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The Referendum in the Portuguese Constitutional Experience

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Chapter 3

The Dictatorship of the New State: 1926-1974

1. The Military Dictatorship

1.1 The Military Coup of 28 May

On 28 May 1926, General Gomes da Costa, former Commander of the Portuguese Expeditionary Corps in World War I, led a military revolt in the northern city of *Braga* and started a march towards Lisbon. Most of the army joined him after some hesitation, while the rest remained neutral. In Lisbon, the Government resigned on 30 May and President Bernardino Machado resigned on 31 May, giving complete power to one of the revolutionary leaders, Commander Mendes Cabeçadas (Rosas, 1994, p. 156; Marques, 1998, p. 278; Maltez, 2005, pp. 324-328).

The new power had neither any political or governmental project, nor any effective and united direction. As Fernando Rosas points out (1994, p. 155), this military conspiracy lacked a clear leadership. The conspiracy was separated into political-military factions, each having their own leaders with different strategies. Jorge Campinos (1975, p. 39) emphasises that the military movement was united only by the common idea to reestablish public order, without knowing what to do the next day. Having risen to power promising stability and order, the effectiveness of the military government was hampered by heterogeneity and disunity of its own (Oliveira, 1992, p. 13).

On 17 June, Mendes Cabeçadas, who was still a rightist republican, thought that the military coup of 28 May should not put an end to the liberal-parliamentary system, but should regenerate it (Rosas, 1994, p. 151). As a result, he was expelled from the Government. His place was taken by Gomes da Costa himself, with the support of the most extreme right wing and anti-republican faction, led by General Sinel de Cordes. However, given his absolute political incompetence, Gomes da Costa was no more than an ornamental figure of the movement, and was removed from power on 9 July by a new military coup commanded by Generals Óscar Carmona and Sinel de Cordes. They then assumed the positions of Head of Government and Finance Minister, respectively (Marques, 1998, p. 375). On 26 November, Carmona was appointed provisionally as both President of the Republic and Head of Government.

In 1927, several republican military revolts against the dictatorship were defeated. The extreme right wing reinforced its position

by improving its repressive mechanisms (Marques, 1998, pp. 380-381). As António Pedro Ribeiro dos Santos points out (1990, p. 277), the winners felt that the maintenance of the dictatorship would not be possible without a social base of support. Therefore, in the first anniversary of the 28 May revolution, through Carmona's voice, they declared the intention of calling elections with the clear purpose of getting that support. Thus, on 29 December 1927, Decree No. 14,802 on the electoral census expanded the right to vote.

On 25 March 1928, the only candidate for the Presidency of the Republic, Óscar Carmona, was directly elected with 761,730 votes. The election was governed by Decree No 15,063, of 25 February 1928, from his own Government. Carmona's entrance into the Presidency on 15 April changed the military dictatorship into a national dictatorship (Maltez, 2005, p. 345). For Marcello Caetano (1956, p. 2), this election was a plebiscitary ratification of the revolution. Meanwhile, the financial policies from the dictatorial governments, led by Sinel de Cordes, and Ivens Ferraz after 16 February 1928 failed completely (Maltez, 2005, pp. 335-338; Rosas, 1994, p. 219).

1.2. The Rise of Salazar

On 18 April 1928, Carmona instituted a new government led by Colonel José Vicente de Freitas, with António de Oliveira Salazar as Finance Minister, establishing, in the words of José Adelino Maltez (2005, p. 346), a 'finance dictatorship' inside the national dictatorship. The purpose of Vicente de Freitas' Government initially seemed to be reconciliation with republican positions (Rosas, 1994, p. 168). However, the reinforcement of most right-wing positions, including Salazar's, halted that tendency with the support from catholic conservatives, young *sidonist* officials and Carmona. This was achieved first through a governmental reshuffle which happened on November 1928, secondly, by forcing Vicente de Freitas' dismissal on 8 July 1929, and substituting him with Ivens Ferraz, and finally by forcing General Domingos Oliveira to take his place on 21 January 1930 (Marques, 1998, pp. 383-384; Almeida, 1999, pp. 87-88).

The dismissal of Ferraz and the appointment of Domingos Oliveira's Government, with Salazar as its true leader, meant a rupture with the Republic and the beginning of a personal and authoritarian regime. This would be the answer to the crisis of liberalism and parliamentary democracy, and also to the threats of the socialist revolution (Oliveira, 1992, p. 15).

The suppression of new republican military revolts in 1931, gave way to a general hardening of the dictatorship and to the reinforcement of the anti-liberal and anti-parliamentary stream. Eleven months later, Salazar would claim government leadership. After his appointment as Finance Minister during Vicente de Freitas' government, he gained support from most of the catholic reactionary faction, and began to take all levels of power, generating around himself movement of unconditional followers. After having belonged to the governments of Vicente de Freitas, Ivens Ferraz and Domingos de Oliveira, Oliveira Salazar became Chief of Government on 5 July 1932. He would only interrupt those functions 37 years later, on 27 September 1968, due to his health condition.

2. The Constitutional Project

2.1. The Essential Lines of the Constitutional Project

The military dictatorship established in 1926 decisively overthrew the Constitution of 1911. Although it was maintained in theory, several dictatorial decrees altered fundamental aspects of the State organisation. Decree No. 11,711, of 9 June 1926 dissolved the Congress of the Republic. Still in that same year, the Decrees No. 11,789, of 19 June and No. 12,740, of 26 November, gave the functions of the Chief of Government to the President of the Republic. In 1928, Decree No. 15.063, of 25 February, established the direct election of the President, whose term of office would be five years. Decree No. 15,248, of 24 March, expressly repealed the 1911 Constitution provision regarding the President's election. Decree No. 15,331, of 9 April, defined the President's attributions and Stated the terms of his honour commitment. Finally, Decree No. 18,570, of 8 July, approved the Colonial Act, which replaced Title V of the 1911 Constitution, on the administration of the overseas provinces (Santos, 1990, p. 92).

