

The nation in Cortes

Electoral rights in *Vintismo*¹

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“In civil society there is a general power, the core of all the others, which are in reality no more than its emanations and divisions. This general power is the electoral power, the political power, the power to choose, appoint and delegate the individual power of the members [of society].”

[José Ferreira BORGES – *Cartilha do Cidadão Constitucional*, 1832]

1. Introduction

Among the multiple facets that the issue of citizenship took during the *Vintismo* triennium (1820-1823)², this work will focus particularly

¹ Revised and expanded text, including footnotes, of the author’s paper at the conference that gave rise to this book.

² See in this book the chapter by Vital MOREIRA, “We are citizens!” – The conquest of citizenship in 1820-1822”; RAMOS, 2004: pp. 547-569; CATROGA and ALMEIDA, 2010; MARTINS and MOGARRO, 2010: p. 187: “Citizenship is a dimension that takes on its full meaning when the Liberal Revolution of 1820 transforms the king’s subjects into citizens of a constitutional state, and their fundamental rights and duties are no longer dependent on a royal will but are enshrined in the Fundamental Law – the Constitution”.

and objectively on the political and electoral participation of Portuguese citizens, influencing the destiny of the political community to which they belong, both by recognising their active electoral capacity (as voters) and their passive electoral capacity (as eligible members)³.

One of the great achievements of *Vintismo* was undoubtedly the granting and recognition of electoral rights to citizens in general – “*the individual voter embodies the supreme expression of citizenship*”⁴ – abolishing the traditional composition of the Cortes (13th-17th centuries) by representatives of the three classes or *estates* of the kingdom (clergy, nobility and people)⁵. Despite still being far from universal suffrage – which in Portugal was only achieved in 1975 – and having been subject to successive advances and setbacks, the triumph of the *Vintismo* suffrage system added a core identity around which the idea of *political-electoral citizenship* in Portugal would gravitate over the next two centuries, except for the convening of the ancient Cortes in 1828 (after the repeal of the Constitutional Charter of 1826).

In this short period of less than three years, two elections were held at national level: the country’s first constituent elections, to form the Extraordinary General and Constituent Cortes (1821-1822), and the parliamentary elections, also the country’s first, to form the Ordinary Cortes (1822-1823). The legal basis for the constituent elections, which were particularly marked by the change in the electoral paradigm of the traditional Cortes, was the electoral chapter of the Spanish Cadiz

³ In a broader sense, “citizenship always implies a demarcation between those who belong to the community and those who are excluded from it, as well as the reserve to members of the community of a set of rights that are forbidden to others, foreigners, and therefore perceived, especially by the latter, as authentic privileges. Citizenship therefore always means membership of a political community and ownership of a set of rights” – JERÓNIMO and VINK, 2013: p. 24.

⁴ FERNANDEZ, 2018: p. 26.

⁵ In the historic Cortes, the upper estates were summoned nominally and the third estate did not have unitary representation, since: (i) only a small minority of municipalities – less than a hundred, out of a total of around 800 – had a seat in the Cortes, by royal charter or privilege; (ii) the representatives of the municipalities were elected by a minority, in principle, only “good men” and nobles voted. All in all, the representation of the people in the Cortes was around 1% of the total population.

Constitution (1812), which established a complex system of indirect elections in four electoral levels⁶. In turn, on 11 July 1822, the Constituent Cortes approved a genuinely Portuguese electoral law, which set up the system of direct election of deputies to the ordinary Cortes⁷.

Before the two elections took place, it was essential to determine which members of the community could and should be considered citizens and, among them, those who had the right to vote (the voters) and those who could be elected deputies (the eligible). These decisions were made by the respective electoral laws – for the constituent elections, through the *Electoral Instructions* of 22 November 1820⁸, adopted by the Provisional Board of the Supreme Government of the Kingdom; and for the legislative elections, through the *Electoral Law* of 11 July 1822⁹, adopted by the Cortes and then constitutionalised by the text of the Constitution of the Portuguese Monarchy of 1822. Thus, reading and comparing these two legal and constitutional texts allow us to see: (i) the vectors on which political and electoral citizenship was based, both in 1820 and 1822; and (ii) the fundamental changes to which the concept of electoral citizenship was submitted, between these two electoral moments.

Undoubtedly, “*the construction of citizenship had its first expression in the actual holding of elections and above all in the electoral legislation produced at the time*”¹⁰. In addition to the legal texts and the political

⁶ On the constituent elections in Portugal: DOMINGUES & MONTEIRO, 2018: pp. 593-639; MOREIRA & DOMINGUES, 2020a: pp. 41-65 and pp. 67-87; MOREIRA & DOMINGUES, 2020d: pp. 181-213; BROCHADO, July-December 2020: pp. 193-231. On the constituent elections in Brazil: FELONIUK, 2015b: pp. 278-306; MOREIRA & DOMINGUES, 2019: pp. 61-78; FERNANDES, 2021: pp. 23-39; MACÊDO, 2021: pp. 459-474; MENCK, 2021; PEREIRA, 2021: pp. 133-162.

⁷ On these elections see FERNANDEZ, 2018: pp. 23-36; COSTA, 2019: pp. 79-108; MOREIRA & DOMINGUES, 2020a: pp. 223-241.

⁸ Supplement to the *Government Gazette*, no. 34 (Lisbon, Imprensa Régia), Thursday, 23 November 1820 [Available at: <https://digigov.cepese.pt> (consulted on 12 November 2020)]; *Lisbon Gazette*, no. 285, Monday, 27 November 1820; and no. 286, Tuesday, 28 November 1820.

⁹ *Government Gazette*, no. 176, Monday, 29 July 1822 [Available at: <https://digigov.cepese.pt> (consulted on 12 November 2020)].

¹⁰ FERNANDEZ, 2018: p. 35.

debate within the Constituent Cortes¹¹, there was an intense electoral *praxis* in both hemispheres of the Lusitanian empire, especially in December 1820 (in Portugal) and 1821 (in Brazil)¹², which contributed in an unusual and inescapable way to refining and densifying the liberal modern concept of political citizenship.

In this chapter, two paradigmatic changes that occurred during the first Portuguese constituent elections are analysed, which illustrate the challenges facing the expansion and scope of *Vintismo* electoral citizenship: (i) the transition “*from neighbours of the municipality to citizens of the nation*”, which was partly the result of the University students’ dispute over the recognition of the right to vote in the elections held in the city of Coimbra (1st electoral level); and (ii) the transition “*from subjects of the king to citizens of the nation*”, also partly the result of the admission of black and brown people (free black and mixed raced people) to vote in the elections held at parish level in Brazil.

