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The Antonine Constitution after 1800 years

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CHAPTER 9

UNIVERSALISM, LEGAL PLURALISM AND CITIZENSHIP: PORTUGUESE IMPERIAL POLICIES ON CITIZENSHIP AND LAW (1820–1914)

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1. "ROMAN UNIVERSALISM": A SOURCE OF INSPIRATION OR A MISTAKE TO AVOID?

The questions of what it meant to be, become, or benefit from the status of a Portuguese citizen in the nineteenth century Portuguese Empire have received several – sometimes contradictory – answers. To the colonial legal theorists who published their works during the late nineteenth and early twentieth centuries, the answer was clear and unanimous: to be a citizen in the Portuguese Empire meant to benefit from all the civic and political rights granted in the Portuguese Constitutions to metropolitan citizens, and everyone who was born in Portuguese overseas territories, no matter their origin, race, or culture, was a Portuguese citizen. To substantiate this assertion, these jurists usually made reference to Article 7 of the Portuguese Constitutional Charter of 1826, according to which all those born or residing "in Portugal *and its dominions*" were Portuguese citizens, an assertion that was repeated in other legal and non-legal texts after the first liberal revolution in 1820. The identification of this "universalist tendency" didn't mean that these authors valorized it as a positive tendency. On the contrary, they used it to claim that universalism was the main cause of what they believed to be the decline of Portuguese Empire. Most of them located the inspiration for this mistaken colonial policy on citizenship in the "Latin character" of Portuguese nation, which favored *assimilationist* attitudes toward the colonial territories and their indigenous populations. They also claimed that this unfortunate feature had been further worsened by the negative influence of what they classified as the metaphysical universal principles of the French revolution. These principles, they claimed, *equalized* the metropolitan and colonial French territories, and granted equal rights to populations of both European and non-European origin all over those territories (Silva 2009b). One of these jurists was José Ferreira Marnoco e Souza, the professor of law who inaugurated the teaching of colonial administration when that chair was set up at the Faculty of Law of the University of Coimbra in 1901. In the lectures that he published to introduce law students to the new subject, he wrote that:

> the […]policy of assimilation has been followed by the nations of the Latin race as heirs of the assimilatory genius of Rome. Portugal, Spain and France are the nations that represent this policy. The ideas held by the French Revolution deeply favored this policy. The French Revo-

> lution effectively proclaimed the equality of all citizens, and held the rights that it proclaimed for itself as belonging to all men, irrespective of race or latitude. The natural and logical consequence of all these ideas was to treat the inhabitants of the colonies as similar to those of the metropolis, carrying the rights of men overseas.[1]

Marnoco e Sousa denounced the submission to a single uniform Portuguese law of different people, with diverse cultures and heterogeneous customary law ("usos e costumes"), as one of the worst consequences of this policy:

> It was this criterion that guided colonization in the first three quarters of the 19th century, with the most serious consequences on the colonial enterprise. Our laws are entirely unfit for the indigenous context of the colonies. Some of them will be dead letter, others will produce counterproductive results, while, at the same time, a large number of juridical relations will lack normative principles.[2]

This opinion was not restricted to the metropolitan elite but shared by colonial administrators from elite creole backgrounds such as Caetano Gonçalves, a member of the Christian elite of Indian origin from Portuguese Asia (Goa) who spent some years of his life in S. Tomé, where he held the position of "Curador Interino dos Serviçais"(1897), and who was later appointed as judge in the Congo (1899). While commenting on the 1894 law that provided for the judicial organization of the Overseas provinces, he presented a more concrete account of the results of the uniform approach in what concerned the overseas law system:

> One of the great faults of our overseas legislation resides in the uniformity of its application to peoples of diverse origins and ethnic capacities, such as the Celtic-Iberians of Europe, the kaffirs of Southern Africa, the Aryans and Dravidians from India, the Tungus of Macao and the Papuas of Timor – races and civilizations that are completely distinct [from each other]. This defect, which produces the absurd result of a literate criminal from the Portuguese provinces of Minho or Beira being judged according to the same legal norms as those applied to a savage from Guinea – is what the justice regime of 1894, the subject that I am especially addressing, suffers from.[3]

1 A "política de assimilação tem sido seguida pelas nações da raça latina como herdeiras do génio assimilador de Roma. Portugal, Espanha e França são as nações que representam esta política. As ideias da revolução francesa favoreceram profundamente esta política. Efetivamente, a revolução francesa proclamou a igualdade de todos os cidadãos, considerou os direitos proclamados por ela como pertencendo a todos os homens, sem distinção de raça e latitude. A consequência natural e lógica era tratar os habitantes das colónias como os da metrópole, transportando para além dos mares os direitos do homem[…]" (Marnoco e Sousa 1906, 110).