In spite of being only a Finance Minister, Salazar appointed himself with the task of expressing the doctrinaire basis of the regime and the Constitutional future of the dictatorship. Fernando Rosas (1994, pp. 198-202; 1996, pp. 198-203) synthesises the essential lines exposed by Salazar's Constitutional project on the New State (*Estado Novo*) into five fundamental parameters: **a)** The refusal of democratic liberalism; **b)** corporative nationalism; **c)** a strong State; **d)** economic and social interventionism; and **e)** colonial imperialism.

2.2. The Constitutional Draft

In October 1931, the Home Minister announced the way to ‘Constitutional normalcy’, which would be achieved through the approval of an electoral legislation, a new Administrative Code and the reform of the Constitution. On 22 December, through Decree No. 20,643, the Government established a National Political Council (*Conselho Político Nacional*) in order to give an opinion on the foundations of the Constitutional system that needed to be created (Santos, 1990, p. 282). This Council, led by the President of the Republic, included the Head of Government, the Home Minister, the President of the Supreme Court of Justice, the Attorney General of the Republic and eleven persons appointed by the President. One of these was Oliveira Salazar, who had a decisive influence on the choice of the other council members (Almeida, 1999, pp. 107-108; Urbano, 1998, p. 103; Nogueira, 2000a, pp. 132-133).

The Council had a heterogeneous composition, but its members, though representing different sensibilities, all supported the dictatorship. One of their main advisory functions was to assess the Constitutional draft of the Republic. That text would be introduced by a task force coordinated by Oliveira Salazar himself, including university professor Fezas Vital, the young jurist Marcello Caetano, Salazar’s future successor in the government’s leadership many years later (Almeida, 1999, p. 108),⁵¹ and Quirino de Jesus, a politically discreet person who has been considered the true inspirer of Salazar’s Constitutional project.

The National Political Council met for the first time on 5 May 1932 to give their opinion on the draft, published in the press on 28 May, and opened a public debate that lasted until February 1933. However, with the press censorship, which drastically restricted fundamental freedoms, the effective decapitation of republican resistance and worker movements due to the repressive waves from previous years, the debate was restricted to the dictatorship’s many factions: the liberal conservatives, the radical right wing, and Salazar’s supporters defending the proposed draft (Rosas, 1996, p. 198).

According to the proposed draft, the Head of State, who was directly elected for a seven-year term of office, and was responsible only to the Nation, centralised executive power with the widest responsibilities. He could dissolve the Parliament, promote Constitutional revisions, appoint and remove the Head of Government and ministers without any parliamentary interference. The Government would only be politically

⁵¹ On the relationship established between Salazar and Caetano during the working up of the Constitutional draft, see Caetano (1977, pp. 52-53).

responsible to the President and it would be completely independent from Parliament. The Head of Government had the huge power of countersigning all the Presidential Acts under the penalty of their inexistence, thus creating a bicephalous presidentialism. The role of Parliament would be minimal, given that even at the legislative level it would only have the responsibility of approving the general elements of the legal systems.

Meanwhile, the conservative liberals had drawn a true counter-draft of the Constitution under the authorship of General Vicente de Freitas, who was the Head of Government during the dictatorship's initial years. He addressed his draft to Óscar Carmona, and proposed a strong and stable government system, which would make disorder impossible, but would absolutely respect the democratic principle of government and which would not sacrifice any individual freedoms. As for the passage of the Constitutional text, Vicente de Freitas contested the plebiscitary option. The Government should only make an Electoral Law for the election of a Constituent Assembly, and introduce its draft to the Assembly once elected. (Santos, 1990, p. 284).

Vicente de Freitas wanted to give his draft directly to Carmona, but Salazar prevented him from doing that by convincing the President to pretend to be ill. Salazar received the document on 8 February 1933. The press published the text on 12 February 1933, and added an unofficial note from the Government refuting its arguments. Meanwhile, the author was discharged on that same day from the post of President of the Administrative Commission of Lisbon.

The final proposal, made by a commission named by the Government, of which Fezas Vital, the Justice Minister Manuel Rodrigues and the Colonies Minister Armindo Monteiro took part, included some of the conservative liberals' proposals. In spite of everything, they still maintained some influence near Carmona. The draft, published by Decree No. 22,241 of 22 February, was to be submitted to a plebiscite. In its final version, it accepted the direct election of the 90 members from the National Assembly. The possibility for presidential reelection was approved, as well as the obligatory presidential enactment of vetoed Acts, which was confirmed by a two-thirds majority. (Rosas, 1996, pp. 205-206; Urbano, 1998, pp. 104-105).

3. The Plebiscite on the 1933 Constitution

3.1. The Procedure

On 21 February 1933, Decree No. 22,229 scheduled the 19th of March as the day of the national plebiscite to approve the Political Constitution of the Portuguese Republic. According to its provisions, the draft would be published as a supplement of the official journal (*Diário do Governo*) on 1 March 1933, and it would be distributed by the municipal authorities to all parishes and posted in public places until 12 March. Participation in the plebiscite was compulsory for the heads of family registered in the electoral census of 1932.

The draft Constitution would be passed if the majority of electors voted affirmatively. However, the ‘heads of family’ who had not voted would have their votes considered as affirmative ones unless they showed proof that one of the following circumstances had prevented them from voting: **a)** death of any relative in one of the three days previous to the plebiscite; **b)** disease that had disabled him from attending; **c)** absence from the municipality during the previous seven days.

