constitucional*, 13 (2012), pp. 585–96, <<http://www.historiaconstitucional.com>>.

<sup>43</sup> DSCGENP, Midosi, 25 April 1837, p. 36.

[legal charters]. In the words of Almeida Garrett:

Desgraçado aquelle paiz cujos Representantes convocados em uma só reunião, fôsem investidos do tremendo direito de decidir sem apelação um agravo de todos os pontos legislativos. Iria logo direito ao despotismo. Quando muito, faria antes o rodeio da anarchia, para cahir mais seguro ainda no despotismo (Apoiado).<sup>44</sup>

[Unfortunate is the country whose Representatives, called to a single meeting, should be invested with the tremendous right to decide without appeal a grievance against all legislative points. It would revert immediately into despotism. At best, it would firstly pass through anarchy before falling even more surely into despotism (Agreed).]

They argued that ‘á nação portugueza reclama hoje estabilidade; ordem, e justiça’ [today, the Portuguese Nation demands stability, order and justice]. It was time to adapt classical principles to the new doctrines resulting from the experience of revolution: or, according to Almeida Garrett ‘A França quando principiou a estabelecer a sua liberdade, constituiu (é verdade) o seu poder legislativo em uma só instancia. O Povo francez era infante na liberdade’ [When France began to establish its liberty, it constituted (in truth) its legislative power in one single instance. The French People were still infants in their experience of liberty].<sup>45</sup> This explains why the Deputy Midosi was already describing the Assembly model, the single chamber, as an ‘anomaly’: ‘Estou preparado para responder aos defensores dessa anomalia politica com as doutrinas dos melhores e mais abalisados publicistas, com os exemplos da historia, e com os de nossa casa e de nossos dias’ [I am ready to reply to the defenders of this political anomaly with the doctrines of the best and most distinguished publicists, with examples drawn from history, from our turf and our times].<sup>46</sup>

The changes were justified on the grounds that at first the only element feared had been the power of the king and the former powers, not the possibility other equally or more oppressive enemies might materialize; a concern shared by the Spanish Deputy Argüelles in Spain:

Edificou o baluarte da liberdade sómente do lado da aristocracia [...] deixou tudo o mais desmurado [...] Hespanha commetteu o mesmo erro [...] Aquelle foi sem dúvida o tributo de faltas, que como homens, que eram, tiveram de pagar á humanidade; os illustres authores da Constituição de Cadiz. [...] lh’o ouvi eu com estes ouvidos confessar. Nem deixarei de invocar o testemunho do virtuoso e nobre Arguelles — o mais illibado e virgineo caracter publico da Peninsula; com cuja amisade tanto me desvaneço.<sup>47</sup>

<sup>44</sup> DSCGENP, Almeida Garrett, 24 April 1837, p. 16. Garrett was a renowned Romantic writer, Liberal politician and mason, who supported the English constitutional monarchy model and opted for bicameralism in support of the 1838 constitution, along with the group he described as ‘ordeiros’ [the orderly ones].

<sup>45</sup> Ibidem.

<sup>46</sup> DSCGENP, Midosi, 25 April 1837, p. 35.

<sup>47</sup> DSCGENP, All the quotes are from speeches by Macário de Castro, 24 April 1837, p. 24. Agustín Argüelles was a lawyer, politician and diplomat, known as ‘El Divino’ [The Divine] for his great powers



[The bastion of liberty was erected only for the aristocracy [...] it left everyone else outside the walls [...] Hespanha made the same mistake [...] That was undoubtedly the tribute of failures, who were only men and had to pay humanity; the illustrious authors of the Cadiz Constitution. [...] With my own ears, I heard him confess it. Nor will I refrain from invoking the testimony of the virtuous and noble Argüelles — the most unblemished and virginal public figure in the Peninsula; whose friendship I value dearly.]

That is why Almeida Garrett stated that the 1822 constitution was unfeasible: 'Vieram as armas da Santa Alliança, e destruíram a liberdade. Mas a Constituição havia de cair. Cá não vieram baionetas estrangeiras, e ella cahio. (Apoiado)' [The arms of the Holy Alliance came down and destroyed liberty. But the constitution had to fall. No foreign bayonets came here, and it still fell. (Agreed)].<sup>48</sup> And this unfeasibility of the revolutionary model with a radical separation of powers occurred only in monarchy, due to its inalterability.

The development of the post-revolutionary doctrine was a response to the need to increase the executive power. With the double executive and all the precautions adopted in the new model, for the constituents the monarchy still represented the best option. This was because it encapsulated the idea of necessary unity which pervaded all political thinking: the perfectibility of one single power, which, precisely because of its hereditary nature, seemed to be a guarantee against oligarchies:

As deliberações que lenta e prudentemente deve tomar a vontade nacional, rapida e velozmente as deve executar a sua força. Os actos do poder executivo são todos complementares, nenhum é seu do principio, nenhum por elle incoado. Mas a acção nacional ficará sempre imperfeita sem o seu mister. Por isso esta autoridade não póde ser rectamente confiada senão a um só [...].<sup>49</sup>

[The deliberations that should be made slowly and prudently by the will of the nation, should be executed quickly and promptly. The acts of executive power are all complementary, none stands alone, it begets none. But the action of the nation will be forever imperfect without its duty. For this reason that authority can only be entrusted to one entity.]