2. “From neighbours to citizens”

2.1. The University against the primordial notion of citizenship

According to the current definition in Porto Editora’s *Dictionary of the Portuguese Language*, a citizen is an “*individual belonging to a free state, enjoying his/her civil and political rights and subject to all the obligations inherent to that condition*”. However, before the Liberal Revolution, the concept of citizen did not have such a broad connotation, nor the direct link to the state that is commonly recognised today, being limited to a

¹¹ The citizenship debate was one of the most significant in the Constitutional Assemblies of Portugal (1821-1822) and Brazil (1823), particularly in relation to Afro-descendants: “the political equality of free and freed Afro-descendants was finally put on the agenda within the broad social framework of the Portuguese empire, first in the General and Extraordinary Cortes of the Portuguese Nation, between 1821 and 1822, and then in the Constituent Assembly of the Empire of Brazil, in 1823” – SILVA, 2015: p. 623.

¹² In Portugal the elections took place between 10 and 30 December 1820, but “in the adjacent islands and overseas domains much later, some of them only being concluded at the beginning of 1822” – see SANTOS, 1883: p. 126.

local latitude and a much more limited universe of people – e.g., in Rafael Bluteau’s *Portuguese Vocabulary*, a citizen was defined as “*a resident of a city*”¹³; and the forum of citizenship as the “*privileges granted to those who are of the number or admitted to the number of citizens*”¹⁴; in Morais da Silva’s *Dictionary of the Portuguese Language*, a citizen was “*a man who enjoys the rights of a city, the exemptions and privileges contained in its charter, postures, etc.; a good man; a neighbour of a city*”¹⁵. At the end of the 19th century, Cândido de Figueiredo’s *Dictionary* already came close to the modern concept of citizen, adding to the definition of “*resident of a city*” that of “*one who enjoys the civil and political rights of a state*”¹⁶.

In a periodical after the Revolution, in 1822, an anonymous author published what was perhaps the first modern definition of citizen:

“Citizen” means a man, a member of a national society to which he has joined, who enjoys certain rights, guaranteed by the associated nation, written in the Political Code, the book of life that lays the foundations for its sociability. The main one of these rights, which constitutes the essence of being a citizen, is, in my opinion, the right to vote in the election of representatives to Cortes and to all elective positions in the State”¹⁷.

It is important to consider that the bond of neighbourhood dates back to the early days of the monarchy¹⁸ and, in order to avoid abuses in its attribution and the consequent excuses from paying royal rights, King Duarte made a law on 21 January 1436 on the conditions and cases in which someone could “*enjoy the privileges and liberties of being a neighbour, as well as being exempt from paying the royal rights that, for the sake of some charters and privileges of kings given to some places, neighbours*

¹³ BLUTEAU, 1712: vol. II, p. 309.

¹⁴ BLUTEAU, 1713: vol. IV, p. 179.

¹⁵ SILVA, 1789: p. 271. The definition was maintained even in the editions after 1820.

¹⁶ FIGUEIREDO, 1899: vol. I, p. 298.

¹⁷ *Borboleta Constitucional* (Constitutional Butterfly), no. 267, Tuesday, 26 November 1822 [Available at: <https://purl.pt/14340> (consulted on 30 May 2022)].

¹⁸ For example, King Afonso III made some of his valedictorian neighbours of the municipalities of Évora, Elvas, Beja, etc. – BLUTEAU, 1721: vol. X, p. 526.

are exempt from” (OA, II, 30, § 4)¹⁹. This law was later compiled in the *Alfonsine Ordinances* (1446: OA, II, 30) and passed on to the successive *Manueline Ordinances* (1521: OM, II, 21) and *Philippine Ordinances* (1603: OF, II, 56). The latter *Ordinances* were still in force during the *Vintismo* triennium – they had come into force in 1603 and remained in force until the first Portuguese Civil Code was promulgated in 1867.

In short, according to the kingdom’s Ordinances:

“In order to be a neighbour, one had to be a native of a certain city, village or place, shared by one of its residents, and this profile had to be recognised by the king, one had to have some dignity there, an office in the royal house or the queen’s house, or that of some lord of the land, or one had to carry out an activity which income allowed one to live reasonably. One also had to be free, have married there and live there. If one met these conditions, one could acquire the status of neighbour. The ease of obtaining the status changed, however, with the change of residence. Those who did so lost their neighbour status and could only regain it after four years of continuous residence in the place they had moved to; and, if they returned to their place of origin, the same four years were required. In other words, along with birthplace, the ius domicilium was central to the attribution of neighbour status. In the Manueline Ordinances, there was a slight innovation in relation to this Alfonsine title, noting the increase in requests for neighbour status from people who were not born in the kingdom. Although exactly the same provisions were set out, it was made easier for anyone who was “natural, or not natural to Our Kingdoms” to acquire the status of neighbour, as long as he married a “molher da Terra” (i.e. a woman from the place where he wanted to be a neighbour), as long as he lived there and wanted to live there, an understanding that persists in the Philippine Ordinances”²⁰.

This was the first legal notion of Portuguese citizenship – that of being a neighbour of a particular village, city or its outskirts –, which was

¹⁹ The *Alfonsine Ordinances* expressly excluded Jews (OA, II, 69) and Moors (OA, II, 108) from the privileges of the neighbourhood.

²⁰ XAVIER, 2015: p. 29.

in full force in 1820 and served as the legal basis for the *academic dispute* that pitted the students of the University against the municipality of Coimbra, in relation to the constituent elections of that year.

According to the above-mentioned *Electoral Instructions* of 22 November, the “*parish electoral assemblies*” for the election of representatives were to be held on the “*second Sunday of December*”²¹ – thus, the first day of the elections of deputies to the Constituent Cortes was scheduled for Sunday, 10 December 1820, which effectively happened; the elections lasted the whole month of December, until the 30th day of that month.