Particularly significant was the way of expressing the vote. The ballot paper contained the following question: ‘Do you approve of the Political Constitution of the Portuguese Republic?’ The voters who wanted to approve, simply had to give the paper without any answer. Those who wanted to reject it had to write ‘No’.

In these terms, the results were not surprising. From the 1,213,159 casted votes, 719,364 were considered as affirmative and 5,955 were negative. The 487,179 abstentions (40.2%) were counted as affirmative votes (Santos, 1990, p. 285). In the minutes of the Counting General Assembly we have the following data: registered voters (Mainland, Islands and Colonies): 1,330,258; votes Yes: 1,292,864; votes No: 6,190; blank votes: 666; absentee votes: 30,538. The abstentions had already been counted as favourable votes (Almeida, 1999, p. 134).

The passage of the Constitution through a plebiscite had direct effects on the President’s term of office. This was fixed for a seven year period [Article 72(§1)] and there was a transitory disposition (Article 137) which recognised the President’s functions. In that case, the term of office would last seven years from the date of his investiture. When the Constitution came into force, Carmona had completed five years of functions. Consequently, the passage of the Constitution meant the automatic extension of the presidential term of office by two years.

Salazar, who considered it difficult, or even impossible, to find someone in that period of time as qualified as General Carmona to exercise the post of President, assumed that option himself (Ferro, 1933, p. 136-137).

3.2. Political Significance

The plebiscite that approved the 1933 Constitution was not an expression of popular will, and did not even appear to be so. It was only a way to legitimise a Constitutional text granted by a dictatorial power that refused universal suffrage. It was also a way to legitimise political power that assumed its opposition to any devices inherited from democratic or liberal regimes. In Mário Soares' words (1969, p. 78), the 1933 Constitution was only a juridical mean to mask the previous dictatorial structure.

The Constitutional draft did not result from any Constituent Assembly that had been designated for its drawing, as had happened with the liberal Constitutions of the Monarchy (1822, 1838) and the Republic (1911). The text was drawn under Oliveira Salazar's direction, just as the Constitutional Charter of 1826 had been made under the direction of King Pedro IV. The plebiscite was being used to legitimise the title of a dictator.

Interviewing Salazar about the dictatorship's Constitutional future, António Ferro (1933, p. 136) asked: 'will the Constitution be ordained by decree or by plebiscite?' This question excluded all other possibilities, and implicitly admitted that the Constitution could plausibly be granted by dictatorial decree. However, Salazar admitted: 'it will be submitted to a plebiscite. It would not be well accepted nor would it be fair to impose it to the country, without first hearing the people on such an important statute that will regulate our political and social life'. Take note of the significance this has coming from someone who always chose his words carefully. The plebiscite was not made in order for the people to decide, but only so that they could be heard.

In spite of Salazar's well-known monarchic militancy during the First Republic, he did not want to restore the Monarchy. Nevertheless, several demonstrations of esteem and sympathy were exchanged between Salazar and the former King Manuel II, who was exiled in England. The refusal to restore the Monarchy can be explicable by several reasons. First, because the dictatorship, which resulted from the military coup of 1926, never assumed itself against the Republic, but rather against its deviations. Second, because the dictatorship's Governments always maintained a significant weight of republicans. Third, because the social

support needed for regime survival included the conservative factions, who were against monarchic restoration (Marques, 1998, p. 429). Fourth, because the support for Salazar's increased personal power was given by President Carmona, who was chosen by the dictatorship. Fifth, because the dictatorial statute that Salazar gave to himself as Head of Government could hardly be compatible with the existence of a Monarch who was jealous of their prerogatives.

Therefore, the formal maintenance of republican institutions served Salazar's goals perfectly. The premature death of Dom Manuel II, in 1932, without any direct descendants, obliterated the monarchic hopes of reestablishment and allowed Salazar to consider the monarchic idea as having lost its 'acting force' and to accept the idea of Republic (Marques, 1998, p. 430). The death of Dom Manuel II allowed Salazar to consider the subject as settled. However, there is nothing to prevent us from supposing that he had not already decided on the matter.

Nonetheless, the dictatorship needed a Constitution in order to provide a Constitutional for the so-called New State, in other words, to grant a formal Constitution. Without a King and without a Constituent Assembly, the solution would have to be something that conferred the dictator an apparent legitimacy. Vital Moreira (2004, p. 408) qualifies the 1933 Constitution as a sort of Constitutional Charter granted by Salazar. In the event, the way chosen to grant it, the plebiscite, was, no more than a farce.

The option for a plebiscite of this nature was in agreement with Salazar's doctrinaire conceptions. While refusing the liberal, democratic and parliamentary basis of the State, Salazar rejected any possibility for free or competitive elections. He did not even recognise each individual citizen's right to vote, but only considered them as representatives of the family, which was the basic unit of the society. The goal of the plebiscite was not to submit a Constitutional draft to the popular verdict, but rather to release it from that verdict.

In fact, the plebiscite was carried out in total absence of civic freedoms, including the forbiddance of expression of any opposing tendency and press censorship. Debate was restricted to the factions of the dictatorship, with confrontations among them being also badly tolerated.

The plebiscite was on a single text, and it was inconceivable to the regime that any alternative could be submitted to the electorate. Electoral registration and all electoral operations were completely controlled by the Government. There was never any possibility for

independent scrutiny of the plebiscitary process. On the day of voting, an appeal from Carmona, encouraging approval of the draft, was dropped over Lisbon, Oporto and *Coimbra* by airplane. (Almeida, 1999, p. 134).