2 "Foi este o critério orientador da colonização nos três primeiros quartéis do século XIX, com as mais graves consequências para os resultados da obra colonial. As nossas leis são inteiramente impróprias para meio indígena das colónias. Umas ficarão sendo letra morta e outras produzirão resultados contraproducentes, ao mesmo tempo que um grande número de relações jurídicas carecerá de preceitos reguladores" (Marnoco e Sousa 1906, 169–170).

3 "Um dos grandes defeitos da nossa legislação ultramarina é a uniformidade das disposições para povos de diversa origem e capacidade étnicas, tais como os ibero-celtas da Europa, os cafres da África Austral, os arianos e os dravidas da Índia, os tungús de Macau e os papúas de Timor – raças e civilizações completamente distintas. Deste defeito, que produz o absurdo de serem julgados pela mesma norma de direito um delinquente letrado, minhoto ou beirão, e um selvagem da Guiné ressente-se, na especialidade de que estou tratando, o regimento de justiça de 1894" (Gonçalves 1897, 29).

Another negative effect of the universal approach to the colonial citizenship that this literature identified was that most indigenous populations were being granted civil and political rights that they were able neither to understand nor exercise. This was the opinion of Rui Ulrich, also a professor of colonial administration at the Faculty of Law at the University of Coimbra until 1910. Ulrich regretted the Constitutional norm according to which the liberal monarchy had declared "that native people born in the Portuguese colonial territory have the same rights as [those granted to] Portuguese citizens."[4] As was the case with the lessons of Marnoco e Sousa, Ulrich credited the presence of this Constitutional norm to the influence of Roman ideas about universalism and legal and cultural assimilation:

> Portugal was, along with France, the country that most inconveniently assimilated the metropolis to the colonies, in its legal as in its administrative regime. Both these Latin countries developed the ideas of the Romans, who, through the presence of the *colons*, sought to inculcate their language, their customs and their civil and political life among the subject population.[5]

Similar opinions were rather aggressively expressed by the civil and military officers who were sent to the colonies, either to be governors or to fight indigenous populations in the African military campaigns undertaken during the last years of the nineteenth century. Mouzinho de Albuquerque, governor of the military district of Lourenço Marques and Gaza in Mozambique (1890–1895) and a very popular "hero" of those military campaigns, vociferously rejected what he claimed to be the "absurdity of our laws that gives to the Moors, Canarins and blacks the same rights of Portuguese citizenship as the indigenous of Portugal."[6]

What partially animated these statements were the application of the positivist narrative about the organic nature of nations and their irreducible character, as well as racist approaches to the study of human diversity, the effect of which was to make indigenous people *inassimilable*. But, as we shall see in the last paragraph of this text, these statements were also motivated by the vested aim of legitimizing the *indigenato* (indigenous) system that had been set up, for the first time, by the Republican regime in 1914–17. This system entailed the construction of two new legal categories, the *indigenas* and the *assimilados*. The *indigenas* were individuals "of color" or of "black race" who were considered unable to distinguish themselves from the common people of their race (or from their native cultural background). As a result of this inability, they were submitted to a distinct legal regime that governed their civil, criminal, and fiscal status, as well as their work and property. The *assimilados*, on the

4 "[…]os indígenas nascidos no território colonial têm os mesmos direitos que os cidadãos portugueses" (Ulrich 1909, 103).

5 "[…]Portugal foi com a França o país que mais inconvenientemente assimilou a metrópole às colónias, no seu regime legal e administrativo. Países latinos, ambos eles desenvolveram as ideias dos romanos, que procuravam por intermédio dos colonos inculcar aos povos dominados a sua língua, os seus costumes, a sua vida civil e política" (Ulrich 1909, 103).

6 ("[…] o disparate das nossas leis darem aos Mouros, canarins e pretos os mesmos foros de cidadãos portugueses que aos naturais de Portugal[…] (Albuquerque, 1956, 92, 93 cit. em Capela, s/d). The term *canarins* was one used to pejoratively designate the Catholic elites of indigenous origin from the Portuguese Estado da India. Later in this text I will give more detailed information about this group and its position within the Empire.

