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**A democracia:
uma urgência educativa**

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4. THE HISTORY OF IDEAS OF BRAZILIAN AUTHORITARIAN CONSTITUTIONALISM (1930-1945)



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*Luis Rosenfield*¹

1 INTRODUCTION

The Vargas Era consecrated the rise of authoritarian ideas in Republican Brazil, which meant the expansion of an authoritarian ideology in State building, based on the creation of an new authoritarian order capable of guiding, modernizing and developing the nation. This process does not only concern the ideologues of the Brazilian *Estado Novo*², because the dissemination of authoritarian arguments was shared by intellectuals from different ideological currents in several states of the Republic. This project of regaining authority differs greatly from the strong measures taken during the political instabilities of the First Republic (1889-1930), even from the dictatorial movements of former Presidents Floriano Peixoto and Deodoro da Fonseca at the end of the 19th century. The strength of this Brazilian authoritarian constitutional thought underwent a process of renewal in 1964, when the developments of the 1930s and 1940s were emulated. Thus, in this article, I seek to analyze the phenomenon of *Brazilian authoritarian constitutionalism* and the doctrines that founded and legitimized the "silent coup" of 1937³.

The essays' focus resides on the role of jurists in the elaboration, defense and establishment of authoritarian projects of the past, to demonstrate the intensity of the authoritarian ideology in the interwar period in Brazil. This means exploring the

¹ Escola de Humanidades. Professor Adjunto do Departamento de História e do PPG-História da PUCRS. Doutor em Direito pela UNISINOS e em Filosofia pela PUCRS. Lattes: <http://lattes.cnpq.br/0416483678237478>

² The *Estado Novo* (New State) was a dictatorship which lasted from 1937 to 1945 under the rule of President Getúlio Vargas. This was the first experience of a proper authoritarian regime in Brazil. The National Congress was completely dissolved, as well as all the political parties. The regime established political persecution against its opponents, a corporatist system of social organization and control over the free press.

³This study was made possible with the support of the Coordination for the Improvement of Higher Education Personnel – Brasil (CAPES) – Funding Code 001.

generational clash between the jurists who believed in the principles on the prior experience of liberal constitutionalism (1889-1930) and the new generation of legal experts who embraced the ideas of constitutional authoritarianism under Vargas' rule with the *Estado Novo* (1937-1945). The dichotomy used as a key concept to understand the Vargas Era – the opposition between *constitutional idealists* and *authoritarian realists* – serves as a gateway to the study Brazilian constitutional thought. It is important to highlight the clash between a generation marked by liberal ideology – such as Rui Barbosa and Pedro Lessa – and the generation that gained spaced during *Varguism*⁴ – especially Francisco Campos and Oliveira Vianna – who were responsible for the establishment of authoritarian ideology at the level of Brazilian constitutional theory. From this initial opposition, it becomes possible to see the flow of ideas and the nuances of the different lineages of Brazilian constitutional thought during the interwar period: the opposition between *idealists* and *realists* serves, therefore, only to show the transformation of mentalities that underpinned the consolidation of Brazilian authoritarian constitutionalism.

2 THE CONCEPT OF BRAZILIAN AUTHORITARIAN CONSTITUTIONALISM

Authoritarian (or anti-liberal) constitutionalism can be described as an *uncertain tradition*⁵, which has temporal continuity and deep historical roots, but at the same time presents itself as something difficult to be conceptually defined at the constitutional level⁶. Indeed, the very concept of authoritarian constitutionalism is highly paradoxical. The authoritarian regimes of 1937 and 1964 sought constitutional legitimacy – there was a very clear tendency to constitutionalize revolutionary

⁴ *Varguism* stands for the uninterrupted period in which Getúlio Vargas stayed in power in Brazil as President of the Republic, from 1930 to 1945.

⁵ About this phenomenon, we borrow the conceptualization of Kermit Hall and James Ely Jr. about the difficulty of defining the tradition of legal systems marked by inequalities and legal modes of oppression. See HALL, Kermit K.; ELY JR., James W. (Orgs.). *An uncertain tradition*. Constitutionalism and the History of the South. Athens: The University of Georgia Press, 1989.

⁶ This paper seeks to continue the issues of constitutional theory and political philosophy raised during the author's doctorate. For a detailed and in-depth analysis based on the History of the Constitutional Ideas of the Vargas Era, see the thesis: ROSENFELD, Luis. *Transformações do pensamento constitucional brasileiro: a história intelectual dos juristas da Era Vargas (1930-1945)*. 2019. 247f. Tese (Doutorado em Direito), Programa de Pós-Graduação em Direito, Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo, 2019.

processes – and this constancy in history of the Brazilian Republic is noteworthy. There was an urgent need to use legal instruments to institute the conquest of power, instead of simply anchoring such political regimes in systems of force, repression and imposition⁷. Any possibility of establishing mere *de facto* governments was denied.

The different ideological and doctrinal inclinations that guided the drafting of the Constitution of the *Estado Novo* by Francisco Campos inaugurated an open model of authoritarianism in Brazil that gave rise to new ways of structuring constitutional theory and the separation of powers. There are different possible paths to take in analyzing the 1937 Constitution, and the complexity of the elements that surround the consolidation of the strictest period of Varguism opens the investigation to the different conceptions of the world of Brazilian intellectuals.

The political-legal alternatives that Brazil found in the constitutionalism of the interwar period were essentially taken from an anti-liberal matrix. For Vianna, the “authoritarian State” should “seek the sources of democracy” in the principles of corporatism, in “classes organized through their most legitimate organs of expression: professional associations, social institutions and corporations of culture”⁸. This was because Vianna believed that the liberal experience that had dominated the First Republic was essentially “disintegrating”⁹ and that the Brazilian State had to organize itself from a strong Executive Power. In this scenario, corporations should orbit around an empowered President of the Republic.

In general, a limited number of scholars of constitutional theory have been concerned with the concept of *authoritarian constitutionalism*¹⁰. Yet, it is important to take a more comprehensive approach to the idea of constitutionalism – widening the field of typology of the Constitutions – in order to encompass the political-legal processes that led to the creation of authoritarian constitutions and their internal

⁷ SILVA, Carlos Medeiros. O Ato Institucional e a elaboração legislativa. *Revista dos Tribunais*, São Paulo, v. 53, n. 347, p. 7-17, set. 1964.

⁸ VIANNA, Oliveira. *O idealismo da Constituição*. 2. ed. São Paulo: Companhia Editora Nacional, 1939. p. 211.

⁹ VIANNA, Oliveira. *O idealismo da Constituição*. 2. ed. São Paulo: Companhia Editora Nacional, 1939. p. 32.

¹⁰ TUSHNET, Mark. Authoritarian constitutionalism: some conceptual issues. In: GINSBURG, Tom; SIMPSON, Alberto. *Constitutions in authoritarian regimes*. Cambridge: Cambridge University Press, 2014. p. 36-51.

modes of functioning. The analysis of the different comparative models of authoritarian constitutionalism shows that each constitutional development has its own dynamics for imposing the political and legal order, which reflects the tradition of a certain people and the strategy of institutional conquest used by a group to rise to power¹¹. In this essay, I assume that Constitutional History is present wherever there is a construction of power, an articulation of order¹².

Many legal historians start from the premise that the liberal-democratic (or liberal-social) strand of constitutionalism is the only tradition that could be called *constitutionalism*, because it represents a backbone of the modern History of Constitutional Law¹³. In summary, this historiographical perspective comprises constitutionalism as the gathering of concepts linked to the evolution of democracy, fundamental rights and separation of powers, in other word, the civilizing achievements directly linked to law and constitutional theory.

In this paper, I assume that the purpose of studying constitutionalism is to trace the ideological principles that are the basis of a given Constitution (be it democratic or autocratic) and its internal organization, in order to then be able to understand the essential content of a given constitutional text¹⁴. Since “the Constitution is, in fact, the very structure of an organized political community, the necessary order that derives from the designation of a sovereign power and the bodies that exercise it”¹⁵ the objective of this investigation is focused on addressing the ideas that led Brazil to the consolidation of an authoritarian, anti-liberal and corporativist constitutional thinking, which had its apex in the *Estado Novo*.