Something of paramount importance to help understand the model and the era can be seen in the constituent debate: the increase of executive power was intended to grant more power not to the king, the incumbent, but to the effective power, the government. This is why even the absolute veto could be supported, on the understanding that it was an instrument of the government and not the king.

The basic principle that the ministers should be members of parliament gave rise to a debate that was not even held in Spain. The measure was justified by

of oratory, who played a major role in the Cortes de Cádiz (1810–12).

<sup>48</sup> DSCGENP, Almeida Garrett, 24 April 1837, p. 16.

<sup>49</sup> DSCGENP, Almeida Garrett, 24 April 1837, p. 19.

Passos Manuel, a minister of the realm and a moderate Septembrist,<sup>50</sup> along with Pereira Borges and Baron Ribeira de Sabrosa: 'Pela minha parte declaro, que no estado da Civilisação Europeia não é possível nenhum ministério extra-parlamentar [...] estabelleceo a verdade desta luminosa theoria: appliquei-a ao meu Paiz' [For my part I declare that in the state of European Civilization no extra-parliamentary ministry is possible [...], the truth of this luminous theory has been established: I applied it to my Country].<sup>51</sup>

This parliamentarization of the monarchy granted the king the right to convene, suspend and dissolve the Cortes; they, in turn, could regulate the government through the ministers' political accountability. They had the right to make a vote of no confidence (laid down in the Rules of Procedure of the Congress) against a Government which would become dependent upon its parliamentary majorities. Furthermore, he had a co-legislative function, could freely appoint ministers, and had the prerogative to grant pardons. In other words, he began to use the powers that, since Constant's time, were attributed to the Moderating Power, with the capacity to act on each of the powers.<sup>52</sup>

Although the 1838 constitution was in force only until 1842, when the Charter was restored, the 1852 reform of the latter implied recognition of the principles contained in the former, among them the government's effective accountability to the Cortes. What matters here is that although the Chartists intended to follow the procedure for reform laid out by the Charter, the situation made it impossible for them to abide by it. The Decree issued on 25 May 1851 established that the Cortes which resulted from the elections should have the constituent powers necessary to change it to reflect what, in their experience, was indispensable. Thus, the first monarchical concession and the constituent process of national sovereignty were merged and several principles from 1822 and 1838 were incorporated into the Charter, at a time when socialists and republicans were emerging to the left of the Septembrists. The same happened with direct elections and the annual vote to approve the budget.<sup>53</sup>

From the late nineteenth century onwards, the system entered into crisis and at the beginning of the twentieth century the weakened dynastic parties experienced successive splits, between 1901 and 1905. Regenerators and Progressives turned to the king, Dom Carlos I, to obtain their majorities by demanding the dissolution of Parliament. However the king believed that

<sup>50</sup> This term refers to the revolution of September 1836 won by the progressive Liberals. Among the most important of these were Manuel da Silva Passos, also known as Passos Manuel, and the Marquess Sá da Bandeira.

<sup>51</sup> DSCGENP, Passos Manuel, 21 January 1837, p. 122, Pereira Borges and Ribeira Sabrosa on that same day, p. 123.

<sup>52</sup> See Lario, 'La Monarquía del Liberalismo a la Democracia', in Ángeles Lario (ed.), *Monarquía y República en la España contemporánea*, pp. 35–56. This is dealt with specifically in Lario, 'Del liberalismo revolucionario al liberalismo post-revolucionario en España: el triunfo final del camino inglés', in *Espacio, Tiempo y Forma*, serie v, 17 (2006), 45–66. See also Lario, 'El modelo liberal español', *op. cit.*

<sup>53</sup> See Sardica, 'A Carta Constitucional portuguesa de 1826', p. 556.

his Prime Minister, João Franco, could lead the parties towards efficient bipartisanship.<sup>54</sup> So, in May 1907 the king dissolved the Cortes and placed his full confidence in João Franco, who instigated an authoritarian government which lasted until 1908 and accelerated the end of the monarchy and parliamentarism.<sup>55</sup>

Republicanism had developed in the 1880s, fostered by, among other things, the crisis caused by the British Ultimatum. In Europe it adopted the model of the French Third Republic, that is, the parliamentary model of a Republic dressed in the robes of monarchy. But at the turn of the twentieth century the crisis of parliamentarism combined with the admiration for presidentialism, meaning that the first models adopted were a mixture of both systems.<sup>56</sup> In this crisis of monarchy and parliamentarism, events took place at a dizzying pace at the turn of the century: in 1906, there was a break with the Republicans, who were expelled from Parliament; 1907 saw the anti-constitutional rule of João Franco, with the blessing of the king; and on 1 February 1908 the king, Carlos I, along with his eldest son and heir, was assassinated in Lisbon's Praça do Comércio. The monarchy only survived two more years, under Carlos's younger son, Manuel II, and on 6 October 1910 the Republic was established in Porto, with a provisional government led by Teófilo Braga.