In Luís Barbosa Rodrigues' reference to the plebiscite of 1933 (1994, pp. 122-126), he considers its qualification as a 'national plebiscite' to be incorrect. It was not national because the inclusion of the colonies was doubtful, and it was not a plebiscite because its topic was neither an election nor a recall, and that point is decisive for the author to distinguish between a referendum and a plebiscite. If the first question is undisputed, the second one is not. In fact, the idea that a plebiscite must always be an election or recall is not true. There are hundreds of pages written by outstanding authors trying to distinguish plebiscite and referendum without convincing results.⁵² However, even if we consider that distinction to be correct, it is also true that the plebiscite of 1933 functioned politically as a legitimacy title for Salazar and it also had the formal effect of extending Óscar Carmona's presidential term of office.

On the other hand, Rodrigues does not think it is 'controversial' to qualify that plebiscite as democratic, regardless of fact that the submitted text that was drawn up by a restricted group, the vote was compulsory, the abstentions had been counted as affirmative votes, and because there was a smashing majority of affirmative votes. The author finds similar cases in democratic contexts. In his view, the 'difficulty' in considering the 1933 vote as democratic resulted from the reduction of the pluralism to the minimum, and from the fact that the freedoms were very restricted and in some cases suspended. These facts, taken together, and connected with the brief, abbreviated and insufficient publicity of the draft proposed in a country with a high illiteracy rate, with a discriminatory voting procedure, and the limits of its secret nature, all allowed for the author to think that the democratic nature of the plebiscite was 'controversial'. This seems like an understatement: the facts adduced by the author should be more than enough put the anti-democratic nature of that plebiscite beyond question.

The Portuguese plebiscite of 1933 was, after all one, of a handful of plebiscites held in Europe by fascist dictators, giving formal legitimacy to their absolute powers. That plebiscite was similar to the Italian and German fascist plebiscites held between 1929 and 1938. Until its fall on 25 April 1974, the dictator did not use the plebiscite again. But

⁵² On the conceptual difference between referendum and plebiscite see among many others, Miranda (1996a, pp. 234-235); Canotilho (1998, pp. 284-285); Duarte (1987, pp. 206-207); González (2005, pp. 8-9); Butler & Ranney (1978, p. 4); Denquin (1976).

that single act in 1933 was a very clear sign of how the dictatorship viewed electoral processes. This contempt for democracy was to be revealed again in several electoral farces during the following decades. The plebiscite of 1933 also contributed to a long-term suspicion of referendums amongst the Portuguese left wing, and attitude that was to persist for many years to come. For a long time, there was a feeling of reluctance, or even of distrust, of referendums as an expression of the popular will.

3.3. The Constitution of the New State

In the event, the 1933 Constitution was passed.⁵³ According to Vital Moreira (2004, p. 409), the final text of the Constitution was little more than an enshrinement of the ideas expressed by Salazar in 1930. It formally maintained some institutions from the 1911 Constitution, and contained some secondary influences from the Constitutional Charter of 1826, from the Weimar Constitution of 1919, and from the North American presidential system. However, it was largely the original product of its creator.

Vital Moreira (2004, p. 417) points out that Salazar's political system, just as it was shaped historically, is not fully reflected in the formal Constitution. The truth is that, the doctrinaire conceptions of the Head of Government prevailed more than the Constitution: the abolition of the opposition, and the strongly anti-liberal, anti-democratic, anti-parties and anti-parliamentary features, which assumed unequivocally fascist aspects in the thirties. Marcelo Rebelo de Sousa (1992, p. 63) referred to the 1933 Constitution as a 'semantic Constitution' that was largely ignored in day-to-day political and governmental practices.

In the power system, the President had a formal supremacy. He was elected through a direct vote (until 1959) for a seven-year term of office. He could be reelected. He appointed the Chief of Government (*Presidente do Conselho de Ministros*) and the ministers. He summoned the National Assembly, and could give it constituent powers, and dissolve it in name of the highest interests of the nation. The majority of his acts had to be countersigned by the responsible ministers or by the whole government (Miranda, 1981, p. 259). As Vital Moreira refers, in theory, this scheme could have been a presidential system, but this is not how the system developed in practice. The Head of Government actually occupied

⁵³ On the Constitution of 1933, see Moreira, V. (2004, pp. 405-454); Canotilho (1998, pp. 172-179); Miranda (1981, pp. 247-275); Sá (1994, pp. 158-164); Caetano (1956); Campinos (1978).

the main role in the government's system and in the regime's evolution. The Constitution laid down that the President appointed and discharged the Head of Government, but what really happened was the opposite. In fact, the Head of Government chose the President and decided on his 'reelection' or removal (Moreira, 2004, pp. 420-421).

The Parliament, *Assembleia Nacional*, was emasculated. In the beginning, it was comprised of 90 members,⁵⁴ and it worked in sittings of three months a year. The Government was not politically responsible before the Assembly. Its legislative powers were scarce and assumed by the Government. Besides, only members appointed by the National Union constituted the Assembly. It was unthinkable that within it some deep divergence or a real diversity of opinions could be expressed. Only after 1969 was there any controversy in parliamentary debates due to the existence of a 'liberal wing' in the National Assembly.

There was a second chamber, named the Corporative Chamber (*Câmara Corporativa*) that had an auxiliary nature and advisory functions. It was composed of representatives of local authorities and social interests. Initially, its functions were limited to the expression of opinions on the legislative initiatives introduced in the National Assembly. Later, in parallel with the undermining of the Assembly's legislative powers, the Corporative Chamber started to give legislative suggestions directly to the Government, thus becoming an instrument that reduced the role of the directly elected Assembly (Moreira, V., 2004, pp. 427-430).

Gomes Canotilho (1998, pp. 173-174) synthesises three essential marks of the political system: **a)** A strong executive, independent from the legislative body; **b)** a legislature without partisan divisions, limited to the formulation of the general foundations of legal systems and to the ratification of Government executive laws; **c)** a directly elected Chief of State that is only held responsible before the Nation, and who could appoint or freely discharge the Head of Government. This political structure had enough elements to develop either a presidential system or a chancellor's regime. The direction followed was the latter.