This is because the history of constitutional doctrines does not cease during Authoritarian regimes. Understanding constitutionalism as a simple movement

¹¹ PERLMUTTER, Amos. *Modern authoritarianism: a comparative institutional analysis*. New Haven: Yale University Press, 1981. p. XIII.

¹² FIORAVANTI, Maurizio. Constitucionalismo e historia del pensamento jurídico. In: SUANZES-CARPEGNA, Joaquín Varela (Org.). *Historia e historiografía constitucionales*. Entrevistas con Ernst-Wolfgang Böckenförde, Michel Troper, Maurice J. C. Vile, Maurizio Fioravanti. Madrid: Trotta, 2015. p. 102.

¹³ LOEWENSTEIN, Karl. *Political power and the governmental process*. Chicago: The University of Chicago Press, 1957. p. 29-30.

¹⁴ VILE, M. J. C. *Constitutionalism and the separation of powers*. 2. ed. Indianapolis: Liberty Fund, 1998. p. 1-82.

¹⁵ MATTEUCCI, Nicola. Constitucionalismo. In: BOBBIO, Norberto; MATTEUCCI, Nicola; PASQUINO, Gianfranco (Orgs.). *Dicionário de Política*. v. I. 13. ed. Brasília: Editora da UnB, 2007. p. 247.

forward of individual guarantees, freedoms and a supposed evolution of democratic political systems would be a naive historical perspective. In the field of Political Science, there has been a traditional resistance to study authoritarian regimes, as can be clearly seen in the criticism of this posture in Guy Hermet, Alain Rouquié and Juan Linz¹⁶.

In working with the concept of authoritarian constitutionalism, one seeks, above all, to understand how an authoritarian constitutional tradition is established and consolidated at the level of the history of ideas. This depends, to a great extent, on understanding how its internal logic works, especially with regard to the separation of powers, the forms of expression of authority and the way hegemony and social control are established through instruments of constitutional law¹⁷. Mark Tushnet's detailed analysis of an authoritarian Constitution reveals characteristics peculiar to the functioning of certain societies. The analysis of Singapore's contemporary political regime, for example, accurately demonstrates the role of authoritarian law in a country whose economic development and increased quality of life has been exponential in recent decades¹⁸.

In the case of the *Estado Novo* (and of the Vargas Era in general), there was extraordinary economic growth and improvement in the quality of life, which in a way ended up mitigating the impact of the introduction of an authoritarian political system and the violence connected to it. To a large extent, the intellectuals who sought to provide the foundations for the "March Revolution" of 1964 emulated the authoritarian principles of the *Estado Novo*, as is clearly seen in the astute writings of Miguel Reale¹⁹ and Carlos Medeiros Silva²⁰.

¹⁶ HERMET, Guy; ROUQUIÉ, Alain; LINZ, Juan J. *Des élections pas comme les autres*. Paris: Les Presses de Sciences Po, 1980.

¹⁷ GRIMM, Dieter. Types of Constitutions. In: ROSENFELD, Michel; SAJÒ, András (Ed.). *The Oxford Handbook of Comparative Constitutional Law*. Oxford: Oxford University Press, 2012. p. 98-105.

¹⁸ TUSHNET, Mark. Authoritarian Constitutionalism. *Cornell Law Review*, Ithaca, v. 2, n. 100, p. 391-461, jan. 2015.

¹⁹ REALE, Miguel. *Imperativos da Revolução de Março*. São Paulo: Martins, 1965. p. 93-122.

²⁰ SILVA, Carlos Medeiros. Seis meses de aplicação do ato institucional. *Revista de Direito Administrativo*, Rio de Janeiro, v. 78, p. 449-452, out./dez. 1964.

3 THE 1937 CONSTITUTION AND THE DEBATE BETWEEN CONSTITUTIONAL IDEALISTS AND AUTHORITARIAN REALISTS

Since the 1920s, Brazilian constitutionalism has been entangled in the contest between *constitutional idealists* and *authoritarian realists*. Gradually, this ideological clash came to fruition during the 1930s, culminating in the coup that instituted the *Estado Novo*. The decadence of a generation of liberal jurists, headed by Rui Barbosa and Pedro Lessa, caused the model of liberal constitutionalism to lose ground to that of *authoritarian realism* proposed by Francisco Campos and Oliveira Vianna. The dichotomy between idealists and realists is not an opposition between two groups of politicians or intellectuals, but rather an analytical axis to explain the *movement of ideas from the authoritarian practices* of the First Republic to the doctrinal authoritarianism of Varguism²¹.

In the First Republic, the liberalism proposed by Rui Barbosa and Pedro Lessa came up against the constant use of authoritarian practices, despite the fact that liberal constitutionalism was the official doctrine of the First Republic. Analysis of the First Republic's final throes reveals that its institutional practices were full of anti-liberal measures and different degrees of authoritarianism, despite the formal model of the State being liberal between 1891 and 1930. The legal doctrines and political essays of the 1920s make it sufficiently clear that there was a well established liberal discourse – seeking consolidation of an effective rule of law – that did not accept the constant distortions of political liberalism by successive governments. Jurists such as Rui Barbosa, Pedro Lessa and Assis Brasil were committed to the reform of liberal institutions – which were often violated by arbitrary governments, by the decree of states of emergency or by intervention from the federal executive branch – and to the defense of the institutions, the separation of powers and individual freedoms and guarantees.

After the Revolution of 1930, there was deep ideological fragmentation, with the most diverse constitutional alternatives presented as solutions to national ills. This ideological fragmentation resulting from revolutionary rupture represented a

²¹ SALDANHA, Nelson. *O pensamento político no Brasil*. Rio de Janeiro: Forense, 1978. p. 111.

window of opportunity for the dissemination of various doctrines – authoritarian, totalitarian, socialist, corporatist, Catholic, and monarchical – offered as alternatives to the misguided Republic. This process of strong theoretical intermingling opened the way for the gradual rise of an avowedly authoritarian discourse, which ceased to be taboo, at the same time as numerous antagonistic doctrinal proposals clashed with each other, such as the introduction of a parliamentary model, the resurgence of Catholic conservatism and even the call to restore monarchy.

With the *Estado Novo*, the scenario changes completely, and Brazil begins to definitively adopt antiliberal principles typical of an interwar dictatorship. However, the process of authoritarian consolidation did not begin precisely in 1937, but permeated several previous debates. In 1935, Francisco Campos already implied that Brazil was facing the “tragic aspect of the so-called times of transition”. Long before the coup d'état that instituted the *Estado Novo*, his obscure doctrine allowed us to glimpse the gravity of the emerging Brazilian institutional authoritarianism. For Campos, the country witnessed a period of transition in which the “past continues to interpret the present; in which the present has not yet found its spiritual forms” and, therefore, “the spiritual forms of the past, with which we continue to clothe the image of the world, are inadequate, obsolete or non-conforming”²².

Integralism, for example, represented the amalgamation of typically authoritarian traits of the Brazilian mentality with modern trends from Italian and Portuguese fascism. The emergence of *tropical fascism* in the political group called *Ação Integralista Brasileira* (AIB) was an attempt to rescue Christian values and national conservative traditions, while seeking to establish a thriving political movement of mass mobilization, in which there was a will to impose an authoritarian agenda. As a consequence, the fusion of conservative and traditionalist factors with the revolutionary spirit of the time made integralism an essential element for understanding the constitutional theory of those years. Although AIB was crushed by Getúlio Vargas after the failed 1938 coup attempt, the ideologues of integralism actively participated in the country's constitutional debates during the 1930s and

²² CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 13-14.

were responsible for considerable dissemination and defense of authoritarian and corporatist principles in the country, as can be seen in Miguel Reale²³, Gustavo Barroso²⁴, Olbiano de Mello²⁵ and Anor Butler Maciel²⁶.