### The Portuguese Republic: From Imperfect Parliamentarism to Semi-presidentialism

#### *The Portuguese First Republic*

In the elections held for the *Assembleia Nacional Constituinte* [Constituent National Assembly] on 28 May 1911, a year after the 1910 revolution, no monarchists stood or were elected to office. On 19 June the Assembly met for the first time and two months (including fifty-five night sittings) later, on 18 August, the first Republican constitution was drawn up, which remained in force, at least formally, until 1933 (though in fact only until 1926). The first thing it did was to abolish the monarchy and proclaim a democratic Republic. It also changed some national symbols like the flag and the national anthem. Then a committee of five members was appointed to draft the constitution, chaired

<sup>54</sup> In Spain at that time, and in a similar context, the Regent-queen had said that a Bismarck was needed.

<sup>55</sup> Hipólito de la Torre, 'La crisis del liberalismo (1890–1939)', in Id. *Portugal y España Contemporáneos*, Revista *Ayer*, 37 (2000), 65–80. Fernando Rosas, 'La crisis del liberalismo y los orígenes del "autoritarismo moderno" y del Estado Novo en Portugal', *Espacio, Tiempo y Forma*, serie v, 6 (1993), 327–46. Rui Ramos, 'El colapso del liberalismo en Portugal', *Historia y Política*, 7 (2002), 119–46.

<sup>56</sup> A synthetic overview of the evolution of republicanism since the late nineteenth century can be found in Francisco de Luis Martín, 'El fracaso de la primera república portuguesa (1910–1926): razones de una crisis', *Studia Historica, Historia Contemporánea*, 23 (2005), 221–48 (p. 226 ff.). Manuel Baião, 'A Primeira República Portuguesa (1910–1926): partidos e sistema político', *Arbor*, vol. 190, no. 766 <<http://arbor.revistas.csic.es/index.php/arbor/article/viewArticle/1916/2164>> [accessed 14 December 2016].

by Francisco Correia de Lemos and comprising José Barbosa as Secretary, João Duarte Menezes, José de Castro and Magalhães Lima.

It is interesting to analyse the drafts and debates of the committee members, where they expressed ideas and doctrines which were in some case typical of the time and in others the product of a lack of a doctrinal tradition, including idealistic aspirations to the classic Republic and direct democracy. Indeed, although this was excluded from the final document, two members of the committee, José de Castro and João Menezes, regarded direct democracy as an ideal because, as was understood at the time, in modern societies with a large territory and population it was absolutely unfeasible.<sup>57</sup>

The first Republic was born at the moment when the crisis of liberalism and parliamentarism converged with the admiration for the presidentialism of the United States, a group of former colonies which united to become an emerging country. It had showed its strength in 1898 against Spain and would soon show it to the rest of the world in World War I. In general, what was admired was what seemed to be an efficient system appropriate for an age characterized by the second industrial revolution and the beginning of territorial expansion. It was a time when new-fangled projects engineered towards presidentialism started appearing, but they were never fully achieved because lessons learned from the French Second Republic (which had soon become the Second Empire) had ruled out that possibility in Europe.

And that is exactly what happened with the proposal for the Fifth Commission, a 'sistema misto, sui generis' [mixed, idiosyncratic system] in the words of lawyer, professor and republican political historian João José de Freitas, who defined it thus:

É presidencialista, em parte, porque sendo o Governo [...] estranho ao Parlamento [...] participa igualmente do systema parlamentar, na forma da eleição do Presidente da Republica, que é eleito pelo Congresso, o qual tambem tem competencia para o destituir, segundo o artigo 37.<sup>58</sup>

[It is presidentialist, in part, because since the Government is separate from the Parliament, it participates equally in the Parliamentary system in the way the President of the Republic is elected, by Congress, which also has the powers to oust him, according to Article 37].

<sup>57</sup> *Diario da Assembleia Nacional Constituinte* (DSANC). See, for instance, the debate with Alexandre Braga (who proposed a presidential republic with two chambers and the president's power to dissolve them, which is an anomaly) in the sitting of 7 July 1911, pp. 12–19. See also Adriano Pimenta on p. 15. For more, see Alexandre Sousa Pinheiro, 'Análise dos debates travados na assembleia Constituinte de 1911: projectos de Constituição apresentados e texto final da Constituição', in *A Assembleia Constituinte e a Constituição de 1911* (Lisbon: Assembleia da República, 2011), pp. 43–145.

<sup>58</sup> DSANC, 17 July 1911. 'Com respeito á organização do poder executivo, o projecto da comissão nem adoptou o systema presidencialista norte americano e brasileiro, nem o systema do Governo parlamentar, mas sim um systema misto, sui generis, que participa da natureza d'aquelles dois' [With respect to the organization of executive power, the commission's Project adopted neither the North American or Brazilian presidentialist system, nor the system of parliamentary Government, but a unique, mixed system, sharing elements of both], 14 July, p. 16.