To underline the identification between the regime and Salazar, Vital Moreira (2004, pp. 430-431) reminds us that Salazar was appointed to lead the Government for the third and last time in 1936. He maintained his functions without interruption until 1968. Several Presidents died,

⁵⁴ The number of members increased from 120 in 1945, to 130 in 1959 and 150 in 1971.

were removed or re-elected, the ministers succeeded, Ministries were created and extinguished, and the National Assembly was recomposed regularly. However, there was never a need to formally reinstate Salazar as Chief of Government – not even after presidential elections.

4. The Referendum in the Constitutional Revision of 1935

4.1. The Constitution and the Referendum

The 1933 Constitution did not contain, in its original text, any provision about the national referendum. However, the position of the local referendum remained quite similar to the terms in the 1911 Constitution. In Title VI, on political and administrative circumscriptions and local authorities, Article 126 laid down that special laws will regulate the organisation, along with the functioning and responsibilities of administrative bodies, with the administrative life of local authorities under the government agency's supervision. It also states that their deliberations could be submitted to referendum. Besides the evident and drastic limitation of the local powers' autonomy, due to Government interference, the regulation for the local referendum was sent to the Administrative Code, in terms that we shall see further ahead.

The national referendum would be enshrined in the Constitutional revision of 1935. In the text passed in 1933 the provision on the Constitutional revision laid down that the Constitution would be reviewed every ten years, and the National Assembly whose mandate included the revision time would have constituent powers (Article 133). However, the revision could be advanced five years, if approved by two thirds of the National Assembly [Article 133(§1)]. However, the Chief of State could also, if the common good was imperiled, after hearing the Council of State and through decree signed by all ministers, determine the elected National Assembly's constituent powers and could review the Constitution on subjects appointed in that same decree (Article 134). These were the general rules. However, Article 138 of the Constitution lay down that the first National Assembly would have constituent powers.

4.2. The Government's Draft

In early 1935, during the first legislature of the National Assembly, the first revision of the 1933 Constitution took place. According to the draft introduced by the Government, a new Article 134(2) gave the President of the Republic the power to submit the amendments to the Constitution regarding legislative function, to a national plebiscite. The approved amendments would come into force as

soon as the definitive result from the plebiscite was published in the official journal (*DSAN*, 8, 23 January 1935, p. 71). According to the draft preamble, this right given to the President was in agreement with the plebiscitary origin of the Constitution, and with the principle that sovereignty resides in the Nation. The idea was to avoid a situation where only a single body exercised sovereign powers – the National Assembly – and would be capable of changing the Constitution.

The Corporative Chamber had an opinion on that proposal and Fezas Vital reports that the question is not to establish a general rule for all Constitutional matters but only to avoid that the National Assembly could prevent, through its own exclusive will, a reform which touched its power, restricting it, or that touched the privileges of their members, thus decreasing them.

Therefore, the Corporative Chamber understood the advantage of the proposal and considered that its inception would prejudice neither the national sovereignty principle nor the plebiscitary origin of the Constitution. But the opinion added, significantly, that, ‘the given adhesion does not mean, however, the acceptance as a principle of the national sovereignty dogma or the appeal to plebiscites. Such a subject was not in question.’ (*DSAN*, 8 – Supplement, 4 February 1935, p. 33).

Meanwhile, the 1935 Constitutional revision provided another chance for a plebiscite due to a proposal introduced by Manuel Fratel (Lobo, 2004, pp. 672-673). The proposal referred to the power to initiate legislation (Article 97) and suggested that if the Assembly passed a bill, introduced by a deputy, and sent it to the President for enactment, the procedure would not follow if the Government declared it as inconvenient. In that case, if the Assembly insisted,⁵⁵ the President would hear the Council of State, and definitively decide on its enactment or rejection within 15 days (*DSAN*, 8, 23 January 1935, p. 95).

The proponent’s idea, according to his own explanation, would be to put the President in a referee position (*DSAN*, 74, 22 February 1935, p. 343) for eventual divergences between the Assembly and the Government, which was in fact very implausible. In either case, if the Government were against a bill passed by the Assembly, the President would have an absolute right to veto. Therefore, the President and the Assembly together

⁵⁵ According to the Article 98(§ unique), of the Constitution, the bills which had not been enacted by the President of the Republic would be submitted again to Parliament and, if they were approved by a two thirds majority, the Chief of State could not refuse the enactment.

could prevail against the Government, but the Assembly could never prevail against the Government and the President. It was a proposal that sought to further depreciate the role of Parliament as a legislative body.

The Corporative Chamber was once again called to give its opinion and had Fezas Vital as the reporter. It supported the idea that the President should have an absolute right to veto on all the bills passed by the Assembly, even in the case of an initiative by the Government. If the President had unrestricted powers to dissolve Parliament, he could always use that extreme solution to solve any disagreement. That solution should be exceptional, but it would be a consequence of presidential supremacy (*DSAN*, 14 – 2nd Supplement, 15 February 1935, p. 5).

However, the Corporative Chamber foresaw an exception that would change the presidential powers if the bill passed. That could happen in theory, given that the National Assembly elected in 1934 had constituent powers. In that case, the Corporative Chamber proposed that when the vetoed bill concerned the Constitutional responsibilities of the President, it should be submitted to a national plebiscite within 30 days, and the Constitutional changes would come into force if they were passed as soon as the definitive result of the plebiscite was published in the official journal. Manuel Fratel disagreed. He considered that giving the President the absolute right to veto did not mean giving him a role as a referee but as a tyrant. In addition, he expressed his disapproval the ‘abuse’ of the plebiscite (*DSAN*, 17, 22 February 1935, p. 343).