On the other hand, during the Vargas Era, texts opposed to the various manifestations of authoritarianism typical of the Interwar period were abundant, as can be seen in João Arruda, Sampaio Doria, João Mangabeira, Mario Pinto Serva, Aliomar Baleeiro, Assis Brasil and Waldemar Ferreira. The history of intellectual resistance to authoritarian developments in Brazilian constitutional thought shows an ideal of balance between political extremes and a denial of any authoritarian undertaking at all. Examples of intellectual resistance were not only occasional: jurists scattered throughout the country had the courage to rise up against the ascendant authoritarianism of the Vargas Era.

Campos affirmed with impetus that the world had changed radically, and that the social, political and legal reality at the end of the nineteenth century was one of turmoil. At this point, he was correct, the system of constitutional references, in fact, found its lowest point in many years. In his own words, "what we call the transition period is exactly this deeply tragic period, in which the conflict between the traditional forms of our spirit became acute," and the unprecedented forms of social and political organization were, increasingly, something disconcerting²⁷.

The generation that assumed power in 1930 fervently repudiated constitutional idealism. Francisco Campos, Oliveira Vianna and Monte Arraes, who shared authoritarian ideas, accused the the jurists of the beginning of the 20th

²³ REALE, Miguel. Nós e os fascistas da Europa. In: REALE, Miguel. *Obras políticas* (1ª. fase – 1931-1937). t. III. Brasília: Editora UnB, 1983 [1. ed. 1936]. p. 223-233; REALE, Miguel. Corporativismo e unidade nacional. In: REALE, Miguel. *Obras políticas* (1ª. fase – 1931-1937). t. III. Brasília: Editora UnB, 1983 [1. ed. 1936]. p. 235-242. REALE, Miguel. Integralismo e democracia. In: REALE, Miguel. *Obras políticas* (1ª. fase – 1931-1937). t. III. Brasília: Editora UnB, 1983 [1. ed. 1937]. p. 243-251.

²⁴ BARROSO, Gustavo. *Comunismo, cristianismo e corporativismo*. Rio de Janeiro: Empresa Editora ABC Limitada, 1938. 164p

²⁵ MELLO, Olbiano de. *Republica Syndicalista dos Estados Unidos do Brazil*. 2. ed. Rio de Janeiro: Typ. Terra e Sol, 1931. 117p

²⁶ MACIEL, Anor Butler. *O estado corporativo*. Porto Alegre: Globo, 1936. 138p; MACIEL, Anor Butler. *Nacionalismo*. O problema judaico no mundo e no Brasil – o nacional socialismo. Porto Alegre: Globo, 1937.

²⁷ CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 13-14.

century of being apart from the *real* Brazilian social realities. The repeated criticism of liberal absenteeism permeated the battle of ideas surrounding designs for Brazil, and this realistic criticism labelled constitutional idealists as mere legal formalists. In short, the conduct of the new generation consisted in assigning the misdeed of legal formalism to any form of liberal and democratic organization of the State, politics and law. It was not exactly a new maneuver in the history of law. At least since the beginning of the nineteenth century, there had already been discussions of the crisis of the Kantian system and growth of an antiformalist discourse. Criticism of legal formalism in the Interwar period involved a disbelief of the principles of liberal constitutionalism and its supposed inability to organize, order and develop society. This scenario of acute crisis in *liberal law* involved a mistrust of the Judiciary, an inefficiency of the Executive Branch and a lack of credibility of the Legislative Branch²⁸. The Brazilian constitutional law in the interwar period received several innovative intellectual proposals in Europe: François Génys's Free Law Movement²⁹; Eugen Ehrlich's Sociology of Law³⁰; Léon Duguit's innovations on the Public Law doctrine³¹; Roscoe Pound's progressive thinking in Sociology of Law³²; and Karl Llewellyn³³ and Jerome Frank's³⁴ North American Realism.

In the United States and in Europe, the list of jurists who came to propose increasingly radical anti-formalist ideas was enormous: it was a real crisis of Western values. The extreme search for a new concrete order by the jurists of Nazi Germany was only the most radical project of the constitutional changes in motion in Europe. The obscure shades of political philosophy and constitutional theory of Schmitt, the

²⁸ HAFERKAMP, Hans-Peter. Legal formalism and its critics. In: PIHLAJAMÄKI, Heikki; DUBBER, Markus D.; GODFREY, Mark (Ed.). *The Oxford Handbook of European Legal History*. Oxford: Oxford University Press, 2018. p. 928-944.

²⁹ GÉNY, François. *Méthode d'interprétation et sources en droit privé positif*. v. 2. 2. ed. Paris: L.G.D.J., 1919. p. 74-113.

³⁰ EHRLICH, Eugen. *Fundamental principles of the sociology of law*. New Brunswick: Transaction Publishers, 2009 [1. ed. 1913].

³¹ DUGUIT, Léon. *Le droit sociale, le droit individuel et la transformation de l'état*. 2. ed. Paris: Felix Alcan, 1911; DUGUIT, Léon. *Les transformations du droit public*. Paris: Armand Colin, 1925. Sobre o pensamento de Léon Duguit, ver GRIMM, Dieter. *Solidarität als Rechtsprinzip: Die Rechts- und Staatslehre Léon Duguits in ihrer Zeit*. Frankfurt am Main: Athenäum, 1973.

³² POUND, Roscoe. *An Introduction to the Philosophy of Law*. New Haven: Yale University Press, 1922.

³³ LLEWELLYN, Karl. A realistic jurisprudence: the next step. *Columbia Law Review*, New York, v. 30, n. 4, p. 431-465, abr. 1930.

³⁴ FRANK, Jerome. *Law and the modern mind*. New Brunswick: Transaction Publishers, 2008 [1. ed. 1930].

senior jurist of the Third Reich, are a demonstration of a state of mind that had taken root in European intelligentsia. Hans-Peter Haferkamp described this phenomenon as “the struggle of law against legal positivism”. The challenge to the very idea of written law is present in several of these authors, naturally in different forms and guises. The debates around this scarecrow - legal formalism - involved criticism of the sources of law, of legal epistemology, of legal hermeneutics, of questions of method, as well as of the cleavages between Law and Politics³⁵.

In Brazil of the 1920s, the naturalist doctrine of Pedro Lessa, who died in 1921, was increasingly seen as a body of ideas that could not handle the social complexity of the nation. The perception of the new realistic generation was that in Lessa's work there was a split between society and the legal doctrine. The discussion is especially interesting and, to some extent, paradoxical. At the same time that legislation in the First Republic was an instrument of modernization, it ignored existing conditions. And it was precisely through faith in Spencerian scientism that the naturalist jurists, including Lessa, believed in the idea of inevitable social and institutional progress. In other words, the reality in which the people were immersed did not matter, but only the presuppositions of inevitable modernization and human progress. The criticism focused on the accusation that idealists sometimes neglected to look at Brazilian society itself³⁶.

It is in this vacuum in the connection between Law and society that realistic thinking gained space and acceptance, reaching an openly authoritarian facet in the period of institutional closure of Varguism after 1935. Part of this genuine cultural war between jurists was imposed by force with the coup of the *Estado Novo*, but not without the apocalyptic rationale of Francisco Campos. The *Estado Novo* ideologue exposed his theses with strong doses of obscure symbolism, asserting that the “demon of the time, as under the eschatological tension of the next and final catastrophe, seems to accelerate the pace of change”. In Campos' eschatological vision, Varguism and, above all, the *Estado Novo* were seen as something solid and

³⁵ HAFERKAMP, Hans-Peter. Legal formalism and its critics. In: PIHLAJAMÄKI, Heikki; DUBBER, Markus D.; GODFREY, Mark (Ed.). *The Oxford Handbook of European Legal History*. Oxford: Oxford University Press, 2018. p. 940-941.