The constitution eventually produced an imperfect parliamentary Republic which can hardly be described as the mixed model so often invoked by the constituents. Its imperfection derived mainly from the facts that the President of the Republic, elected by the Cortes, did not have the power to dissolve them (until the 1919 reform), and was not the commander of the armed forces. His acts were countersigned by the ministers who, eventually, in spite of proposals to the contrary (Article 40 of the draft), could also be deputies (Article 50.1 of the constitution).<sup>59</sup>

The debate focused on the President's right of dissolution, which was eventually rejected. This was the First Republic's 'original sin',<sup>60</sup> which generated the most controversy and was of far-reaching significance even during the coup and the specific circumstances of Sidonism which followed. Although recognizing the crisis of parliamentarism, according to the deputy and minister of the First Republic Antonio Macieira (who declared himself to be 'theoretically a parliamentarist'), the model that was defended proposed two chambers and ministers who were members of the legislative. Some deputies remarked that a distortion was caused by the lack of the right of dissolution, an element essential when exercising moderating power, and thought necessary by Alexandre Braga<sup>61</sup> and Goulart de Medeiros, for instance:

A função da presidência corresponde á necessidade da existencia de um elemento coordenador e moderador que, superior a todas as lutas e paixões politicas, possa estabelecer unidade dentro da Patria e dar cohesão e seguimento ás diversas obras governativas, que hajam de succeder-se na arena parlamentar [...] Eu não posso aceitar, em meu espirito, a comprehensão de um presidente inerte [...].<sup>62</sup>

[The function of the presidency corresponds to the need for the existence of a co-ordinating and moderating element which, superior to all conflicts and political passions, can establish unity within the Fatherland and bring cohesion and continuity to a diverse range of government activities which take place in the parliamentary arena [...]. I cannot in good faith accept or understand the concept of an inert president [...].]

In other words, a President, as described here, could not actually exercise moderating power, which is what justifies the very existence of the institution

<sup>59</sup> See Manuel de Arriaga, *Na Primeira Presidencia da Republica Portuguesa: um rapido relatorio* [Lisbon: A. Editora, 1916], facsimile re-edition with an 'Estudo Introdutório e Notas' by Joana Gaspar de Freitas and Luís Bigotte Chorão (Horta: Associação dos Antigos Alunos do liceu da Horta, 2013).

<sup>60</sup> An expression used by Bigotte Chorão in *A crise da República e a Ditadura Militar*, 2nd edn (Porto: Sextante Editora, 2010). He stresses the importance of this issue as a reflection of the 'crise do Estado' [crisis of the state] which 'atormentou o regime desde os trabalhos da Constituinte' [had tormented the regime since the work of the Constituent committee], p. 875.

<sup>61</sup> Alexandre Braga (1871–1921) was a lawyer, famous orator and member of the Partido Democrático. He was Minister of the Interior and Minister of Justice in the First Republic.

<sup>62</sup> DSANC, 6 July 1911, p. 19. As Goulart de Medeiros (1861–1947) rightly stated on 14 August, if it were based on a presidential republic, the President should not have the right of dissolution, but being based on a parliamentary republic 'it is indispensable'. This politician was an officer in the Portuguese army, a mason, a deputy, senator and Minister of Public Instruction in the First Republic.

in a parliamentary system.<sup>63</sup> The organization of the executive power was paramount in the whole process of constitutional construction of the First Republic. Ultimately the project was criticized for its lack of efficiency or a clear political model, and its ignorance of Portuguese customs and culture. Not surprisingly it was said to be a muddled amalgam of ideas and 'arbitrary eclecticism', one author mentioning its 'fragility' in terms of theory.<sup>64</sup>

The major contradiction in the thinking of these republicans was that although wishing to confront the system of monarchy,<sup>65</sup> and its parliamentary model, they did not want to adopt either the Swiss system or a purely presidentialist one (in the latter case because it would lead to despotism and dictatorship, according to Barbosa de Magalhães and Goulart de Medeiros), but a mixed one instead. This meant that the absolute separation of powers was not established and the President was not directly elected by the people but by the legislative power which, in addition, could dismiss him just as it could dismiss the ministers. The head of state's lack of accountability was regarded as an aristocratic privilege and this was how they sought to meet the longstanding republican complaint about the king's lack of accountability.