other hand, were defined as those indigenous individuals who could obtain Portuguese citizenship if they demonstrated that they had completely abandoned the habits and customs of their race (or those habits and customs which were associated with their native cultural background) and demonstrated the ability to speak and write Portuguese (or, in some cases, one of its dialects, or, in other cases, another educated language). Finally, they were also required to demonstrate the capacity "to practice a profession, trade or industry" or to "own goods sufficient for their subsistence," which allowed them to be "exempted" from the special laws for natives (indígenas) namely the work laws.[7] The other underlying (although even more crucial) aim of the *indigenato* regime was likewise related to the previous one. It consisted in turning the political form of the "liberal" empire into what was considered a true colonial Empire. While the former was marked by the erosion of the distinction between conqueror and conquered through the universalization of citizenship and indigenous elites' resultant role as protagonists in colonial administration, the latter was thought capable of expressing the Portuguese capacity to promote the colonization of non-European territories with the metropolitan population and to civilize the indigenous people of those territories, namely by turning them into "good workers". This strong nationalistic approach emerged within the framework of the Berlin Conference and the European competition surrounding occupying African territories.

Some years earlier, in the late eighteenth century and the first half of the nineteenth, legal texts were published that also asserted that both Portuguese law and Portuguese citizenship rights were spread all over the territory of the Portuguese Empire. These texts also suggested that the Constitutional norm of equality regarding citizenship was inspired by Roman reflections on the status of *peregrini* (foreigners) and *barbari* (barbarians), as well as by the emperor Caracalla's grant of universal citizenship in 212. In one of his most important works, published in 1789, Paschoal José de Mello e Freire, a very well known and respected Portuguese jurist of the eighteenth century, wrote that "Portuguese citizens are those who were born in Portugal from citizens" and that "by Portugal we mean Lisbon, the provinces and the dominions of the Discoveries, because among us the diversity of places have never gave rise to the diversity of legal orders, a diversity that had also been abolished in the Roman World by Antoninus Caracalla and his well known Constitution […]."[8]

António Ribeiro de Liz Teixeira, a famed professor of civil law from the first half of the century, made similar statements after the first Portuguese liberal revolution and the enactment of the Constitutional Charter of 1826. While commenting on Paschoal de Mello e Freire, during his lessons on civil law (1843–44), Teixeira re-

7 On this conjuncture and the political conflicts engendered by this legislation in Mozambican colonial society, namely thought the protest of indigenous elites, the "filhos da terra," who considered and identified themselves as full Portuguese citizens, without need to prove it by the means of an administrative process, see Silva 2012 and Cahen 2012.

8 "Os nascidos em Portugal de cidadãos são cidadãos portugueses. Por Portugal entendemos Lisboa, as províncias, e os outros domínios dos descobrimentos, pois entre nós nunca teve uso a diversidade do direito fundada na diversidade dos lugares, que no próprio mundo romano Antonino Caracala acabou por ab-rogar com a conhecidíssima Constituição, de que fala a lei 17 do tit. *De statu hominum*, do Digesto" (Melo e Freire 1789, 24).

minded his students that, according to Article 7 of the Charter, "(…) the fact of being born within Portuguese territory confers the quality of citizen on all those who are *sons of Portuguese citizens*, while Lusitânia, our territory, includes Lisbon, the provinces as well as the overseas dominions and conquests" in Asia and Africa. He added that "our civil law was preserved, *equal* and *uniform*, to all the citizens, without any diversity being established in its different parts, just as happened among Roman people since Antoninus Caracala" (Liz Teixeira 1845, 129, emphasis mine).[9] The ambiguous presence of the criterion of *ius sanguinis*, which was absent not only from what is known of the text of the Antonine Constitution (Mathisen 2012, 750–751, 754–755) but also from the letter of the Constitutional Charter, poses the question of whom Liz Teixeira considered the sons of Portuguese citizens in the "overseas dominions and conquests" to be. Did this community include the indigenous people of the non European territories, as was formally established in the text of the Constitutional Charter? On a previous page, Liz Teixeira had admitted that a citizen was an individual who was born within the territory (Liz Teixeira 1845, 126). Moreover, his interpretation of the Antonine Constitution was consistent with the idea that Emperor Caracalla had granted Roman citizenship to all the inhabitants of the Empire, no matter the status of their fathers. He nevertheless added that the Antonine Constitution had excluded "independent people and nations" from its benefits:

> The quality of [Roman] citizen […]that was, at the beginning, reserved for the inhabitants of the Roman territory, later granted to the people of Lazio and, even later, to those of Italy, and finally extended by Caracalla to all the subjects of the Empire, without difference of territory, save for the exclusion of the independent people and Nations […].[10]

He also insisted once again in other paragraphs of his text that "[…]the son of Portuguese father, born within the Lusitano territory, both in Europe, as in Asia and Africa, was born a Portuguese citizen[…].[11]