³⁶ LOPES, José Reinaldo de Lima. *Naturalismo jurídico no pensamento brasileiro*. São Paulo: Saraiva, 2014. p. 285.

consistent in an era of constant movement and instability. As the pace of change accelerated increasingly, it was necessary to set in motion a plan for the stabilization of social relations in which the State had to have greater prominence³⁷. In a certain sense, this is one of the decisive moments of what Antonio Paim called the “statism dispute”³⁸.

The flagrantly realistic vision of Brazil did not possess only the authoritarian facet of which Francisco Campos and Oliveira Vianna, each in his own way, were the great ideologues. Even before the Revolution of 1930, Oscar Stevenson was adamant when he stated that “a Constitution for a people was drafted here, but a people geometrically conceived, balanced on the whole, identical everywhere, perhaps the Americans”. He summed up the question by saying that “perhaps few reflected that a Constitution could not be a mere product of ingenuity, of the fantasy of some men, but the result of observation and experience”. For Stevenson, it was natural that a constitution should bring a “hallmark of idealism,” but not of the idealism that can be summed up as a hurried step towards an ideal system that will never have any chance of coming to fruition in the country³⁹.

Despite profound theoretical incompatibilities, Pedro Lessa and Oliveira Vianna converged on one essential question: a considerable portion of the Republic’s institutions of the Brazilian Republic had been copied and transplanted from the United States⁴⁰. However, beyond this point of agreement, there was a gap in the interpretation of which constitutional inheritances were adequate, or not, for Brazil. Lessa claimed that the legacy of Portuguese institutions was not a point of pride for Brazil, which is why American constitutionalism could help to improve and modernize Brazilian political organization⁴¹. In this discussion, it was clear to Lessa that the recurrent and indiscriminate use of the state of emergency of the First Republic, for

³⁷ CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 14.

³⁸ PAIM, Antônio. *A querela do estatismo*. Brasília: Senado Federal, 1998. p. 113-130.

³⁹ STEVENSON, Oscar. *A reforma da Constituição Federal*. São Paulo: Typ. Rio Branco, 1926. p. 64.

⁴⁰ LESSA, Pedro. *Do Poder Judiciário: direito constitucional brasileiro*. Rio de Janeiro: Livraria Francisco Alves, 1915. p. 50-55.

⁴¹ LESSA, Pedro. *Reforma constitucional: o preconceito da reforma constitucional – a autonomia municipal – o caso do Conselho Municipal perante o Supremo Tribunal Federal*. Rio de Janeiro: Brasileira Lux, 1925. p. 6-10.

example, was blatantly unconstitutional. Such was the case that he used several votes as a minister of the Federal Supreme Court to widen the scope of *habeas corpus* and prioritize individual guarantees. His treatise on Brazilian constitutional law is a treasurable account of a generation committed to finding legal alternatives to the ongoing unmanageability of Brazilian politics, which oscillated between internal crises and commotions that justified a state of emergency and federal interventions. In the context of this discussion between idealists and realists, the classic book by Pedro Lessa, *Do Poder Judiciário*, sums up well the eagerness to put the brakes on the activity of the Executive and Legislative Powers through an organized constitutional doctrine appropriate to the Brazilian experience. Lessa recognized the Constitution of the United States of Brazil as an explicit copy of the American constitution in its principles, but also with the integrity to adapt the text to the varied Brazilian reality, without falling into the trap of merely performing a judicial transplantation just because it was imported from North America⁴².

On the other hand, Oliveira Vianna, with his powerful rhetoric, accused such positions aligned with liberal constitutionalism as something naive, and considered Lessa to be a "judicial sleepwalker"⁴³. With the backdrop of a clash between *idealists* and *realists*, there was a real semantic battle between the country's political-intellectual elites over the concept of *democracy*⁴⁴. While the previous generation of Rui Barbosa and Pedro Lessa had virtuously defended liberal democracy, the reformulation of democracy in its authoritarian aspect emerged with impetus. Committed to finding a genuinely Brazilian solution, Campos and Vianna, each in their own way and grounded in different intellectual foundations, argued vigorously that the appropriate solution for the Brazilian reality was *authoritarian democracy*⁴⁵. There was an omnipresent claim that the constituents of 1891 imported North American

⁴² LESSA, Pedro. *Do Poder Judiciário: direito constitucional brasileiro*. Rio de Janeiro: Livraria Francisco Alves, 1915. p. 356-421.

⁴³ VIANNA, Oliveira. *Instituições Políticas Brasileiras*. v. 2. Metodologia do Direito Público (Os problemas brasileiros da ciência política). 2. ed. Rio de Janeiro: José Olympio, 1955 [1. ed. 1949]. p. 425.

⁴⁴ CODATO, Adriano Nervo. *Elites e instituições no Brasil*. Uma análise contextual do Estado Novo. 441f. 2008. Tese (Doutorado em Ciência Política), Programa de Pós-Graduação em Ciência Política, Universidade de Estadual de Campinas (UNICAMP), Campinas, 2008. p. 231-298.

⁴⁵ VIANNA, Oliveira. *O idealismo da Constituição*. 2. ed. São Paulo: Companhia Editora Nacional, 1939. p. XI-XV.

and European experiences without filters. Oliveira Vianna's alternative was frankly authoritarian and corporate, with eugenic traits. For him, knowledge of the peculiarities of national reality was central to the success of authoritarian democracy. In his view, which often clashed with that of Rui Barbosa, Brazilian political development demanded a consideration of "the problems of the State or, even more so, the political and constitutional problems of Brazil, not only as simple problems of doctrinal or philosophical speculation", in order to then face the "objective problems, linked to the cultural reality of the people"⁴⁶.

There was a concern to present Brazilian authoritarianism as an experience adapted to reality, different, therefore, from the experiences that were seen as extreme: Italian fascism, national-socialism and, mainly, Bolshevism. In Brazilian doctrine, there was generally a conviction that Brazil could not be swept up in the era of extremes, and the instruments of its *authoritarian democracy* served as a motto for legitimizing this supposedly moderate process. The attempt to differentiate between authoritarianism and totalitarianism was recurrent in the doctrine, as can be seen in the work of Araújo Castro, who published one of the few systematic reviews of the 1937 Constitution⁴⁷. Especially during the harshest and most repressive phases of the Vargas Era, there was a continual affirmation of this authoritarianism as appropriate to the needs of the country, and this meant a complete divergence from European totalitarianism. The detachment from the totalitarian ideology of Italian fascism was frequent in the writings of Oliveira Vianna, which was an attempt to present a path identifiable as *Brazilian authoritarian democracy*⁴⁸.

Curiously, even in integralism there was caution regarding an association with Italian totalitarianism, as can be seen in several points of Miguel Reale's work, in which there are affinities with fascist totalitarianism, but at the same time a certain distance and differentiation regarding the extent of the fascist proposal and the

⁴⁶ VIANNA, Oliveira. *Instituições Políticas Brasileiras*. v. 2. Metodologia do Direito Público (Os problemas brasileiros da ciência política). 2. ed. Rio de Janeiro: José Olympio, 1955 [1. ed. 1949]. p. 425-427.

⁴⁷ CASTRO, Araújo. *A Constituição de 1937*. Prefácio de Inocêncio Mártires Coelho. Brasília: Senado Federal, 2003. p. 39-44.

⁴⁸ VIANNA, Oliveira. *Problemas de direito sindical*. Rio de Janeiro: Max Limonad, 1943. p. 25-33 e 131-164.

integralist ideas⁴⁹.