At the beginning of the month, as the election day approached, a rumour of unknown origin arose accusing the Coimbra academic body of propagating “*anti-political, revolutionary and anti-patriotic ideas*”. In response to this rumour, and considering the accusations against them to be false, the students sent a letter to the Provisional Board of the Supreme Government of the Kingdom, signed by most of the Academy (474 signatures) and with Almeida Garrett at its head²². This initiative is said to have inflamed the spirits of the city’s residents against the academic body and, as the contention intensified, “*a secret intrigue was formed to deprive the students of the right to vote in the parish assemblies*”²³.

At the municipal board meeting on 6 December, the mayor of Coimbra, Bernardo de Serpa Saraiva, raised the question of whether, “*since many students live in this city, but are not domiciled in it*”, they should be allowed to vote in the next elections on 10 December. Initially, based mainly on the aforementioned Title 56 of the [Philippine] *Ordinances*, it was unanimously decided that they should not. Immediately, the students sent a committee of four bachelors to the Town Hall, where they were explained the reasons why they “*could not be allowed to vote*” and “*convinced, they withdrew*”. However, “*after a few moments*”, a

²¹ Supplement to the *Government Gazette*, no. 34, Lisbon, Imprensa Régia, Thursday, 23 November 1820 [Available at: <https://digigov.cepese.pt> (consulted on 12 November 2020)]; *Lisbon Gazette*, no. 285, Monday, 27 November 1820; and no. 286, Tuesday, 28 November 1820.

²² See doc. no. 36 published in MOREIRA & DOMINGUES, 2020c.

²³ See doc. no. 46 published in MOREIRA & DOMINGUES, 2020c.

second, larger students' committee (of fourteen people) came and flatly refused to accept the board's decision²⁴ and threatened that "*if they didn't vote, nobody would vote*"²⁵.

This incident prompted the board to think more carefully about their decision, and they ended up divided in three different positions: (i) the oldest councillor changed his vote and said that, "*to avoid riots*", the students "*should all be allowed*" to vote on 10 December; (ii) four members maintained their vote that the students should not be allowed to vote in the parish elections, as it was enshrined in the *Electoral Instructions*, which had to be interpreted in accordance with the kingdom's *General Ordinances*²⁶; and (iii) other four councillors, relying on the provisions of Article 50 of the *Electoral Instructions*²⁷, voted that the issue should be delegated to the decision-making power that this Electoral Law awarded to the parish electoral assemblies²⁸.

On 6 December, at six o'clock in the evening, the academic body sent a proclamation to the Provisional Board of the Supreme Government (in Lisbon), signed by Almeida Garrett, protesting against the insult of preventing the University's students from taking part in the forthcoming elections for deputies to the Constituent Cortes. In this proclamation, the students threatened that if they were not admitted

²⁴ According to the second committee, "they considered such a decision to be null and void and illegitimate; that they did not recognise, nor was the City Council in fact competent to decide such a question; and that they were citizens, that all students were citizens, because they were of legal age (14), that they had committed no crime that would deprive them of this and that, consequently, they should vote" – See doc. no. 46 published in MOREIRA & DOMINGUES, 2020c.

²⁵ See doc. no. 37 published in MOREIRA & DOMINGUES, 2020c.

²⁶ The following members voted for this solution: the previous councillors (from the previous councillorship), Francisco de Sousa Loureiro and Francisco António Negrão; and the municipality's attorney-general, Joaquim Inácio Roxanes Manique; and the judge and mayor, Bernardo de Serpa Saraiva.

²⁷ Article 50: "If doubts arise as to whether or not any of those present have the qualities required to be able to vote, the Board shall decide them in the same act and its decision shall also be executed without appeal, for this time and for this purpose only."

²⁸ The councillors who voted for this solution were: Manuel Pedro de Melo (councillor for the University), Francisco Manuel de Faria Vieira, José Filipe Dias Vieira and Francisco António Ribeiro de Paiva.

to the elections, they would cease to be students, because “*the price of letters to pay for citizenship was too cruel*”²⁹.

Meeting at Almeida Garrett’s house at seven o’clock in the evening, the students decided to organise a public demonstration through the streets of the city. To this end, they prepared three different proclamations claiming to be citizens and to have the right to vote³⁰. When night fell, “*everyone went out in the best order, with torches lit, faces and heads uncovered, through the streets of the city, to make their protest public*”. A crowd of more than a thousand “*mancebos*” (young men) gathered in an orderly fashion and travelled through the streets of the city, reading, and putting up these proclamations in the “*most public corners*”. When they arrived at the house of the vice-rector of the University, the bachelors Francisco Gomes Brandão and Almeida Garrett went up to tell him about the events, assuring him that “*no feeling or spirit of rebellion animated them, but simply the desire to reintegrate themselves into their rights, which they [the city council] intended to usurp from them*”. They continued their tour until ten o’clock at night and, and before parting, they solemnly swore – “*right to vote or death*”³¹.

Meanwhile, the president of the city council of Coimbra, Bernardo de Serpa Saraiva, in order to resolve the impasse the council was in, and to decisively determine whether or not the University’s students should be allowed to vote in the next constituent elections, had decided to ask the professors of the Faculty of Laws and the Faculty of Canons of the University of Coimbra for their opinion. On the following day (7 December), eight of them sent their opinions to the council, unanimously supporting the students’ demand – “*the constitutional right of citizenship was vindicated even before the Constitution*”³².

²⁹ See doc. no. 38 published in MOREIRA & DOMINGUES, 2020c.

³⁰ See docs. no. 39, no. 40 and no. 41 published in MOREIRA & DOMINGUES, 2020c.

³¹ See doc. no. 46 published in MOREIRA & DOMINGUES, 2020c. There is a different version of the facts, which contradicts the idea that the students acted in an orderly, silent, and peaceful manner – see doc. no. 48 published in MOREIRA & DOMINGUES, 2020c.

³² The professors who issued opinions were: José Pinto de Fontes, Francisco Manuel Trigo de Aragão Morato, José Joaquim da Silva, Pinheiro de Azevedo e Sousa, António José Ferreira de Sousa, Joaquim de Seixas Dinis, José Vaz Correia de Seabra

2.2. The legal question: “new wine in old wineskins”

According to the Portuguese *Electoral Law* of 22 November 1820, “*parish electoral assemblies shall be composed of all citizens domiciled and resident in the territory of the respective parish*” (Article 35). This regulation was a the literal translation of the Cadiz Constitution (1812), which, in its original version, established that “*las Juntas electorales de parroquia se compondrán de todos los ciudadanos vecindados y residentes en el territorio de la parroquia respectiva*” (Article 35). The Spanish word “*vecindados*” gave way to “*domiciliados*” (domiciled) in Portuguese, but even so, it left a latent link to the old concept of citizenship at local level (Title 56 of the *Philippine Ordinances*), according to which political-electoral intervention was reserved for the neighbours of the local community³³. *Prima facie*, the Electoral Law of 1820 maintained the link to the municipality as the decisive criterion for recognising the right to suffrage.