4.3. The Corporative Chamber Draft

Cancela de Abreu (Rolo, 2004, pp. 85-88) introduced the Corporative Chamber’ proposal in the National Assembly. The bills passed in the National Assembly would be sent to the President to be enacted within 15 days. If the President, after first consulting the Council of State, thought that the highest interests of the country were not served by the enactment, he could refuse it. However, when that bill regarded the Constitutional responsibilities of the President, it should be submitted to a national plebiscite within 30 days, and the Constitutional amendments, if passed, would come into force soon after the publication of the definitive result of the plebiscite in the official journal. That proposal was rejected, as well as Manuel Fratel’s original proposal (*DSAN*, 17, 22 February 1935, p. 345). Finally, it is important to note that, in the 1935 Constitutional revision, there was an isolated voice, that of Antunes Guimarães, who considered that any deep changes of the Constitution should be submitted to a national plebiscite because that was how the

Constitution had originally been passed (*DSAN*, 17, 22 February 1935, p. 345).

4.4. The Proposal Passed

The outcome of the Constitutional revision of 1935 was the right given to the President of the Republic to submit the Constitutional amendments referred to in the legislative function or their bodies to a national plebiscite, when the common good demanded it, after first consulting the Council of State and through a decree signed by all the ministers. Jorge Miranda (1996, pp. 247-248) States that the idea was to prevent the Assembly, which was responsible for the Constitutional revision, from paralysing any reform that changed its own responsibilities. It was not acceptable that other bodies of the State were submitted to the will of the Assembly regarding the change of their structure and responsibilities while the Assembly could not be changed by another will. Parliament could not be resistant to the President. In that case, the President could transfer the final decision to the voters.

Maria Benedita Urbano (1998, p. 106) considers that this option reflected the anti-parliamentary attitude of the regime. Insofar as Oliveira Salazar's ideas went forward, it was intolerable that the Constitutional revision was, in practice, under the Parliament's exclusive responsibility. From that point of view, it was particularly worrying that the Constitutional future of the New State depended, as a whole, on the National Assembly. It was unacceptable that a directly elected organ could increase its own responsibilities through the Constitutional revision, even though elections to that body were not free and fair.

This possibility was never applied in practice, and that the plebiscite was never held. The reasons for the indifference regarding this plebiscite, according to Maria Benedita Urbano (1998, p. 107) were the reduced powers of the President relative to the Head of Government, the understanding that Parliament would never be a true obstacle to the New State purposes, and the fear that a plebiscite could awaken the opposition's protest.

Therefore, the revisions of the 1933 Constitution were never submitted to popular verdict, in spite of the approval of provisions regarding the legislative function. They were all passed by the National Assembly alone, without any popular consultation.

5. The Local Referendum in the Administrative Code of 1936-1940

5.1. The Establishment of a Local Government

The military dictatorship established in 1926 abruptly ended the local governmental system of the Republic. On 13 July 1926, Decree No. 11,875 dissolved all administrative bodies. The administrative commissions appointed by the new power were a precious instrument to support the New State construction. Ten years later, the New State approved its administrative law (Oliveira, 1996b, pp. 304-305). The 1933 Constitution laid down in Article 126 that special laws regulated the organisation, functions and responsibilities of the administrative bodies, with the administrative life of local authorities subject to the supervision of Government agents, and their deliberations being submitted to referendum. The Administrative Code would consequently have the Constitutional incumbency to regulate the organisation, functions and responsibilities of administrative bodies, which were the municipal authorities (*câmaras municipais*), the parish authorities (*juntas de freguesia*) and the province authorities (*conselhos de provincia*),⁵⁶ and to regulate the terms in which their deliberations could be submitted to referendum.

The Administrative Code, passed by Executive Law No. 27,424, of 31 December 1936, was initially introduced as a trial. The definitive version came into force in 1940 through Executive Law No. 31,095, of 31 December. This code broke with the liberal administrative tradition and divided the mainland territory into municipalities (*concelhos*), constituted by parishes (*freguesias*) and grouped into districts and provinces. The municipality was at the centre of the administrative division (Oliveira, A. C., 1993, p. 36). Therefore, the resident citizens no longer elected the municipal authorities. They were composed of a president and a vice-president appointed by the Government, and by city councillors (*vereadores*), who were elected by the Municipal Council (*Conselho Municipal*) for four-year terms of office (Article 36). This last body gathered twice a year and reproduced the corporative structure of the regime. Its members were the Mayor (*presidente da câmara*) and other

⁵⁶ The Constitution of 1933 and the Administrative Code created the provinces and did not recognise the districts as local authorities. The experience was over in 1959, with the abolition of the provinces, replaced by the districts (Oliveira, A. C., 1993, p. 36).

representatives chosen by the parish authorities, the trade unions,⁵⁷ the patronage, the professional Orders and other corporative structures.

5.2. The Local Referendum

The Bill of Authorisation to Legislate allowed the Government to pass the Administrative Code, which was introduced to the National Assembly on 19 December 1935. It laid down that the deliberations from the parish authorities, which concerned the by-laws or regulations, the acquisition or alienation of real estate goods and the concession of servitudes on parish goods, should be submitted to referendum or oversight approval (*DSAN*, 57, 20 December 1935, p. 131). The Corporative Chamber, in its Opinion reported by Fezas Vital, proposed that only the onerous acquisition of goods be submitted to referendum (*DSAN*, 75 – Supplement, 8 February 1936, p. 25). On the session of 21 February 1936, Albino dos Reis proposed that the free acquisition of goods also be submitted to referendum if it involved any duty to the parish authorities. The proposal was passed (*DSAN*, 86, 22 February 1936, p. 642).