Later in this text I will point to how this doctrinal ambiguity around the formal criteria that defined who was and who was not a Portuguese citizen was shared by other legal texts, as well as by other narratives that took the empire and its indigenous populations as referent, giving rise to a great deal of uncertainty around the subject. What I would like to underline now is how the references to the Roman world and the Antonine Constitution in the doctrinal works authored by Paschoal de Mello e Freire and Liz Teixeira differed from those in the textbooks on colonial theory of the late nineteenth century, referred to earlier. While the latter authors held

9 "*Per Lusitaniam intelligimus*… – Por estas expressões principia o Sr. Paschoal explicando-nos o que se entenda por território Portuguez, pois que o nascimento dentro dele confere a qualidade de cidadão ao filho de pai português; e diz-nos que a Lusitânia, ou o nosso território, compreende Lisboa, as Províncias e Domínios ultramarinos ou Conquistas; Mais especificamente ele se acha declarado em relação à Europa, Ásia e África, na Cart. Const. Art. I. […]" (Liz Teixeira 1845, 129).

10 "A qualidade de cidadão [romano] […]que ao princípio foi, como vimos, reservado para os habitantes do território romano, concedido depois aos do Lácio, posteriormente aos de Itália, e por fim estendido por Caracala a todos os súbditos do Império, sem diferença de território, só com exclusão dos povos, ou Nações independentes[…]" (Liz Teixeira 1845, 133).

11 "[…]o *filho de pai português*, nascido dentro do território Lusitano, tanto na Europa, como na Ásia e África, nascia cidadão português[…]" (Liz Teixeira 1845, 129–130).

Roman influence responsible for imperial decline, the earlier texts celebrated Roman influence, with the Roman empire emerging as a model to be emulated. Just as in the case of the Roman empire, Portuguese (civilized) law was described as the unifying feature of the Portuguese empire (Pagden 2002, 42). In addition, if all those who were born within the Roman Empire after Caracalla were citizens, so also were those who were born in Portuguese territories in Europe, Africa and Asia. The idea of a Portuguese empire as a recreation of the ancient Roman empire was something that made positive sense in the political and legal culture of the time, as was also the case during the early modern period (Pagden 1995, 9–28; Zoltán 2004; Cardim 2010, 2011; Marcocci 2013). There were, nevertheless, some doubts surrounding the status of the indigenous populations of those distant overseas Portuguese provinces, doubts that were absent from what is known about the original text of Antonine Constitution, which turned *all* free alien residing in the Roman provinces into Roman citizens (Mathisen 2012, 754).

2. LEGAL DIVERSITY ON ROMAN AND PORTUGUESE EMPIRES

As we have just underlined, important differences in context and meaning separated the two groups of texts analyzed above. Nevertheless, both are linked to narratives that obscured central features of both the Roman Empire before and after Caracalla and of the nineteenth century Portuguese empire: namely, the diversity of legal systems, status, identities, and cultures that characterized both these empires. These narratives also obscured the "ambiguities of citizenship" that the Portuguese Empire shared with other contemporary empires, a feature whose consequences were amplified from the nineteenth century onward due to the growing importance of race-based national identities, where the formal status of belonging to a nation began to gain central importance in determining access to legal regimes and rights.[12]

The historiography of the Roman Empire has long questioned images of the unity and homogeneity of the Roman Empire after Caracalla. These images are contradicted by narrative discourses as well as by the legal practices of those times. Firstly, although they possessed the right, not all those who became Roman citizens after Caracalla benefitted from the Roman *ius civile*. What formally distinguished a Roman citizen after Antoninus Caracalla's constitution was common submission to the Roman law. This fact had emancipatory consequences that surpassed the mere purpose of using Roman civil law as an instrument of the domination of conquered populations, as was the case in previous periods of Roman history (Ando 2011, 4). But it didn't imply the full universalization of the *ius civile*, not only because "the scope of action by Antonine Constitution in producing legal homogeneity was limited" (Ando 2011, 25), but also because parallel legal systems continued to be used alongside Roman civil law. On the other hand, Roman citizens could also submit to Roman law partially, or to different degrees. This happened, in part, because Roman

12 On the "ambiguities of citizenship" in the contemporary French Empire see Dubois 2001; Cooper 2005, 173 ff. Other examples can be collected in Burbank and Cooper 2008; Fradera 2008; Blackburn 2012.

citizenship after Caracalla was not exclusive. It coexisted with other kinds of earlier citizenship and legal identities, namely the municipal and provincial ones, which had been preserved for those who were converted into citizens by the Antonine Constitution. The same happened with the religious and ethnic identities of Roman citizens: people from different religious and ethnic groups submitted to different legal rules that "sometimes competed with or contradicted Roman civil and criminal law," as happened after the official recognition of the Christian church.[13]