The difficulty of putting this literal interpretation into practice (initially adopted by the City Council of Coimbra) stems from the fact that most students – coming from distant parts of the country and overseas domains, namely Brazil – did not enjoy the privilege of being *neighbours* of the city of Mondego. In this way, given the many difficulties and even impossibility for everyone to travel in good time to the land where they were *neighbours*, a large proportion of them would be prevented from exercising their right to vote in the first modern elections of deputies to the Cortes – “*denying, without any cause, the first, the greatest, the most sacred right of a citizen to more than fifteen hundred people*”³⁴.

and José Pedro da Costa Ribeiro Teixeira. The eight opinions were transcribed in full and analysed in a recently published book – MOREIRA & DOMINGUES, 2020c: docs. no. 42-A to no. 42-H (the chapter on the elections was reprinted, with some additions, in *Populus: Revista Jurídica da Escola Judiciária Eleitoral da Bahia* (Legal Magazine of the Electoral Judicial School of Bahia), 9, December 2020).

³³ Only neighbours were allowed to enter the jobs, especially since the charter of 12 November 1611, which imposed the prior composition of the list of eligible people – José Justino de Andrade e SILVA, *Collecção Chronologica da Legislação Portuguesa: 1603-1612*, Lisbon, Imprensa de J. J. A. Silva, 1854, pp. 314-316 [Available at: <http://legislacaoregia.parlamento.pt> (consulted on 14 November 2020)].

³⁴ See doc. no. 46 published in MOREIRA & DOMINGUES, 2020c.

This was the dilemma faced in 1820 by the University professors who had been consulted by the mayor to help the municipality of Coimbra make a legally justified decision – to interpret article 35 of the *Electoral Instructions*, according to the kingdom’s law and decide whether students could be admitted to the constituent elections.

As mentioned above, all opinions of the Law professors supported the students’ claim – in the words of António Pinheiro de Azevedo e Sousa, “*the students at this University should be admitted to the elections, without repairs and without further examination*”³⁵. The arguments put forward can be summarised in the following crucial points: (i) the Spanish word “*avecindados*” had purposely been translated into Portuguese as “*domiciliados*” (domiciled) and not “*avizinhados*” (neighbouring), which was part of the common Portuguese lexicon; (ii) the word *domicile*, in turn, was an indeterminate notion that had to be interpreted in accordance with political-liberal canons; (iii) the spirit of the *Electoral Instructions* was to broaden national representation as much as possible – these *Instructions* had been made in opposition to the traditional limited representation of the three estates of the kingdom –, adapting them to the political changes of the new political system, so it made no sense to deprive a substantial part of the nation (the students) of this representation; (iv) the student class was one of the most important in the nation, “*worthy of all contemplation for its enlightenment, patriotism and education*”³⁶; (v) since the title of the *Ordinances* on the acquisition of the right of neighbour (OF, II, 56) was limited to the scope of the privileges and liberties of each person to be exempt from paying royal duties, it had no applicability to the case of the right to vote in the forthcoming elections. In conclusion, the fact that students were residents of the city was a sufficient condition for them to be admitted to vote in the electoral assemblies of the parishes of Coimbra on 10 December 1820.

The opinions issued by the experts of the Faculties of Law and Canons were decisive in recognising the students’ right to vote. Living up to the old saying that “*no one puts new wine into old wineskins*”, they flatly

³⁵ See doc. no. 42-D published in MOREIRA & DOMINGUES, 2020c.

³⁶ See doc. no. 42-F published in MOREIRA & DOMINGUES, 2020c.

refused to integrate the new political reality that the country was going through by resorting to the old binomial of citizenship-neighbourhood provided for in the *Ordinances*. This decision calmed tempers, the students restored tranquillity and public order and voted in Coimbra³⁷!

However, in a letter dated 9 December, the Provisional Board of the Government had left the *academic question* open, not fully approving of “*the facts with which the academic youth, so benevolent to the homeland, had dealt in this regard*” and had decided that, in this regard, it was “*reserved for the national Cortes to determine what was appropriate*”³⁸. The missive certainly arrived late and, “*in a word, Coimbra definitively broke the reservation of political participation to the elite of the “good men” of the land, giving rise to the formation of a new concept of citizenship, equal and universal, contrasting with the concept of restricted citizenship from the Ancien Régime*”³⁹.

Later on, this new concept of citizenship was particularly reflected in the text of the *Political Constitution of the Portuguese Monarchy* of 1822, which – unlike its counterpart, the *Political Constitution of the Spanish Monarchy* of 1812⁴⁰, which served as a direct source for many of its provisions – completely excluded the neighbourhood criterion in the attribution of citizenship⁴¹ and the recognition of electoral rights (to vote and to be elected)⁴².

³⁷ The following day (8 December), the students replaced the proclamations that they had posted in the city’s public places on 6 December with three new proclamations calling for order, quiet and concord with the inhabitants of Coimbra – See docs. no. 43, no. 44 and no. 45 published in MOREIRA & DOMINGUES, 2020c.

³⁸ See doc. no. 47 published in MOREIRA & DOMINGUES, 2020c.

³⁹ MOREIRA & DOMINGUES, 2020c.

⁴⁰ “*Son ciudadanos aquellos españoles que (...) están vecindados en cualquier pueblo*” (citizens are those of Spanish origin that (...) are domiciled in any town) of the bi-hemispheric domains (Article 18). It is nonetheless relevant that “*la continuidad de la vecindad en Nueva Granada durante la primera mitad del siglo XIX hizo más difícil el proceso de construcción del ciudadano moderno*” (the continuity of the neighbourhood in Nueva Granada during the first half of the 19th century made the process of building the modern citizen more difficult) – BOLÍVAR, 2012: p. 191.

⁴¹ “All Portuguese are citizens” (Article 21).