Therefore, the Authorisation to Legislate established that would be submitted to referendum or oversight approval, as laid down in the Code, the parish authorities' deliberations which concerned by-laws or regulations, the onerous or free acquisition of real estate goods with duties, along with their alienation, and the concession of servitudes on parish goods (*DSAN*, 87, 6 March 1936, p. 7). Thus, Administrative Code of 1936 established that certain deliberations from the parish authorities were not fully effective on their own.

The mayor should approve by-laws in general, along with: **a)** the making, interpretation and revocation of by-laws on the fruition of goods, pastures and any fruits from the common area that is exclusive to the parish or some of its residents; the plantation of forests, groves and cutting of wood in parish lands; the fruition and use of public waters under parochial administration; **b)** the regulations needed for the parish administration; **c)** the acquisition of movable properties and real estate goods needed for the *junta*'s services and the alienation of those that are dispensable; **d)** the concession of servitudes on parish goods; **e)** the onerous or free acquisition of real estate goods with duties; **f)** the request to create new municipalities.

⁵⁷ The trade unions were obviously under the regime's control and mandatorily led by people it confided in.

In order for them to come into full effect, they should be passed by: **a)** a parish council composed by seven members appointed by the mayor or, in Lisbon and Oporto, by the civil governor, in first order parishes; **b)** a parish assembly composed by the president and other members of the *junta* and by every head of family 40 and over in the third order parishes outside of towns; **c)** by local referendum in third order or in second order parishes placed in towns.

Such deliberations needed the approval of the majority of the heads of family, through referendum, which would be carried out on a Sunday or Holiday (Article 187) designated by the mayor upon request by the president of the parish authority [Article 208 (2)]. The act would be chaired by the mayor or a city councillor (Article 187). The posters, which were placed on public spaces at least 15 days before, had to contain the question submitted to referendum in clear and exact terms (Article 186). Each head of family with the right to vote went to a ballot box with a paper 'yes' or 'no' written on it. These words could be, however, replaced by conventional signs in the posters since they were well known to illiterate voters. After the vote, the mayor proceeded to the scrutiny, with the presence of the parish priest, a primary school teacher and two old heads of family, chosen by the mayor (Article 187).

It is notable that the Constitution of 1933 and the Administrative Code kept the local referendum nominally as it existed during the Republic, but drastically reduced its sphere of action. According to the centralist and anti-democratic characteristics of the regime, all of the local government bodies, with the exception of the parish authorities, were directly or indirectly appointed by the central government. No decision from those bodies could be subject to a local referendum. Only some deliberations from parish authorities could be submitted. Therefore, the only body that was formally elected by the population⁵⁸ was also the only one whose deliberations could be submitted to referendum.

For Marcello Caetano (1991, p. 234), who was surely the real author of the 1936-1940 Administrative Code, the Code of 1936 still tried to revitalise the local referendum introduced by the Constitution of 1911, but even that attempt was frustrated. Consequently, the Code of 1940 completely removed the possibility for a local referendum. In the version of 1940, the mayor had to approve the deliberations that could be

⁵⁸ Without public freedom it was unthinkable that from such elections there could result the choice of anybody who did not have the regime's confidence.

submitted to referendum according to the 1936 version.⁵⁹ It remains a vague succedaneum, which was the organic referendum exercised by municipal and provincial councils⁶⁰ on certain deliberations from municipal and province authorities (Articles 55 and 318). As mentioned by Ricardo Leite Pinto (1988, p. 68), an instrument that was potentially democratic and decentralising became a typical instrument of centralism that obeyed to an authoritarian and anti-democratic political philosophy.

6. The Constitutional Revisions without a Plebiscite

In the first legislature of the New State, the National Assembly, which assumed constituent powers, passed five laws for Constitutional revision⁶¹ including numerous Amendments to the Constitution.⁶² However, the common denominator for these revisions was the reduction of the National Assembly's responsibilities contrasting with the Government's and Corporative Chamber' reinforcement. Jorge Miranda (1981, pp. 264-266) classified this period by using a common expression by Marcello Caetano. He called it 'parliamentary ratification' of the Constitution, having in mind that its approval had not been made by any Constituent Assembly (Moreira, 2004, p. 413).

The end of World War II gave rise to the regime's first serious crisis. Germany's defeat increased Salazar's concerns about the dictatorship's survival after the war, and he was alarmed by the fall of many friendly fascist regimes. In addition, there was a strong internal social struggle led by the Portuguese Communist Party (*PCP*), which had, by then, reorganised in secrecy and assumed a decisive role in wanting to overthrow the dictatorship. Salazar, at this point, moved in three directions: approach the allied field, avoid conspiracies in the army, and repress workers' strikes. (Rosas, 1994, pp. 353-369).

At the end of the war, there were antifascist demonstrations all over the country on 7 and 8 May 1945. This generated perplexity in the regime's ranks. Salazar counterattacked with a Constitutional revision, a

⁵⁹ See Article 253(18)§ 1-2. The proposal to create new municipalities would be sent by the parish authority to the provincial authority, and then to the civil governor and finally to the Government (Article 8).

⁶⁰ The district councils replaced the provincial councils in 1959.

⁶¹ Law No. 1885, of 23 March 1935; No. 1910, of 23 May 1935; No. 1945, of 21 December 1936; No. 1963, of 18 December 1937 and No. 1966, of 23 April 1938. Law No. 1900, of 21 May 1935, modified the Colonial Act (Miranda, 1981, p. 265).

⁶² Respectively: Law No. 1885, 44 amendments; Law No. 1910, one amendment; Law No. 1945, three amendments; Law No. 1963, 13 amendments; Law No. 1966, three amendments (Miranda, 1981, p. 264).

new electoral law, the dissolution of the National Assembly, the call for legislative elections and the change of the National Union ruling classes (Rosas, 1994, p. 377).