On the same grounds the president was granted fewer powers: he could only call elections after obtaining agreement from both chambers, whereas they could do it by decree if necessary. He could not dissolve the Cortes; instead the unusual method of the 'suicide' of both chambers in a joint sitting was upheld, even if that were an initiative of the President. This was why Deputy Barbosa responded ironically to those who accused the project of being presidentialist.<sup>66</sup> He was well aware that the resulting regime was neither presidentialist nor parliamentary.<sup>67</sup>

It was, perhaps, Eduardo de Almeida who expressed these subtleties most effectively, warning that it was not the parliamentary regime that was in crisis but its misuse, what he called 'parliamentary fiction'.<sup>68</sup> This remark that the 'the parliamentary regime was a lie' led João de Menezes to reject it as unsuitable

<sup>63</sup> José Ferreira Marnoco e Souza, *Constituição política da República portuguesa. Commentario* (Coimbra: França Amado, 1913; repr. Lisbon: Imprensa Nacional-Casa da Moeda, 2011), p. 345. Also, Ivo Miguel Barroso, 'A natureza do sistema de governo na Constituição portuguesa de 1911', *Nomos. Revista do Programa de Pós-Graduação em Direito da UFC*, 31.2 (2011), 127–79 (p. 143).

<sup>64</sup> Jorge Fernandes Alves, 'A lei das leis: notas sobre o contexto de produção da Constituição de 1911', *Revista da Faculdade de Letras. História*. Porto, III Série, vol. 7 (2006), 169–80. This author synthesizes the republican antipathy towards the Constitutional Charter, in reference to what was expressed in Elias Garcia's newspaper *A Democracia*, in which in 1873 he argued that the Charter established 'uma ponte provisória entre o absolutismo e a soberania nacional' [a provisional bridge between absolutism and national sovereignty] (pp. 188–89).

<sup>65</sup> DSANC, João Gonçalves, 12 July, p. 18.

<sup>66</sup> DSANC, 12 July, p. 16.

<sup>67</sup> DSANC, 25 July, p. 15.

<sup>68</sup> DSANC, Eduardo de Almeida 13 July, p. 16. General Eduardo Augusto de Almeida y Maia, Head of the Colegio Militar [Military Academy], was a friend of Machado Santos and later Sidónio Pais, with whom he was Vice-president of the Chamber of Deputies in 1918. He was a member of the Unionist party, with moderate tendencies.

for the Republic, recalling that between 1826 and 1910 all but nine of the chambers had been dissolved.<sup>69</sup>

Adriano Pimenta provided a lucid analysis of the doctrinal situation and of the models at stake. He pointed out the intermediate situation caused by the shift from monarchy to republic, calling Portugal 'uma República de transição entre as formas presidencialistas e as formas parlamentares' [a Republic in transition between presidentialist and parliamentarist forms].<sup>70</sup> Pimenta's voice joined the numerous warnings that to avoid presidentialism becoming 'o caminho mais direto para a ditadura e para a tyrannia' [the most direct path to dictatorship and tyranny], it required 'um dos correctivos mais intensos de regime presidencialista' [one of the most intense correctives of the presidentialist regime]: the 'federação dos Estados que embaraça qualquer Presidente a assumir a ditadura' [federation of States which prevents any President from ushering in a dictatorship].<sup>71</sup>

Although its architects looked towards America, their solution was designed for Europe: one only legitimacy was maintained, aiming at parliamentarism but affecting the system's other characteristics. Eight years later, in 1919, the Weimar Republic introduced what Maurice Duverger described as a semi-presidential system, namely, a mixed system where double legitimacy and the power of dissolution were introduced, advocated by eminent social scientists such as Max Weber and Hugo Preuss.<sup>72</sup>

So, although many constituents declared themselves to be presidentialists, one might say that none of them was willing to introduce presidentialism into Portugal, because the model was not appropriate for the country at that moment in time.<sup>73</sup> This same historical reason was used as justification for not approving universal suffrage, because of the widespread social inequality.

### *The Presidentialist Reform of Sidónio Pais*

It was not long before a presidentialist model was attempted, by the decree of 30 March 1918, which also changed the electoral system from censitary suffrage

<sup>69</sup> DSANC, 12 July, p. 13. João Duarte de Menezes (1868–1918) was a lawyer, journalist and important republican from an early age. He fought actively against the monarchy. In the First Republic he was a member of the Unionist party.

<sup>70</sup> DSANC, 7 July, p. 15.

<sup>71</sup> *Ibidem*.

<sup>72</sup> An analysis of contemporary state-building by those who have written, thought and redesigned the models through history can be found in Chapter 1 of my *El Rey, piloto sin brújula*. See also Lijphart, *Parliamentary versus Presidential Government*, and Duverger, 'A New Political System Model: Semi-Presidential Government'.

<sup>73</sup> DSANC, night sitting of 14 August, p. 11. José de Barbosa, from the Commission, stated: 'Eu não quero o regime puro presidencial. Sei bem que esse regime tem um mecanismo especialíssimo, que só joga perfeitamente com o principio da maxima autonomia e descentralização no systema administrativo nacional' [I do not want a purely presidential regime. I know very well that such a regime has a very unusual mechanism which only works perfectly with the principle of maximum autonomy and decentralization of the national administrative system].



to universal male suffrage. This was the constitutional consequence of the aforementioned perceived need to extend the powers of the executive, although in the Portuguese case this took the form of an attempt to make the omnipotent Democratic Party take a step backwards, and a glorification of the role of the army, which had been obliged to become involved in World War I.<sup>74</sup> This zeal for presidentialism and modernization of parliamentarism became apparent in movements advocating regeneration, during which strong allegiances to particular politicians (rather than ideologies) took hold. In this context, the weakness of the president and, above all, the fact that he did not have the power of dissolution, was a key factor in the 1917 coup and a distinctive characteristic of what became known as *Sidonismo*.