⁴² “Portuguese citizens who are exercising their rights as citizens (...) and who are domiciled or have been resident for at least one year in the municipality where the

The 1822 Portuguese Constitution did not come into force in Brazil, because of its secession, but the change made to the concept of political citizenship and the consequent abolition of the neighbourhood link was passed on and was later added to the political debate in the Brazilian Constituent Assembly of 1823, in Rio de Janeiro. It was no coincidence that the claim that “*this denomination [of citizen] should be extended to all individuals, because it would be odious for us to preserve a difference that has its origins in such barbaric times*” came from the constituent deputy Pedro de Araújo Lima⁴³. As a matter of fact, Pedro de Araújo Lima had been a member of the deputation from the province of Pernambuco, which had been the first Brazilian deputation to enter the Lisbon Constituent Cortes on 29 August 1821.

3. “From subjects to citizens”

3.1. “All Portuguese are citizens”

The second collective notion of citizenship was that of portuguese *subject*, which in principle referred to a relationship with the king. This notion is at the basis of Portuguese identity, which began to be forged from the 12th century onwards – at the dawn of the kingdom’s formation as a sovereign political entity, King Afonso Henriques had already declared himself *King of the Portuguese* – and was slowly consolidated, especially in the confrontation with the kingdom of Castille, at times of greater crisis of independence, such as the crown succession of 1383-1385 and the Iberian political union of 1580-1640.

If, as explained above, the inhabitants felt more identified with their local communities (*local citizenship*) than with a general and abstract kingdom of Portugal⁴⁴, it is not insignificant the gradual

election takes place shall have the right to vote in the election of deputies” (Article 33).

⁴³ SANTOS, 2008: p. 35.

⁴⁴ The same happened with citizenship in Spain: “La vecindad hispana denotaba un

formation of a national identity, from which the modern concept of *national citizenship* would later derive. The legal criterion of citizenship, in the sense of nationality, appeared for the first time in a title of the *Philippine Ordinances* of 1603 (OF, II, 55)⁴⁵.

Along with national identity, Portugal developed one of the oldest traditions of political representation in Europe – the participation of representatives of the people in the Cortes, along with representatives of the clergy and nobility, has been documented since the Cortes of Leiria, in 1254⁴⁶ –, which lasted until the end of the 17th century (Cortes of Lisbon in 1697-1698). But we must bear in mind that in the old or traditional Cortes, the representatives of the privileged classes (clergy and nobility) were inherently part of the Cortes and were mentioned by name; and only a minority of municipalities sat in the Cortes and elected their representatives on the basis of a very small electorate. For this reason, as we have stated elsewhere, “*in the old monarchy there was never a political expression of the national community as such*”⁴⁷.

carácter eminentemente local. Los individuos debían estar incorporados en una ciudad o pueblo para así ser reconocidos como súbditos de la Monarquía española. El ser percibido como vecino significaba primordialmente la pertenencia y lealtad hacia la comunidad local y el reino, mientras que la identificación con una comunidad más grande y abstracta, como lo era la Monarquía, era ambigua y quedaba en último plano” [The Hispanic neighbourhood notion had an eminently local character. Individuals had to be incorporated into a town or village in order to be recognised as subjects of the Spanish Monarchy. Being perceived as a neighbour primarily meant belonging to and allegiance to formation of a national identity, the local community and the kingdom, while identification with a larger and more abstract community, such as the Monarchy, was ambiguous and laid in the background»] – ZAMARRIPA, 2019: p. 222.

⁴⁵ See, for example, MOREIRA & DOMINGUES, 2020b: pp. 151-155 (and the list of associated bibliography).

⁴⁶ CAETANO, 1994: p. 36. However, this author considers that the Cortes of 1261 are “the first in which we can be certain that the representatives of the municipalities played a role, not as simple messengers, bearers of pleas to be submitted to royal order, but as members of an assembly claiming rights and intervening in the definition of the rules to be included in the law” – CAETANO, 1994: pp. 105-106.

⁴⁷ MOREIRA & DOMINGUES, 2020b: p. 151.

This opportunity for the “*political expression of the national community*” only occurred in 1820, when the traditional method of convening the Cortes was abandoned and the right to broad (male) suffrage was recognised for the nation as a whole, with no class distinction. But a political change of this nature does not happen overnight: it therefore became essential to decide, among the inhabitants of the kingdom, who would become Portuguese citizens, and, among them, who would have electoral capacity (active and passive). This process of transforming the “*subjects of the king into citizens of the nation*” culminated in the constitutional text of 1822, which considered that “*all Portuguese are citizens*” (Article 21). However, not everyone could enjoy the right to suffrage and the right to be elected as a deputy.

While in Portugal there were no major difficulties – in principle, all Portuguese were citizens and only those under 25 years of age and regular ecclesiastics were excluded from the elections – in Brazil, the separation between settlers and natives and the multiplicity of ethnicities⁴⁸ posed yet another major challenge to the construction of the new citizenship⁴⁹. Outside of the political debate within the Cortes, the issue of admitting black and brown people to vote in the elections for Brazilian deputies to the Constituent Cortes of Lisbon, in a way, influenced the definitive wording of the above-mentioned constitutional provision of 1822 and made a further contribution to the formation of the coveted concept of political-electoral citizenship in the modern sense.

3.2. The first general elections in Brazil

The *Electoral Instructions* – both those of 31 October⁵⁰, which were

⁴⁸ See SANTOS, 2005: pp. 115-137.

⁴⁹ On citizenship in Portuguese overseas territories, see SILVA, 2009.

⁵⁰ “The present instructions are applicable to the adjacent islands, Brazil and the overseas domains” (Article 38). See the Proclamation on the convocation of the Cortes, of 31 October 1820: “The Provisional Board of the Supreme Government finalises its Instructions by applying them in general to the adjacent islands, Brazil, and the

not applied, and those of 22 November 1820⁵¹, which served as the legal basis for the constituent elections – provided for overseas representation in the national Constituent Cortes. However, for reasons of urgency in convening the Cortes, especially to legitimise the Revolution as soon as possible, and the fact that the overseas territories had not yet joined the revolutionary cause, the elections there were not held at the same time as those in Portugal.