Following Emilio Gentile's typology, totalitarianism is understood as a revolutionary ideology linked to a political party or movement that considers itself the vanguard of its own group - be it the proletariat, the nation or a racial entity - and that demands for itself a monopoly of power to establish a new order that brutally breaks with the previous tradition, establishing a new and proper conception of man, society, the State and politics⁵⁰. It is this radical change in the concept of politics that defines the typical totalitarianism of the interwar period. Despite Francisco Campos' flirtation with this sort of revolutionary process (and also with the writings of other minor authors who leaned towards totalitarianism⁵¹), it would be very difficult to claim that a totalitarian regime was established in the Vargas Era. This is because a totalitarian inclusion of all facets of society within the State was not applied in Brazil, which would have meant a loss of autonomy of individuality and the consequent coercive subordination of the individual to the collectivity. Although the authoritarianism of the *Estado Novo* was firm, consistent and declared, it did not reach the level of control of fascist totalitarianism⁵².

The totalitarianism of the interwar period was characterized by the precarization of individual liberties, which led to the hypertrophy of the Executive Power and the curtailed autonomy of people and society as a whole. The destructive health of totalitarian political systems was the hallmark of these experiences, and it is worth noting that Brazil did not emulate this type of regime, despite some affinities with *total ideology*, as can be seen in some specific texts of the period.

Brazil, therefore, followed the common trajectory of the interwar period to increase intervention in the social, economic and intellectual life of the country. Based on the writings of Léon Duguit, Araújo Castro described this growth in state

⁴⁹ REALE, Miguel. O Estado moderno (Liberalismo – Fascismo – Integralismo). In: REALE, Miguel. *Obras políticas* (1ª. fase – 1931-1937). t. II. Brasília: Editora Universidade de Brasília, 1983 [1. ed. 1934]. p. 132; REALE, Miguel. Nós e os fascistas da Europa. In: REALE, Miguel. *Obras políticas* (1ª. fase – 1931-1937). t. III. Brasília: Editora Universidade de Brasília, 1983 [1. ed. 1936]. p. 223-233.

⁵⁰ GENTILE, Emilio. Total and Totalitarian Ideologies. In: FREEDEN, Michael; SARGENT, Lyman Tower; STEAR, Marc (Ed.). *The Oxford Handbook of Political Ideologies*. Oxford: Oxford University Press, 2013. p. 64.

⁵¹ DUTRA, Eliana. *O ardil totalitário*. O imaginário político no Brasil dos anos 30. Belo Horizonte: UFMG, 1997.

⁵² GENTILE, Emilio. *La via italiana al totalitarismo*. Il partito e lo Stato nel regime fascista. Roma: Carocci Editore, 2008. p. 205-226.

interventionism as a natural process. The idea that the state should stick to the internal and external security of the country and minimally regulate social relations fell by the wayside in the face of the considerable hypertrophy of the *Estado Novo*⁵³. The concern to show Brazilian authoritarianism as a nontotalitarian political system was central, for example, in Karl Loewenstein's visit to Vargas' Brazil. Loewenstein himself makes it clear in his book *Brazil under Vargas* that part of his investigation was aimed at dissecting the constitutional system of the *Estado Novo* in the context of Brazil's political rapprochement with the United States during the war effort⁵⁴.

Even before the *Estado Novo*, liberal politics had come to be seen by Francisco Campos and the authoritarian intellectuals as something absolutely anarchic. The striking feature of democratic politics – the contingency of diffuse acts that shape power in a democracy – was defined as the “primacy of the irrational”. Like Carl Schmitt, the jurist from Minas Gerais proclaimed a certain obscurantist and labyrinthine political theology to justify his blatantly anti-democratic political positions. For him, “political life, like moral life, is the domain of irrationality and unintelligibility. The more unintelligible the political process, the more effective it will be”. For this reason, Campos aimed toward “total integration of the human masses in a state regime”, since “the greater the masses to be politically integrated, the more powerful the spiritual instruments of this integration must be”. His design for integration between the masses and the State had an almost mythical content. His idea of politics constantly merged with theology, because for Campos “there are no relative forms of political integration, and man belongs, soul and body, to the Nation, the State, the party. The categories of personality and freedom are only illusions of the human spirit.” In 1935, two years before the *Estado Novo*, Brazil already had a well-finished vision of its anti-liberal constitutionalism: in the authoritarian realism of Francisco Campos, one can see several layers of rhetorical constructions that seek to reduce liberalism to dust⁵⁵.

⁵³ CASTRO, Araújo. *A Constituição de 1937*. Prefácio de Inocêncio Mártires Coelho. Brasília: Senado Federal, 2003. p. 37-38.

⁵⁴ LOEWENSTEIN, Karl. *Brazil under Vargas*. New York: The Macmillan Company, 1942. p. VII-XIII.

⁵⁵ CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 19-20.

Campos' multifaceted work must be understood in the context of absorption of large masses of people into the Brazilian political process. The rules of the game typical of liberal constitutionalism were seen as normal when the "political process was reduced to limited human zones and its content involved only states of tension or conflict between interests that were more or less susceptible to a rational control". In these cases, there was the possibility of "academic treatment of parliamentary discussions". For Campos, at a time when the needs of Brazilian society were becoming more and more complex, and political control encompassing more and more interests, a constant instability of social relations arose. This implied the need to provide greater power for political decision-making. It is noteworthy that this line of reasoning of the Campos-based thought was elaborated shortly after the publication of the Constitution of 1934, that is, the empowerment of the president, Getúlio Vargas, was not something that sprang up overnight⁵⁶.

The discourse of a collapse of liberalism was justified in the face of the "mood of the masses" and of the "great political tensions" that "are not resolved in intellectual terms, nor in the controversy between ideas". The prophecy of a strong central government was constant in the writings of Campos, because for him the world no longer obeyed the dialectical process of the rules of the parliamentary game and "the rationalist premises of liberalism" were denied. The spirit of those years was "the political advent of the masses, the irrationality of the political process, which liberalism had tried to conceal with its optimistic postulates. Campos proclaimed the split between democratic institutions and the principles of liberalism. In other words, he defended a "constitutional system" with a new dogma, consisting of assuming that "above the written Constitution", there was "an unwritten Constitution" whose fundamental rule was founded on the fact that the rights of freedom are granted only inasmuch as they do not clash with "basic dogmas or constitutional decisions concerning the substance of the regime. It can be seen that in Francisco Campos' antiliberal constitutional theory, there is a declared element placed above the written Constitution – what he calls "legal formalism" – the *guidelines* of a strong and

⁵⁶ CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 26-27.

centralized government⁵⁷.

The result of Campos' *realist* argument was unequivocal: the elimination of the principle of freedom that founded political liberalism became imperative. "Democracy", in Campos' political philosophy, had to lose its "relativistic and skeptical" character to assume a strong and openly authoritarian feature. The internal crises of democratic institutions, and this obviously included Brazil, led to the decomposition of liberal residues. Authoritarian realism had, therefore, clear and assumed anti-liberal tendencies, because it denied the liberal methods of parliamentary democracy, which, in Campos' view, would never achieve the objective of integration between the political power and the masses. Campos concludes that the consequence of this process will inevitably be the seizure of power by force and the "transformation of democracy, from a relativistic or liberal regime, into an integral or totalitarian state", in which the dictatorial will prevails⁵⁸.

The *realism* proposed by Francisco Campos and Oliveira Vianna was, thus, an essential reformulation of *constitutional idealism*: the so-called organic idealism, that is, adapted to the country. The *realistic* side, therefore, presented itself as *substantial democracy*, while *constitutional idealism* was labelled as mere *formal democracy*. Despite all the strong and explicit authoritarianism in the 1937 Constitution, Campos still affirmed – without any modesty – that the "Letter of November 10 sought to preserve the democratic substance of the Brazilian constitutional formation", and that "a careful examination of the new legal order will demonstrate, however, that the democratic substance, always dominant in our history, was not only preserved, but has now found a more perfect expression". The supposedly *substantial* character of the authoritarian constitutional changes was seen as the culmination of the democratic ideals of the previous Constitutions⁵⁹:

⁵⁷ CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 27-29.

⁵⁸ CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 27-29.

⁵⁹ CAMPOS, Francisco. Problemas do Brasil e soluções do regime (entrevista concedida à imprensa, em janeiro de 1938). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 74-75.