Curiously, Sidónio Pais, who firmly intended to establish a presidential system, carried out his coup in support of the President's right of dissolution, which had already been demanded by the conservative parties but which was a fundamental mechanism of parliamentary government, as we have seen.<sup>75</sup> In a speech on 17 February 1918 he called his project a 'New Republic', quite rightly considering that presidentialism was a 'new' idea.<sup>76</sup> Later he explained that the Decree of March 1918 established 'a presidential system of executive power'.<sup>77</sup> There was no Head of Government and the ministers were renamed Secretaries of State, as in the early days of the constitutional monarchy or in the presidential republic.

Nevertheless, the same problems surfaced as with the model devised in 1911, only the other way round: the former system was parliamentary but lacking basic elements of that model; the latter sought to be presidential but with the 'feet of clay of parliamentarism'. In short, the later reform sought to achieve the mixed model attempted by the committee in 1911, but with an inverted relationship of powers. The earlier model had resulted in a deficient, poorly

<sup>74</sup> Antonio José Telo has highlighted the modernizing characteristics of Sidonism in *Sidonismo e o movimento operário português* (Lisbon: Editorial Ulmeiro, 1977); *Primeira República II: como cai um regime* (Lisbon: Editorial Presença, 2011); and *Primeira República I: do sonho à realidade* (Lisbon: Editorial Presença, 2010).

<sup>75</sup> For more on Sidonism see also Armando Malheiro da Silva, *Sidónio e Sidonismo*, vol. 11: *História de um caso político* (Coimbra: Imprensa da Universidade de Coimbra, 2006); Ana Rodríguez Gaytán de Ayala, *Orden en Portugal: la República Nova de Sidónio Pais (1917–1919)* (Mérida: Junta de Extremadura, Consejería de Cultura, 2006).

<sup>76</sup> I have dealt with this topic in several works, probably most extensively in Lario, 'La Monarquía en España y la construcción del Estado Contemporáneo', in *Experiencias republicanas y monárquicas en México, América Latina y España. Siglos XIX y XX*, ed. by Marco Antonio Landavazo and Agustín Sánchez Andrés (Mexico: Universidad Michoacana de San Nicolás de Hidalgo / Instituto de Investigaciones Históricas, 2008), especially the section 'La cuestión del presidencialismo y parlamentarismo en nuestros liberales tras la crisis de fin de siglo'. Also specifically in 'El papel de la Monarquía en el desarrollo constitucional europeo. El caso español. Del régimen de asamblea al parlamentarismo-versus presidencialismo americano', *Alcores*, 3 (2007), 237–54. For the conclusions of a study on these ideas in Spain, Portugal and the new Latin American countries, see Lario, 'Monarquía y República en la construcción del Estado Contemporáneo: España, Portugal y América Latina', *Mundos de ayer: investigaciones históricas contemporáneas del IX Congreso de la AHC*, ed. by María Encarna Nicolás Marín and Carmen González Martínez (Madrid: Abada, 2009), pp. 153–90.

<sup>77</sup> Ana Rodríguez Gaytán, p. 43.

constructed parliamentarism, whereas the 1918 one suffered from structural weaknesses. A clear indication of this was the uncertainty felt by the ministers themselves to whom it was unclear whether they were ministers or secretaries of state and who said they were both.<sup>78</sup>

After Sidónio's assassination, the position of President of the Council of Ministers, i.e. Prime Minister, and the election of the President of the Republic by parliament were re-established. The only other change after his death was the correction of the parliamentary 'defect' in the constitution, henceforth granting the president the right of dissolution, although only after hearing the Parliamentary Council. In 1975 it was still being said that the First Republic suffered from 'um parlamentarismo desordenado e caótico' [a disordered and chaotic parliamentarism].<sup>79</sup>

### *The End of the Republic and the Search for More Executive Power*

On 28 May 1926, the First Republic was brought to an end by a coup carried out by a group of military officers who intended to establish a new, dictatorial regime. It was the fear aroused by the uprising of military and civilian republicans in February 1927 in order to re-establish the 1911 Republic that led to a union of conservative republicans and monarchists in order to stabilize what they called the 'national dictatorship', upholding the military dictatorship until the 1933 constitution was approved, consequently ushering in the so-called *Estado Novo* [New State].<sup>80</sup> This meant the end of the liberal regime although it also strengthened executive power, which basically became the sole power. This was precisely what António de Oliveira Salazar included in his 'Princípios Fundamentais da Revolução Política' [Fundamental Principles of the Political Revolution] when the *Estado Novo* was created under his leadership.<sup>81</sup>