News of the 24 August Revolution reached Brazil only in October⁵² and in November there were the “*first manifestations of adherence to the constitutional movement that had begun in Portugal in 1820*”⁵³. Actual adherence to the new constitutional system only took place in 1821. The accession of the provinces of Grão-Pará (1 January), Bahia (10 February) and Rio de Janeiro (26 February) forced the accession of the Court and the king⁵⁴. With the rest of the provinces inherently joining, it was necessary to organise the election of their deputies to the Cortes of Lisbon.

overseas domains. The shortness of time, the urgency of the present situation, the immense distance of the places and other weighty considerations, which are easy to sift through, did not allow it to develop more positive and detailed particularities. They just plea to the overseas brothers, in the name of the Homeland, of the very intimate and sacred relationships that bind us together in the same family; in the name of the habits that are dear to both of us; in the name, finally, of the mutual and reciprocal interests that bind us, please do not delay in coming to co-operate with us, in the same Congress, in the immortal regeneration of the Lusitanian empire. With the insulting nickname of colonies gone forever, we all want no other name than the generous title of fellow citizens of the same homeland. As much as slavery has depressed us, so much will our common liberty exalt us. And between Europeans, Americans, Asians and Africans, there will be no other distinction than the fierce ability to surpass and advance ourselves through more intimate fraternity, more heroic patriotism and more determined sacrifices” – *Government Gazette*, no. 22, Thursday, 9 November 1820 [Available at: <https://digigov.cepese.pt> (consulted on 15 November 2020)].

⁵¹ “The articles relating to the overseas domains, which are not applicable now, will be in force as soon as their inhabitants spontaneously wish to accede to the general votes of the Portuguese people” – Circular of the Provisional Board of the Government, signed by Manuel Fernandes Tomás, attached to the Electoral Instructions.

⁵² On 27 October, from Rio de Janeiro, the king replied to the letter sent to him by the Lisbon Regency on 2 September 1820.

⁵³ CABRAL, 2005, pp. 66-68.

⁵⁴ MOREIRA & DOMINGUES, 2019: pp. 69-70.

Elections in Brazil followed the *Electoral Instructions* of 22 November, which adapted the electoral chapter of the Cadiz Constitution of 1812⁵⁵ to Portugal and its empire. Both the decree of King John VI, of 7 March 1821⁵⁶, as well as the Cortes decree of 18 April 1821⁵⁷, ordered the election of overseas deputies to the Constituent Cortes of Lisbon in accordance with the above-mentioned *Electoral Instructions*, but “*adjusting the same Instructions to the local circumstances of each province*”⁵⁸, since no specific provisions had been made for the overseas territories in these Instructions.

3.3. The right to suffrage for brown people (“pardos”) in Brazil

Historically, the first step towards equality between citizens of colour and white settlers had been taken in revolutionary France, through the decree of 4 April 1792, with the French National Assembly recognising and declaring that “*hommes de couleur et nègres libres doivent jouir, ainsi que les colons blancs, de l’égalité des droits politiques*” (coloured men and free blacks must enjoy equal political rights with white settlers), stating that “*les hommes de couleur et nègres seront admis à voter dans toutes les assemblées paroissiales, et seront éligibles à toutes les places*” (coloured and black men will be admitted to vote in all parish assemblies and will be eligible for all positions) (Article 2)⁵⁹.

This experience spread to the new Latin America independent countries, as reflected in documents such as the *Electoral Instructions*

⁵⁵ See, for example, FELONIUK, 2015.

⁵⁶ Royal Decree of 7 March 1821, copy from the Mindlin Brasileira Library [Available at: <https://digital.bbm.usp.br/handle/bbm/2410> (consulted on 15 November 2020)]; *Rio de Janeiro Gazette*, no. 22, Saturday, 17 March 1821 [Available at: http://objdigital.bn.br/acervo_digital/div_periodicos/gazeta_rj/gazeta_rj_1821/gazeta_rj_1821.htm (consulted on 15 November 2020)].

⁵⁷ *Regency Gazette*, no. 123, Friday, 25 May 1821 [Available at: <https://digigov.cepese.pt> (consulted on 15 November 2020)].

⁵⁸ *Regency Gazette*, no. 123, Friday, 25 May 1821 [Available at: <https://digigov.cepese.pt> (consulted on 15 November 2020)].

⁵⁹ Decree of 4 April 1792 [Available at: <http://www.assemblee-nationale.fr/Histoire/esclavage/decret1792.pdf> (consulted on 14 November 2020)].

of 11 December 1810 for the province of Cartagena (Colombia), which recognised the right to suffrage for “*todos los vecinos del distrito de la parroquia, blancos, indios, mestizos, mulatos, zambos y negros*” (all neighbours of the district of this parish, white, Indians, mixed-race, brown, Afro-Indians and black people)⁶⁰; the Venezuelan Constitution of 1811, which restored brown people to “*los imprescriptibles derechos que le corresponden como a los demás ciudadanos*” (the imprescriptible rights to which they are entitled as other citizens) (Article 203)⁶¹; this citizenship and legal equality between whites and blacks was also recognised in the 1812 Cartagena Constitution and the 1821 Cúcuta Constitution (Gran Colombia)⁶².

It is important to bear in mind that, although in contradiction to what would be expressed in the definitive Spanish constitutional text, the debate in the Cortes of Cádiz (1810-1812) was the great impetus for recognising the right to suffrage for brown people in Spanish America – “*aquello que inicialmente cautivó la imaginación de los patriotas criollos, y que a la vez los impulsó a abrazar la idea de una armonía racial, fue la serie de debates realizada en las Cortes de Cádiz entre 1810 y 1812*” (what initially captured the imagination of the Creole patriots, and what prompted them to embrace the idea of racial harmony, was the series of debates held at the Cortes of Cádiz between 1810 and 1812)⁶³.

In Brazil, it is more likely that the issue of the right to suffrage for brown people was a consequence of these previous experiences, namely those that had taken place in the adjacent territories of Venezuela⁶⁴ and Colombia and in other former overseas domains of Spain. Let us look at what happened in the context of the Brazilian constituent elections of 1821, namely in the provinces of Bahia and Minas Gerais⁶⁵.

⁶⁰ CORRALES, 1889: vol. II, p. 48.

⁶¹ GÓMEZ, 2005.

⁶² LASSO, 2007: p. 43.

⁶³ LASSO, 2007: p. 34: “after Cádiz, opposing racial equality was equivalent to being unpatriotic and anti-American”. See also BLANCO VALDEZ, 1995.

⁶⁴ MAIA, 2019: pp. 94-110.

⁶⁵ See MOREIRA & DOMINGUES, 2019: pp. 75-77.