The Constitutional revision made through Law No. 2009, of 17 September 1945 had, as its most important change, the establishment of parity between the Government and Parliament regarding their legislative responsibilities, which formally inscribed in the Constitution something that had already been practiced (Miranda, 1981, p. 267). The Government started to legislate by executive-law in normal situations and not only in the case of urgency or public need. It is true, however, that the Government was the only judge of what would be considered an urgency and public need. According to the Corporative Chamber' Opinion, reported again by Fezas Vital, the Constitutional revision adjusted the Constitution to the political realities of the past. The National Assembly had, in practice been an exceptional legislative body, the Government being the primary source of legislation under normal circumstances (*DSAN*, 176 – Supplement, 16 June 1945, p. 13).

This proposal was opposed by Antunes Guimarães (Caldeira, 2004) who called for a plebiscitary approval of the Constitution. The Nation had not decided on a decrease of the National Assembly's legislative functions through a plebiscite. For that reason, if the Nation's best interests showed the opportunity to change the legislative function, the suitable thing to do would be to follow Article 135(2) of the Constitution and submit the amendments to the Constitution regarding the legislative function or their bodies to a national plebiscite. Those Amendments would be effective after the publication of the results of the plebiscite in the official journal (*DSAN*, 187, 4 July 1945, pp. 718-720).

The reply came from the President of the Assembly, José Alberto dos Reis, who alleged that the plebiscite foreseen in Article 135(2) of the Constitution would not be suitable for the normal revision process made by the National Assembly in the fixed terms. That regime was only suitable for the exceptional procedure of a revision made by the Assembly or through national plebiscite, or out of the regular periods, through presidential initiative as laid down in Article 135. However, Antunes Guimarães insisted, to no avail, that in decreasing the legislative responsibilities of the Assembly, which had been awarded through plebiscite in 1933, the President should consult the Nation (*DSAN*, 190, 7 July 1945, p.768).

The next Constitutional revision occurred in 1951, immediately after Carmona's death, through Law No. 2048, of 11 June 1951. It established that all candidates to the presidential election should offer warranties of respect and fidelity to the Constitutional principles, with such political suitability being verified by the Council of State (Miranda, 1981, p. 267). Even so, the regime was unable to avoid a wave of strong opposition in 1958, which supported the candidacy of General Humberto Delgado. Massive electoral fraud gave the presidency to the regime's candidate, Américo Thomaz. Following a Constitutional revision of 1959, made through Law No. 2.100, of 29 August, the citizens would no longer elect the President, whose choice, by a restricted electoral assembly (Almeida, 1999, p. 592) became an administrative act (Santos, 1990, pp. 319-320).

After the replacement of Salazar by Marcello Caetano in 1968, the hopes of liberalisation were disappointed. However, in the elections of October 1969, now considered a milestone in the road to freedom (Carvalho, 2000), the opposition tested whether the 'liberalisation' was genuine by organising a powerful campaign against the regime. Knowing that the National Assembly elected in 1969 would have Constitutional revision powers, the socialist Mário Soares (1969, pp. 193-208) introduced in the 2nd Republican Congress held in Aveiro from 15 to 18 May 1969, a thesis on the 1933 Constitution and the democratic evolution of the country. In that speech, Soares proposed two referendums, both with Constitutional consequences.

Soares argued that, bearing in mind that the time and the political circumstances left the 1933 Constitution outdated, the new National Assembly should have undergone a deep Constitutional revision. The elections should have prompted a far-reaching debate about the main problems of the Nation. Such a debate should lead to a direct consultation of the Nation, under the form of referendums, on two crucial points of the collective life: the overseas policy and the corporative orientation of the economic life (Soares, 1969, pp. 207-208). The 1933 Constitution defined the Portuguese State as a unitary and corporative Republic. This determined relations between the mainland and the overseas. Give Europe's economic evolution, Soares argued that it was time to frame of a new overseas policy and abandonment the corporative experience, which was exhausted. Thus, Soares proposed two referendums: to define the overseas policy, and to put an end to the corporative State. The result of the referendums would settle the options of the National Assembly for the Constitutional revision.

As was expected, the 1969 elections were not free. The final Constitutional revision of the regime happened in 1971, through Law No. 3/71, of 16 August. In spite of this being the most extensive and debated revision of the 1933 Constitution, almost nothing essential changed (Miranda, 1981, pp. 268-269). A Draft Amendment to the Constitution introduced by Francisco de Sá Carneiro and other members of a liberal wing of the Assembly, who defended the evolution of the dictatorship in a liberal way, was not even accepted for discussion (Miranda, 1981, p. 269).

The only 'popular consultation' held during the dictatorship was the plebiscite of 1933, which gave formal legitimacy to the fascist Constitution. Besides that sham of a referendum, the regime never seriously considered holding any type of direct consultation, not even in the case of Constitutional revisions.

On the other hand, given the inexistence of public freedoms, the prohibition of any opposition and the systematic practice of electoral fraud by the authorities, the democratic opposition, mainly led by the Communist Party, never thought of the referendum as a worthy objective in its political struggle. The exceptions were the proposal mentioned by Mário Soares in 1969, and in consideration of the colonial problem. In fact, some sectors of the opposition considered the referendum as a way to change the Portuguese colonial rule, and this could have been achieved even inside the regime's ranks, as we will see further ahead.

For now, what is important is that on 25 April 1974, the Armed Forces Movement, 'crowned the long years of resistance and reflected the deepest feelings of the Portuguese people by overthrowing the fascist regime.'⁶³ Actually, through a resolute and well-planned military action, quickly supported by a formidable popular movement, almost half a century dictatorship was overthrown, thus opening the way for the construction of a democratic polity in Portugal.

⁶³ Preamble of the Constitution of the Portuguese Republic passed on 2 April 1976.