The argument Salazar used to put forward this strengthening of the executive power was that its weakness, as had been deliberately established in the Republic, was typical of liberalism, along the lines of the traditional criticism of parliamentarism outlined above. In order to avoid it he proposed that the president be directly elected, just as Sidónio Pais had been in 1918 and as Carmona had been by decree, in 1928.<sup>82</sup> In line with the trends of the time

<sup>78</sup> Ana Rodríguez Gaytán, p. 52; on the 'pies de barro del parlamentarismo' see p. 140, pp. 282–86. This was the reply to the insistent questions posed by the democratic Machado Santos, to elucidate who was accountable: whether the ministers, if they were indeed ministers in a parliamentary regime, or the president of the Republic himself, if the republic were defined as presidentialist.

<sup>79</sup> Assembleia Nacional Constituinte (DSANC), Manolo Gusmão (PCP), 10 December 1975. See Luís Farinha, 'O Regime republicano e a constituição de 1911: entre a "ditadura do legislativo" e a "governança em ditadura": um equilíbrio difícil', *Historia Constitucional*, 13 (2012), 597–609.

<sup>80</sup> Luís Bigotte Chorão has dealt extensively with this process in *A crise da República e a Ditadura Militar*, pp. 162–218, 869–78.

<sup>81</sup> You can also access the digital edition (see section c), added to the 1933 constitution in 1935 by the Secretary of National Propaganda (which was reformed at various times, especially in 1935, and was in force until 1974) at <<http://fama2.us.es/fde/ocr/2006/constitucionPortuguesa.pdf>>, pp. 78 ff.

<sup>82</sup> See Miranda, below.

Salazar stated that:

Não há Estado forte onde o Poder Executivo o não é, e o enfraquecimento deste é a característica geral dos regimes políticos dominados pelo liberalismo individualista ou socialista, pelo espírito partidário e pelos excessos e desordens do parlamentarismo.<sup>83</sup>

[No State is strong if the Executive Power is not strong, and the weakening of the latter is the general characteristic of political regimes dominated by individualist or socialist liberalism, by a partisan spirit and by the excesses and disorders of parliamentarism.]

It is interesting that once again the issue was the moderating power of the Head of State, but at the same time a comparison was made with the king's role in the 1822 constitution, just when that power was absent from both political doctrine and the thoughts of the constituents. Nevertheless, the revolutionary model, the one which had preceded parliamentary government, did coincide with the radical separation of powers once more under discussion, and was the other main aspiration of the 1933 constitution.<sup>84</sup> Manuel Fratel has described these two years as the key moments in Portuguese history: obviously, 1822 was the moment the contemporary state was born, and 1933 'também é diferente de tudo quanto está para trás, cuja última fase era o anarquia parlamentar e a usurpação de funções' [is also different from everything that came before, the last phase being parliamentary anarchy and the usurping of functions].<sup>85</sup>

It was not until the current era, after the Carnation Revolution, that the direct election of the President of the Republic was enshrined in a liberal and democratic regime by the constitution approved on 2 April 1976, thus combining the presidential model for the election of the President (welcomed particularly by Jorge Miranda, a member of the Partido Popular Democrático), and the parliamentary model of government. In other words, a semi-presidential system had been set up. In Miranda's words, 'O PPD congratula-se, sobretudo, com a

<sup>83</sup> António Oliveira Salazar, 'Princípios fundamentais da revolução política', cited in Jorge Ramos do Ó, *O lugar de Salazar: estudo e antologia* (Lisbon: Alfa, 1990), pp. 181–98 (p. 189). Paulo Ferreira da Cunha writes that 'A Constituição de 1933, no seu texto final referendado, é menos anti-liberal, anti-parlamentar e anti-democrática que os postulados ideológicos reaccionários do Estado Novo, mas a prática constitucional ulterior do regime de Salazar se encarregaria de corrigir este aspecto do seu carácter "semântico"' [The Constitution of 1933, in its final text as put to plebiscite, is less anti-liberal, anti-parliamentary and anti-democratic than the ideological postulates of the Estado Novo, but the later constitutional practice of the Salazar regime undertook to correct this aspect of its 'semantic' character]: 'Da Constituição do Estado Novo português (1933)', *Historia Constitucional*, 7 (2006) <<http://hc.rediris.es/07/index.html>>.

<sup>84</sup> Diário Das Sessões da Câmara Corporativa. 2nd supplement to no. 14 of 15 February 1935, pp. 3 and 4. Opinion of the Corporative Chamber on the draft Law no. 12, proposal for amendment of the constitution: 'o Presidente desempenha a função de Poder moderador, na hipótese de divergências inconciliáveis entre os outros' [the President carries out the function of moderating power, in the event of irreconcilable differences between members].