The new concept of political and electoral citizenship introduced by Portuguese Liberalism raised the crucial question of who could vote in the elections to choose the deputies to the Cortes of Lisbon, i.e. considering the racial diversity that predominated on the other side of the Atlantic⁶⁶, it became, once again, imperative to find: (*i*) which individuals could be considered citizens; and (*ii*) which citizens would have the right to vote in elections. In other words, it became imperative to define the electoral basis on which the elections of Brazilian deputies would be based, namely in relation to Africans and Afro-descendants⁶⁷.

The Cádiz Constitution, which served as indirect legal support for these elections (the direct support was the *Electoral Instructions* of 22 November), imposed specific criteria for acquiring civic citizenship and political-electoral citizenship for the inhabitants of the Spanish dominions – the criterion of the two lines (maternal and paternal) – that were quite restrictive in relation to Africans and Afro-descendants⁶⁸:

⁶⁶ In the words of the decree of 25 February 1821, issued by the Provisional Board of the Government of Bahia, “*in view of the difficulties that our population faces, due to the diversity of individuals of which it is largely composed*” – FREITAS, 1821, pp. 313-314; see SANTOS, 2005: pp. 115-137.

⁶⁷ This issue was later on debated in the Brazilian Constituent Assembly of 1823 and continued throughout the period of the constitutional Empire – see SLEMIAN, 2005: pp. 829-847; SABATO, 2009, pp. 5-22; MAMIGONIAN, 2015: pp. 181-215. In the first Brazilian Constituent Assembly, “slaves and wild Indians were excluded from political citizenship, while freed blacks and assimilated Indians were included” – DOLHNIKOFF, 2009: p. 45.

⁶⁸ This criterion did not apply to the Indians, since the gaditan Constitution would have converted the indigenous population into citizens, albeit with certain restrictions – ZARZA RONDÓN, 2010: pp. 2639-2650. For example, in Quito (the capital of Ecuador), with the entry into force of the 1812 Constitution, the indigenous people “*accedieron al derecho de ciudadanía con igualdad política ante la ley y se eliminaron las diferencias sociales entre los indígenas*” (acceded to the right of citizenship with political equality before the law and social differences between the indigenous people were eliminated) (...) “*En las regiones de Cuenca y Loja los indígenas participaron como nuevos ciudadanos españoles en las elecciones y en el proceso constitucional y manifestaron un gran interés en el establecimiento de ayuntamientos constitucionales*” (In the regions of Cuenca and Loja, the indigenous people participated as new Spanish citizens in elections and in the constitutional process and showed great interest in the establishment of constitutional municipalities) – BORRERO VEGA, 2014: pp. 25 and 27. The liberty and equality of the Indians of Brazil, like the Indians of the Spanish overseas territories, also had a strong legal tradition,

(i) it only considered citizens “*aquellos españoles que por ambas líneas traen su origen de los dominios españoles de ambos hemisferios*” (those Spaniards who by both lines trace their origin from the Spanish dominions of both hemispheres) (Article 18); (ii) consequently, it only admitted to the electoral base and recognised the right to suffrage to the “*población compuesta de los naturales que por ambas líneas sean originarios de los dominios españoles*” (population composed of the natives of both lines originating in the Spanish dominions) (Article 29). In this way, except for sporadic cases of “*virtue and merit*” that were duly recognised by letter from the Cortes⁶⁹, Africans and their descendants living in the American provinces were practically excluded from citizenship and voting, even if they were not slaves.

These provisions were also the legal basis for the constituent elections of 1821 in Brazil, which had been transposed by the Portuguese *Electoral Instructions* of 22 November 1820. These *Instructions* did not say anything about their applicability in Portugal, which is understandable, given that the population of freed former slaves that existed in Portugal at the time was very small, because of the abolition of slavery implemented by the

which had begun to be built with the law of 20 March 1570, confirmed and added to by the law of 22 August 1587, and had been affirmed with the successive laws of 30 July 1609, 10 September 1611, 10 November 1647, 6 June 1755, 8 May 1758 – see MOREIRA & DOMINGUES, 2020b. During the Pombal Government, various laws were enacted “to incorporate categories of non-white people from various parts of the empire into the status of vassals of the Portuguese monarchy” – PRECIOSO, 2011; pp. 74-76.

⁶⁹ “A los españoles que por cualquier línea son habidos y reputados por originarios del África, les queda abierta la puerta de la virtud y del merecimiento para ser ciudadanos: en su consecuencia las Cortes concederán carta de ciudadano a los que hicieren servicios calificados a la Patria, o a los que se distinguan por su talento, aplicación y conducta, con la condición de que sean hijos de legítimo matrimonio de padres ingenuos; de que estén casados con mujer ingenua, y avecindados en los dominios de las Españas, y de que ejerzan alguna profesión, oficio o industria útil con un capital propio” (To those Spaniards who by any means are known and reputed to have originated in Africa, the door of virtue and merit to become citizens is open to them: as a result, the Cortes will grant a citizen’s licence to those who perform qualified services to the country, or to those who stand out for their talent, application and conduct, on the condition that they are the children of legitimate marriages of ingenuous fathers; that they are married to an ingenuous woman, and educated in the Spanish dominions, and that they are engaged in some useful profession, trade or industry with their own capital) (Article 22).

Marquis of Pombal⁷⁰. However, the population of African origin that lived in Brazil in 1821 could not have been insignificant.

In order to prepare its own *Electoral Instructions*, suitable for the elections in the province of Bahia, based on the 1812 Spanish Constitution and the Portuguese *Electoral Instructions* of 22 November 1820, the Provisional Board of the Government of the province of Bahia at once set up an *ad hoc* commission – the Preliminary and Consultative Commission for the Election of Deputies from the Province of Bahia to the Cortes of Portugal⁷¹, by decree of 25 February 1821⁷².

On the subject of *ingenuous* [people born free] and *freedmen*, the Preparatory Commission determined that Article 35 could not be applied to its full extent and that “*all free men, born in the Portuguese domains of both hemispheres, residing and domiciled in the parish and connected by property, employment, trades or an honest and legal way of life, including secular ecclesiastics, should be admitted to the parish electoral assemblies*”⁷³. Therefore, an economic and social requirement was added.