The Constitution of November 10 will better achieve democratic ideals than its predecessors. This statement will necessarily be contested by those who know no other democratic form than that established by political liberalism. The theory of the liberal state claims for itself exclusivity of democratic thought, making one believe that if a political regime does not enshrine liberal principles, it is fatally an autocracy, a dictatorship, an absolutist regime. But this is false. Until today, only deformed democracies have emerged from the mold created by liberalism⁶⁰.

For Campos, the main discourse of Brazilian authoritarianism in the interwar period was its conviction that its model was a third way between the evils of liberalism and its antithesis, Marxism. In the view of the jurist from Minas Gerais, liberalism was tarnished by demagoguery, by party struggle and by class struggle, while Marxism tried to stop this process with a dictatorship of the proletariat. And what he proposed in Brazil was something different. As Campos interpreted that the "liberal state failed to establish a true democratic regime, because it served only one class, one party, a small group of individuals to exploit the advantages of power, to the detriment of the community", his objective was an alleged rescue of the "public good", the "general welfare", which would be true democracy⁶¹. The crisis of the ideal, then, was focused on the critique of any policy guided by liberal democracy, since it aimed to resignify the democratic ideal. The cultural war of Campos and Vianna against the preceding liberal tradition was fundamental to provide a minimally ordered constitutional theory for Vargasism:

In one hundred years of democratic attempts and experience, the mechanisms to make democracy effective have multiplied: universal suffrage, the parliamentary system, the secret ballot, women's suffrage, initiative elections, referendum voting, direct legislation, recall elections, the principle of turnover of elected officials and many other devices and combinations. None of these methods, however, have brought about the abolition of privileges; none of them ensure

⁶⁰ CAMPOS, Francisco. Problemas do Brasil e soluções do regime (entrevista concedida à imprensa, em janeiro de 1938). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 74-75.

⁶¹ CAMPOS, Francisco. Problemas do Brasil e soluções do regime (entrevista concedida à imprensa, em janeiro de 1938). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 74-75.

equal opportunity and use of capabilities, or infused governments with a greater sense of honor, duty or righteousness, essential elements of the democratic ideal. It can be argued, to the contrary, that the machine, because of its volume and complexity, has further alienated the people from the Government, made democratic processes more obscure, confusing and unintelligible, increased the opportunities for corruption and fraud, as well as allowing the concern about the mechanical part of institutions to create confusion between the means and the end, reducing democracy to a process-based formalism, in which there is no place for the democratic spirit or ideal. (...)

The democratic ideal has nothing to do with the machine, the artifices or the maneuvers of formal democracy. In order to claim the democratic ideal, it is necessary to break the democratic machine, restoring freedom and spontaneity to the movements of opinion. The inauguration of a new revolutionary era in the world finds its explanation precisely in the fact that democratic institutions have acquired an exclusively formal and mechanical character, in which they serve precisely the ends that are opposed to the democratic ideal. The revolutions of the twentieth century have almost all the same significance: to break the resistance of the democratic machine to give free course to the democratic ideal. This is the meaning of the November 10th Constitution⁶².

Oliveira Viana sought to legitimize the *Estado Novo* from its constitutional perspective and the main foundation of this constitutional construction was the empowerment of an armed president with exceptional powers. This was what the 1937 Constitution provided: a leader endowed with authority and capable of "directing the nation from above, in a totalitarian sense, acting as a force of aggregation and unification – and not as a force of disintegration and struggle"⁶³. In summary, Vianna's vision was in fact adapted to the Brazilian reality, as he advocated that Brazil, due to its peculiarities, did not need a single party, as in the cases of Nazi Germany and fascist Italy, but a single president. The purpose of this constitutional construction was that the President did not share authority with anyone, thus being

⁶² CAMPOS, Francisco. Problemas do Brasil e soluções do regime (entrevista concedida à imprensa, em janeiro de 1938). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 78-79.

⁶³ VIANNA, Oliveira. *O idealismo da Constituição*. 2. ed. São Paulo: Companhia Editora Nacional, 1939. p. 207.

capable of fully exercising his sovereignty. At this point, the realisms of Campos and Vianna met and complemented each other. The exchange of hands that Brazilian political power underwent during Varguism led – through innovative constitutional discourses – to a new meaning of constitutional law, with long-lasting consequences and the re-ordering of political structures led to the creation of a new separation of powers, the consolidation of new concepts and legal institutions and even a new way of looking at what is, in fact, the Constitution as a fundamental norm.

4 THE *ESTADO NOVO* AS AN AUTHORITARIAN CONSTITUTIONAL REVOLUTION

Varguist authoritarianism from its constitutional perspective can be summarized in a few main facets: the greater centralization of central power, the absorption of legislative technique by the Executive Power, the strengthening of State authority and the expansion of the presidential powers, alongside the suspension of political assemblies, the dissolution of political parties and the restriction of individual freedoms and political rights. Each of these facets of the authoritarian order encompasses a series of legal and political instruments that made the dictatorial undertaking last from 1937 to 1945. In addition to the corporatist guidelines that guided part of the federal administration, and in the view of the Varguist ideologues, the conditions were then in place to enable the building of a new, more efficient, technical and progressive National State.

However paradoxical the provisions of the Constitution of 1937 may seem at first glance, the Basic Law of the *Estado Novo* had an internal logic and an ideal of operation. Due to its relatively short life and to a certain pragmatism of Vargas, many of the constitutional provisions were not fully applied, as can be seen from the eloquent example of the failure to call the plebiscite foreseen in Article 187, which was never called⁶⁴. That is, not even one of the cornerstones of the Constitution of 1937, the plebiscite that sought to legitimize the regime, was adopted, and since its early years the official discourse of the *Estado Novo* had to live with this eloquent inconvenience. This paradoxical process of constitutional construction led Karl

⁶⁴ ABREU, Luciano Aronne de. O sentido democrático e corporativo da não-Constituição de 1937. *Estudos Históricos*, Rio de Janeiro, v. 29, n. 58, p. 461-480, mai./ago. 2016.

Loewenstein, in 1942, to expressly reference the phenomenon of the “non-Constitution of 1937”⁶⁵. At the theoretical level, this peculiar situation left some of the ideologues linked to the *Estado Novo* in a delicate position, as in the case of Augusto Estellita Lins who even called the provision of Article 187 as the “constituent plebiscite”, stating that its convocation should be of a mandatory character⁶⁶.

The author of the 1937 Constitution, Francisco Campos, foresaw that the plebiscite should only take place once the *Estado Novo* political regime was consolidated and had already shown its fruits, even though there was no provision in the fundamental law of the authoritarian constitution to indicate the possibility that the plebiscite could be unfavorable, in whole or in part, for the regime. Campos said in January 1938: “I do not think it is possible to predict the consequences that would follow a negative plebiscite. This is the domain of events and history”⁶⁷.

Themístocles Cavalcanti described the Constitution of 1937 as a “more logical, more concentrated” judicial structure, “where, in terms of responsibility, there is no dilution of authority by an organ without expression”. In Cavalcanti’s view, the removal of the “casuistic feature that characterized the Constitution of 1934” was important and it was beneficial that the fundamental law of the *Estado Novo* presented preponderant influences from the European Constitutions of the period, while at the same time there was a return to ideas already present in the currents that promoted the republican propaganda when the Empire fell. The fact that Brazil quickly adapted to the modern legal and ideological tendencies of the time was part of a “universal tendency”⁶⁸.

When the fundamentals of legal engineering are separated in an authoritarian Constitution, one can see how liberal institutions are easily misrepresented through a few precise changes in the separation of powers and in the traditional model of checks and balances. This is sufficiently clear in the analysis of the 1937

⁶⁵ LOEWENSTEIN, Karl. *Political power and the governmental process*. Chicago: The University of Chicago Press, 1957. p. 29-30.