<sup>85</sup> Diário das Sessões, Assembleia nacional, sitting of 20 February 1935, p. 320. On this constitution see also Marcello Caetano, *A Constituição de 1933: estudo de Direito público*, 2nd edn (Coimbra: Coimbra Editora, 1957). António Araújo, *A Lei de Salazar: estudos sobre a constituição política de 1933* (Coimbra: Edições Tenacitas, 2007).

devolução que nesse título é feita ao povo português da eleição do titular do primeiro dos órgãos constitucionais' [The PPD is most proud of the devolution that is granted to the Portuguese people to elect the head of the first of the constitutional Bodies].<sup>86</sup>

In his work on the Portuguese constitution, Miranda, a member of parliament and of the constitutional committee, who shortly afterwards became a Doctor of Law and Political Sciences and Law Professor, shows not only his knowledge of the French model of the Fifth Republic but also expressly mentions Duverger. He points out that the semi-presidential system can be found in Ireland, Iceland, Austria and France, but identifies a specific variation in Portugal in comparison to the French case: the President of the Portuguese Republic could not preside over the Council of Ministers unless the Head of Government requested it. The aim was to preclude a likely concentration of power, for the presidency of the revolutionary Council was also inherent to the post at the time. António Esteves, a member of the Socialist Party, shared this view and considered it was 'very dangerous', bearing in mind that the President was not accountable to the legislative power.<sup>87</sup>

The President would be elected by direct elections for a term of five years and could renew that mandate only once. The Prime Minister and the government would have the classic double confidence of the parliamentary system, that is, the President's and the National Assembly's. Similarly, and under the same parliamentary rules inherited from the nineteenth-century monarchy, the Prime Minister would be appointed by the President of the Republic according to parliamentary majorities, these latter elected for four years.

The final project was drafted by the Fifth Committee (charged with the organization of political power) and presented for discussion on 4 March 1976. In the attempt to once again move away from monarchical tradition, and from the use that the 'fascist regime' had made of the term 'Head of State', it was deliberately avoided, as Jorge Miranda explains.<sup>88</sup> In this case, however, he would continue to be Supreme Commander of the Armed Forces, as usually befits the Head of State, and this article (12) was unanimously approved.

The Communist Party, according to Vital Moreira, disagreed with the manner in which the President should be elected, although it approved the constitution. In short, Portugal eventually established a semi-presidential system (also known as a parliamentary-based mixed system)<sup>89</sup> with two legitimacies,

<sup>86</sup> <[http://app.parlamento.pt/LivrosOnline/Vozes\\_Constituinte/medo1040338j.html](http://app.parlamento.pt/LivrosOnline/Vozes_Constituinte/medo1040338j.html)>.

<sup>87</sup> DSANC, 6 March 1976, pp. 3793–95.

<sup>88</sup> See Jorge Miranda, 'La Constitución de 1976 en el ámbito del constitucionalismo português', *Revista de Estudios Políticos*, 60–61 (1988), 569–606 (p. 577 ff.).

<sup>89</sup> See also Raul Machado Horta, 'A Constituição da República Portuguesa de 1976 e o regime semi-presidencial', in *Perspectivas constitucionais: nos 20 anos da Constituição de 1976*, ed. by Jorge Miranda (Coimbra: Coimbra Editora, 1996), vol. 1, pp. 515–31; Jorge Miranda, 'O sistema semipresidencial português entre 1976 e 1979', *Revista da Faculdade de Direito da Universidade de Lisboa*, 25 (1984), 193–220; Miranda, 'A experiência portuguesa de sistema semipresidencial', *Direito e Cidadania*, 1 (1997), 9–25; Miranda, *As Constituições portuguesas: 1822, 1826, 1838, 1911, 1933, 1976* (Lisbon: Livraria Petrony,

Parliament's and the President's. The President, elected by universal suffrage, has significant powers to act, such as the power of veto (Article 136), the power to dissolve the Assembly at his discretion and to call the ensuing elections, to appoint the Prime Minister in accordance with parliamentary majorities and to dismiss him or her, as well as to dissolve the autonomous Assemblies (Article 133). The President's role is to guarantee national independence and the unity of the State as well as to exercise the role of moderating or 'overseeing the proper functioning of the democratic institutions' (Article 120 of the constitution).<sup>90</sup>

Thus, 5 October 2010 marked the centenary of the republican regime which came into being, wanting to correct the deficiencies of the monarchical parliamentary government and ended up establishing the closest model to a presidential republic that can be found in Europe: the mixed model, still in force today.

1976; repr. 1981); André Gonçalves Pereira, *O semipresidencialismo em Portugal* (Lisbon: Ática, 1984).

<sup>90</sup> See also Silwia Maciaszek-Llaneza, 'El Presidente de la República como árbitro político: el caso polaco en una perspectiva comparada', *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol*, 57 (2006), 119–42. It should be noted that the 1976 constitution was subject to several revisions (1982, 1989, 1992, 1997, 2001, 2004 and 2005); on these revisions and the political debate around them see also José Joaquim Gomes Canotilho and Vital Moreira, *Constituição da República Portuguesa Anotada*, 4th rev. edn (Coimbra: Coimbra Editora, 2014), I, 25–42.