In the province of Minas Gerais, the governor, Manuel de Portugal e Castro, chose to ask the jurist Manuel Inácio de Melo e Sousa, a native of Arcos de Valdevez (Portugal), for an opinion. Based on the provisions of the gaditan Constitution, he came to the conclusion that, in principle, “*brown people or those originating from one line of Portuguese and the other from Africans were not included in national representation*”⁷⁴.

⁷⁰ The law of 16 January 1773 or the “law of the free womb” complied with the law of 19 September 1761, determining that the children of slaves would become free men and that all slaves could be freed up to the generation of their great-grandmother – António Delgado da SILVA, *Collecção da Legislação Portuguesa desde a Última Compilação das Ordenações: Legislação de 1763 a 1774*, Lisboa, Tipografia Maignense, 1829, pp. 639-640 [Available at: <http://legislacaoregia.parlamento.pt> (consulted on 15 November 2020)]; see MOREIRA & DOMINGUES, 2020b.

⁷¹ The Commission was made up of the following members: José Joaquim Nabuco de Araújo (president), judge of the Palace and chancellor of the Court of Appeal of this city; the judges Francisco Lourenço de Almeida, Francisco Carneiro de Campos, António Augusto da Silva and António José Duarte Gondim; and the reverends José Ribeiro Soares da Rocha, Marcos António de Sousa, Manuel Tomás Peixoto and Diogo Soares da Silva Bivar.

⁷² FREITAS, 1821: pp. 313-314.

⁷³ Lisbon, AHP – Section I/II, Cx. 56, doc. 15.

⁷⁴ Arquivo Público Mineiro – Secretaria do Governo e da Capitania, Secção Colonial, Cx.

However, openly disagreeing with this solution, he went on to list the reasons why brown people should be allowed to vote in elections: *(i)* they owned property and businesses of their own, and contributed their taxes and levies to the state's expenses; *(ii)* they held military positions as officers and senior officers and had other jobs in which they enjoyed great privileges and exemptions; *(iii)* they were a very numerous class and their exclusion could threaten security and public order; *(iv)* white people themselves could consider themselves the target of insult when they were asked to prove their citizenship and the legitimacy of their descent⁷⁵.

In contrast to this broadening of the electoral base, which included black and brown people, Melo e Sousa put forward a proposal for a census vote, considering that the following would be considered citizens, with their right to suffrage recognised in the 1821 elections: *(i)* farmers who paid the Royal Treasury 20,000 réis a year in tithes from their crops, *(ii)* owners of five slaves employed in mining or other interesting services, and *(iii)* traders who paid an annual double to the Bank of Brazil fund⁷⁶.

This idea of census voting, which emerges from these two contexts (Bahia and Minas Gerais), forces us to consider that the recognition of political citizenship for brown people in Brazil was not so much based on constitutional principles of liberty and equality, but rather was underpinned by the idea of “bourgeois” citizenship, recognised for men who demonstrated that they were economically independent.

The text of the 1822 Portuguese political Constitution did not admit census voting and, in relation to the issue under discussion, it visibly departed from its Spanish counterpart of 1812, eliminating the criterion of two lines of origin (maternal and paternal) in the attribution of citizenship and definitively stating that “*all Portuguese are citizens*” (Article 21) and that, therefore, “*in the election of deputies, Portuguese citizens who are exercising their rights as citizens have the right to vote*” (Article 33).

121, Doc. 22 (SG-CX.121-DOC.22) [Available at <http://www.siaa-pm.cultura.mg.gov.br/modules/brtacervo/brtacervo.php?cid=7971> (consulted on 15 November 2020)].

⁷⁵ See MOREIRA & DOMINGUES, 2019: pp. 76-77. On the parliamentary political debate and the causes that led the Constituent Cortes of Lisbon (1821-1822) to include free and freed Afro-descendants in the electoral base, see SILVA and PIMENTA, 2019: pp. 72-91.

⁷⁶ See MOREIRA & DOMINGUES, 2019: p. 77.

4. Conclusion

Following the Liberal Revolution of 1820, the first constitutional elections were held in Portugal and in the territories of its overseas empire (namely Brazil), which led to the introduction and refining of a new political culture, with a new lexicon and the total reformulation of previously existing political concepts, such as *constitution*, *political representation*, *nation*, *sovereignty*, *liberty*, *equality*, etc. One of the biggest political metamorphoses regards the notion of citizenship, especially the so-called political citizenship, with all (male) adult citizens being called upon to actively participate in national representation, i.e. to vote and be elected to the position of deputies of the nation. This was the first time in the constitutional history of Portugal and Brazil that such a broad electoral base of citizens from parishes, towns and cities in both hemispheres took part in the election of deputies to the General Cortes.

The broadening of political citizenship also implied a rupture with the corporatist concept of the *Ancien Régime*, which was imbued with a hierarchical and unequal structure of society. The new inclusive and egalitarian tendency, characteristic of the *Vintismo* constitutional movement, was particularly based on the reform of the two foundational pillars of political citizenship, which dated back to the early days of nationality and the formation of Portugal as an autonomous country: on the one hand, eliminating the neighbourhood link as a determining criterion for becoming a citizen, turning individuals from “*neighbours of a municipality to citizens of the nation*”; on the other hand, abolishing the traditional summoning of the three estates of the kingdom to the Cortes and forging a tendency towards universal male suffrage, which would allow the recognition of political citizenship and consequently electoral capacity for black and brown people in Brazil, fully fulfilling the transition from “*subjects of the king to citizens of the nation*”.

In this regard, Portugal’s first constitutional experience departed substantially from the Cádiz constitutionalism, in neighbouring Spain. It is not insignificant the fact that Portuguese constitutionalism emerged a decade later, thus benefiting from the vast experiences brought about

by Spanish constitutionalism, particularly in relation to Spanish America and the successive resistances and independencies that took place in the meantime, which were particularly fuelled by the refusal of citizenship to Afro-descendants. Regarding the neighbourhood link, it is more likely that it was the uncompromising demands of the students at the University of Coimbra in December 1820 that contributed to the modern concept of political citizenship that was enshrined in the 1822 Portuguese Constitution – “*All Portuguese are citizens*”.

Even though Brazil declared independence unilaterally shortly before the 1822 political Constitution was adopted in Lisbon, the constitutional solutions on citizenship explained above would be brought up in the political debate of the first Brazilian Constituent Assembly, and would also end up being reflected in the final text of the *Political Constitution of the Empire of Brazil* of 1824, which was granted by King Pedro I.

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