⁶⁶ LINS, Augusto E. Estellita. *A nova Constituição dos Estados Unidos do Brasil*. Rio de Janeiro: José Konfino, 1938. p. 66 e 446.

⁶⁷ CAMPOS, Francisco. Problemas do Brasil e soluções do regime (entrevista concedida à imprensa, em janeiro de 1938). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 100.

⁶⁸ CAVALCANTI, Themístocles Brandão. *Instituições de direito administrativo brasileiro* (parte especial). v. II. 2. ed. Rio de Janeiro: Freitas Bastos, 1938. p. VI-VII.

Constitution. Francisco Campos, not by chance, stated emphatically the “democratic character of the Constitution,” and, in his view, the fundamental law of the *Estado Novo* fully met “the transformations in ideals and democratic institutions that, in our Century, are in the process of rapid realization”⁶⁹:

It is enough to verify the universal suffrage it recognizes, the limitation of the power of judges to declare the unconstitutionality of the laws, and the chapters relative to the economic order and to education and culture. In turn, by conferring supreme power to the President of the Republic, it puts him in direct contact with the people, and it is not possible for the President to relinquish to other organs of power the serious responsibilities that the Constitution gives him, as a consequence of the powers and prerogatives that are attributed to him.

The president is the head, responsible for the nation and can only exercise the enormous prerogatives of the presidency if he has the support and prestige of the people, needing, for this, to appeal frequently to their opinion, and having, thus, his mandate an eminently democratic and popular character⁷⁰.

Francisco Campos believed in the “positive and constructive” character of the *Estado Novo*, which was trusted to solve the problems of the nation through a model of modernization oriented from the top down. Liberal constitutionalism was seen as the negative side – restricting the scope of state action – of the political evolution of countries. The French Revolution was viewed with reservations, since “the political charters made under the influence of this climate of ideas were reduced to organizing the citizens’ struggle against power”. In other words, the declaration of individual rights and guarantees, and the consequent limitation of the powers of the state over individuals, was posited as an obsolete conception of democracy, which only corresponded to a defined historical moment, in which “the individual could only be affirmed by denying the state”. The great inversion in the concept of democracy of

⁶⁹ CAMPOS, Francisco. Diretrizes do Estado Nacional (entrevista concedida à imprensa, em novembro de 1937). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 60.

⁷⁰ CAMPOS, Francisco. Diretrizes do Estado Nacional (entrevista concedida à imprensa, em novembro de 1937). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 60.

the authoritarian constitutionalism of Campos placed the ideas of the Nineteenth Century as the ruins of another historical moment: the “constitutional problem” of his time was “to organize power at the service of the new ideals of life”, which meant giving individuals the positive rights by virtue which would provide access to “the goods of an essentially technical civilization of a culture increasingly extensive and focused on the problem of the material and moral improvement of man”⁷¹.

Thereby, “power” would no longer be the enemy, but “the servant”; while the citizen would no longer be the “free man” or the “man in revolt against power”, he would become the “holder of new positive and concrete rights that guarantee him a fair participation in the goods of civilization and culture”⁷². Here we can see, with complete clarity, the convergences between the principles of the authoritarian state and the typical rights of a nascent welfare state. The *social question* was being fully resolved in the standpoint of authoritarian thought, and this served as a justification for political violence and the constitutional reorganization of the country. The Brazilian citizenship imagined by Francisco Campos therefore involved a series of social rights, aimed especially at the working class, to the detriment of the political rights that had been suspended with the 1937 coup d'état, since social rights were placed in primacy over political rights. What was at stake with the *authoritarian realism* of Francisco Campos and other jurists of the period was a constant enterprise of resignification of legal-political concepts – which should now serve the authoritarian regime and guide the dictatorship – with the consequent destruction of the vocabulary from 19th and early 20th century liberalism. This semantic battle around a political project led Getúlio Vargas himself to call the *Estado Novo* a “functional democracy” after Brazil went to war against totalitarianism in 1942⁷³.

Campos, in turn, always reaffirmed the restoration of authority and the popular character of the new Constitution, because the “State moves for the people and to

⁷¹ CAMPOS, Francisco. Diretrizes do Estado Nacional (entrevista concedida à imprensa, em novembro de 1937). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 56-58.

⁷² CAMPOS, Francisco. Diretrizes do Estado Nacional (entrevista concedida à imprensa, em novembro de 1937). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 56-58.

⁷³ CODATO, Adriano Nervo. *Elites e instituições no Brasil: uma análise contextual do Estado Novo*. 441f. 2008. Tese (Doutorado em Ciência Política), Programa de Pós-Graduação em Ciência Política, Universidade de Estadual de Campinas (UNICAMP), Campinas, 2008. p. 256-257.

guarantee them the enjoyment of material and spiritual gains," and this was only possible with the strengthening of the authority of the State in order to intervene effectively in all domains of public nature. The antiformalism of Francisco Campos upheld that "the interest of the State in justice cannot be an interest of a purely formal character", because "justice is the State, the State is Justice"⁷⁴. The constitutional construction proposed by Campos had as a vector the creation of a broad list of "new rights" of substantial content, involving the right to services and goods, the right to work, the right to a reasonable standard of living, the right to "public hygiene", the right to education and protection against the misfortunes of life (unemployment, accidents, diseases, old age). Such rights would be the condition of access to the "goods of civilization and culture". Consequently, the power of the State would have to be "immensely greater than the power atrophied by the negative concept of 19th century democracy" in order to be able to assure the enjoyment of the new rights, the State would then have to exercise control over all social activities: the economy, politics and education. Campos' argument, repeated in different parts of his work, was incisive in the accusation that "the principle of freedom did not guarantee anyone the right to work, to education, to security. Only a strong State can exercise fair arbitration, ensuring that everyone enjoys the common heritage of civilization and culture"⁷⁵.

Campos saw in liberal formalism one of the evils of Brazilian political evolution. He and other ideologues of the regime, such as Monte Arraes, sought to replace what they saw as retrograde formalism with a system of *guidelines of the Estado Novo*, anchored in the supremacy of the Chief Executive Power. It is interesting that the defense of individual liberties was reaffirmed as long as the system of freedom did not interfere with the objectives of the regime, since personal freedom should not "be an obstacle to the greatness and security of the State". For Arraes, the point of equilibrium lay in the conviction that the State should not "erode its power by

⁷⁴ CAMPOS, Francisco. Exposição de Motivos do Projeto do Código de Processo Civil. In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 166.

⁷⁵ CAMPOS, Francisco. Diretrizes do Estado Nacional (entrevista concedida à imprensa, em novembro de 1937). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 58-59.

intervening, through violence, in the circle of individual conscience"⁷⁶.

According to Monte Arraes, the Constitution of 1937 was "an instrument of perfect harmonization of the historical traditions of nationality, with the social objectivity of the moment". This was because the Constitution of November 10 had identified the shift from "formal constitutional rights" to "substantial rights". For Arraes, the *Estado Novo* was a system of balance between public power and "private activities", of respect for individual rights and guarantees⁷⁷. The *Estado Novo* carried the idea that the clauses of the Constitution of November 10 established a certain "constitutional spirit" that should be followed and that would guide the nation⁷⁸. Such concepts of the regime's "spirit" and "guidelines" were never properly elaborated by the Vargasist ideologues, but appeared relatively frequently in the doctrine. An eloquent example of this curious use of the concept of "spirit" within the constitutional theory appears in a work published by José de Castro Nunes, minister of the Federal Supreme Court between 1940-1949, which speaks to the "public spirit outside of political parties" (which in those years were dissolved). The attack of political parties clearly demonstrates the feeling of unity that the *Estado Novo* ideology promoted. In Vargasist authoritarian constitutionalism, the political party was seen as the "spirit of struggle," a division where there should be "collaboration, goodwill, adherence by all to the general interest reflected in the State". Thus, the "public spirit" should be "only one, a generalized will for the common good". Castro Nunes' laudatory argument of the *Estado Novo* attempts to affirm the existence of a "public spirit" in the context of dictatorial consensus. The jurist affirmed that the "public spirit is defined by a mental attitude of understanding, good will and collaboration," and that such collaboration is only established through individual autonomy and taking into account the dissent in society. Castro Nunes concludes that in this way the "non-partisan public spirit is established, without divisions, without irreducible antagonisms, suitable to build, aggregate, unite and not to destroy,

⁷⁶ ARRAES, Monte. *O Estado Novo e suas diretrizes: estudos políticos e constitucionais*. Rio de Janeiro, José Olympio, 1938. p. 105-113.

⁷⁷ ARRAES, Monte. *O Estado Novo e suas diretrizes: estudos políticos e constitucionais*. Rio de Janeiro, José Olympio, 1938. p. 194-202.

⁷⁸ BARATA, Julio. *O espírito da nova Constituição*. Rio de Janeiro: Mandarin & Molinari, 1938. p. 53-62 e 157-166.

separate, divide"⁷⁹.

Despite the vast concentration of power in the *Estado Novo*, Themístocles Cavalcanti did not define it as a regime of force, because, for him, Brazil did not resemble Fascist Italy, Bolshevik Russia or Nazi Germany, since these governments did not originate from a Constitution, but from the imposition of political violence and the one-party system. On the contrary, the *Estado Novo* would be a political regime derived from a Constitution, whose "characteristic feature is the strengthening of the President of the Republic". Such a process was justified, in Cavalcanti's view, in the conviction that the "technique of revolutions and coups d'état makes the dilution of authority by the various organs of the State dangerous", and hence arises the instability of political situations in governments of popular origin. The consequent tendency for the strengthening of power represents, then, only an "act of legitimate defense, against the threats of political currents and social organizations that possess the same elements as the Government itself"⁸⁰.

For the intellectuals connected to Vargas, the very idea of authoritarian constitutionalism was linked to the social control of the masses that were beginning to rise to the public debate, and there was growing concern among the elites about the political dangers of a "rebellion of the masses". Not by chance, Brazilian authoritarian thought presented affinity and proximity to the pioneering essays of social psychology, as can be seen in the continued interest on the subject in the studies of Oliveira Vianna⁸¹ and Almir de Andrade⁸². Francisco Campos' doctrine contained the idea that the "entry of the masses into the political scene" implied the imposition of "irrepressible plebiscitary *pathos*" and "new mythical instruments in the intellectual configuration of the political process", which exerted a decisive influence on political decision-making and made it increasingly irrational. The insertion of the masses into the structure of the State was described as a latent and ostensible state of violence, which constitutes "the energy potential hitherto disguised by rationalist

⁷⁹ NUNES, José de Castro. *O espírito público fora dos partidos*. Rio de Janeiro: DIP, 1941.

⁸⁰ CAVALCANTI, Themístocles Brandão. *Instituições de Direito Administrativo Brasileiro* (parte especial). v. II. 2. ed. Rio de Janeiro: Freitas Bastos, 1938. p. VII-VIII.

⁸¹ VIANNA, Oliveira. *Pequenos estudos de psicologia social*. São Paulo: Revista do Brasil, 1923. p. 59-122; VIANNA, Oliveira. *Pequenos estudos de psicologia social*. 3. ed. São Paulo: Companhia Editora Nacional, 1942.

⁸² ANDRADE, Almir de. *A verdade contra Freud*. Rio de Janeiro: Schmidt, 1933.

and liberal ideologies, and from which, ultimately, political decisions result". The movement capable of curbing this supposed escalation of violence would thus be authoritarian constitutionalism, and not the liberal-democratic system⁸³.

CONCLUSION

From the 1920s on, there was a widespread conviction in the Brazilian political debate that the constitutional structure of the First Republic was a decadent edifice, and that something should replace the failed political project, as there was deep *disenchantment* with the Constitution of February 24, 1891. The Constitution of 1934 sought to provide Brazil with stability in social relations by granting social rights, modern instruments for elections, corporatist elements and rights of freedom. This breath of social democracy lasted a very short time and was soon undermined by the coming events, since radicalisms from the left and the right served as a premise to harden the regime. As in the Weimar Republic, a fundamental law was not able to stabilize the scenario of strong political and ideological instability. The process of reconstitutionalization of Brazil came up against authoritarian measures, such as the National Security Law of 1936, which in practice cancelled a series of rights and guarantees established in the Constitution of 1934. In the period between 1932 and 1936, there were strong indications of what was being designed on the Brazilian political horizon, and the *Estado Novo* only gave new meaning to the rise of the Brazilian authoritarian discourse, because it assumed a declared system and authoritarian rhetoric.

Oliveira Vianna spared no effort to ensure acknowledgment that the institutional and ideological developments of the Vargas Era were aimed toward a *return to the old conservative tradition* of Feijó, Vasconcelos and Uruguay⁸⁴. The maxims of the day were *authoritarian reaction* and *centralizing doctrine*⁸⁵. Vianna was linked to the regime and his writings from the time show how dedicated he was

⁸³ CAMPOS, Francisco. A política e o nosso tempo (conferência no salão da Escola de Belas-Artes, em 28 de setembro de 1935). In: CAMPOS, Francisco. *O Estado Nacional: sua estrutura, seu conteúdo ideológico*. Brasília: Senado Federal, 2001 [1. ed. 1940]. p. 24-26.

⁸⁴ VIANNA, Oliveira. *Pequenos estudos de psicologia social*. São Paulo: Revista do Brasil, 1923. p. 101-122.

⁸⁵ VIANNA, Oliveira. *Problemas de direito sindical*. Rio de Janeiro: Max Limonad, 1943. p. 27-29.

to justify the institutional innovations of the government. It is in the years of the *Estado Novo* that the scholar from Rio de Janeiro reaches intellectual maturity and becomes a central intellectual reference for the period. Perhaps the respect Vianna and other authoritarian intellectuals had, underneath, for the Brazilian liberal tradition – and the difficulties they encountered in trying to overcome political liberalism – are the reasons why liberal ideology has always been renewed in Brazil throughout the 20th century and the beginning of the 21st. What can be seen behind the Brazilian authoritarian discourse is an intimate dialogue with liberal traditions and institutions. Therefore, paradoxically, there is a link between the project of authoritarian modernization and the liberal principles of organization for society and the State. The analysis of the Brazilian authoritarian ideology of Francisco Campos and Oliveira Vianna demonstrates a constant debate with the institutions built from the liberal discourse.

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A obra coletiva, que ora temos a honra de apresentar, reúne as contribuições resultantes das pesquisas realizadas no âmbito do Projeto *A democracia: uma urgência educativa em contextos multiculturais e multirreligiosos*, apoiada pela *Fondazione Gravissimum Educationis*.

A democracia representativa, modelo vigente e explicitado pela democracia partidária concorrencial, é considerada o principal instrumento político de acesso ao processo da tomada de decisão. No entanto, a crise da democracia representativa está presente tanto nas democracias originárias, nas quais já existe uma tradição nos processos eleitorais, como também nos países de democratização recente, como o Brasil.

Nessas democracias, aparece a questão da problemática relação do Estado com o poder econômico, isto é, com a elite financeira e econômica, que quer determinar o rumo da agenda global, política e social, acarretando, em muitos casos, a preterição do bem comum e o favorecimento da economia. Para reverter essa tendência, o Estado deve fazer todo esforço a fim de que a economia tenha o seu próprio êxito e funcione dentro da regularidade planejada, promovendo a proteção e a liberdade da pessoa humana. As decisões acerca dos rumos da vida coletiva, dentro do modelo democrático, não pode ser prerrogativa de um grupo de poder, seja de capital financeiro ou capital intelectual, ou até mesmo outro tipo de poder, mas deve ser um direito de todos os cidadãos, um modelo inclusivo de democracia. Os textos dessa coletânea abordam com profundidade essas questões, que, além de muito atuais, são altamente relevantes.

Boas Leituras!



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