Furthermore, Caracalla's grant of universal citizenship did not mean that all the persons living within the boundaries of the Roman Empire were citizens. It merely meant that all *freeborn* residents were citizens. Because slavery was maintained, the status of the *servi* (slaves) continued to be a normal, visible and essential component of Roman society, where freedom "was not a general right but a select privilege" and where the "law stated that all men were either free or slaves" (Bradley 2010, 627). As before, slaves continued to be excluded from citizenship, although they could be legally manumitted and become Roman citizens.[14] These freedmen (the *liberti*) had their rights as citizens prejudiced in several respects (Ando 2011, 11), and could lose their citizenship rights, completely or in part, as a consequence of criminal acts (as other citizens could) or due to ingratitude shown toward their old masters, as had been the case before (Dench 2010, 274). Finally, not all Roman citizens could exercise their rights with the same power, different categories of citizens having different access to political and civil rights (Román 2010, 23 ff.).

The Portuguese texts from the nineteenth century failed to capture these complexities because, as has already been seen, the references made to Caracalla and to universal citizenship in Roman empire by Portuguese jurists and Portuguese colonial theorists had more to do with justifying a specific ideological project than "with an accurate description of actual practices of rule" within both the Portuguese Empire and the earlier Roman Empire.[15] While one party sought to emphasize what was perceived as the extensive character of Portuguese law and the corresponding spread of Portuguese sovereignty and civility, the other criticized the Portuguese "Latin" *assimilationist* attitude toward the indigenous people of the empire. Their texts were divorced not only from what happened in a local context, but also from other narratives that allow us to detect heterogeneity of legal orders and uncertainty about what concerned legal status in Portuguese overseas territories. By taking a unified Roman model as a reference, Portuguese legal scholars more or less consciously occluded all those features that recent historiography has identified as per-

13 On the subject of this paragraph see Mathisen, 2006. On the central role of the local/provincial law in the constitution of Roman law, before and after Caracalla, see Ando 2011, chapters 1–2.

14 A process that was common and had probably to do with "the effect of dividing and weakening the slave population, as anticipation of manumission induced devotion to duty and promoted individualistic rather then corporate concerns" (Bradley 2010, 632).

15 An ideological approach which was shared by imperial discourses from other countries. Emmanuelle Saada, for instance, noted that Rome "was used in the ideological construction of a sharp contrast between French and British Empires modes of colonial domination, especially the distinction between *assimilationist* and *differentialist* attitudes toward the *indigenes*" (Saada 2006, 7; 35–36).

sistent features of modern empires: their heterogeneity in what concerns law and personal legal status.[16] They were also avoiding, for different reasons, what Ricardo Roque calls the "contextual complexities of practice [narrative as well as non-narrative practices] that make colonialism(s) a set of heterogeneous, conflicting and internally contradictory projects" (Roque 2003, 108).

It is the diverse and uncertain policies about what concerned citizenship and law in the Portuguese Empire, as well as conflicting discursive narratives about those subjects during the nineteenth century, that I intend to discuss in the subsequent paragraphs.

Two qualifications should be stated at the outset. First, it is worth recalling that, as was the case in the Roman Empire after Antoninus Caracalla, a fully unitary status didn't exist within the Empire's population, or even within the Kingdom of Portugal (hereafter referred to as "the Kingdom"). Portuguese territories were populated by slaves who were declared not to be citizens in the nineteenth century constitutions. According to the norms of historical Portuguese customary law, which were inspired directly by Roman law, like slaves in the Roman empire, these slaves enjoyed the right to become freedmen. These freedmen were full citizens in all the Portuguese Constitutions of the nineteenth century, although, just as in the case of the Roman empire, they could lose their citizenship rights and status if they contravened the ancient notions of Roman law that required the freedman's good behavior and grateful attitude toward their former owners (*Ordenações Filipinas*, Liv. 4, Tit. 63; Silva 2009, 239–57; 335–377; Oliveira 1988; Lara 2000; Grinberg 2006). The condition of these slaves and freedmen were sometimes briefly described by the Portuguese legal doctrine, but as a residual and exceptional one, which would gradually disappear as *Progress* made its way in *History*, creating conditions for the approval and enactment of abolitionist legislation. It should be borne in mind that while the institution of slavery in the Roman context "was not regarded as a moral evil that had to be suppressed" (Bradley 2010, 627), in the nineteenth century slavery was dominantly described as a morally unacceptable and legally impossible institution, and, as such, a transitional one, which would gradually disappear (Silva 2009; Grinberg and Silva 2012; Marques 2006).

A second group that was not given the option of Portuguese citizenship in the first Portuguese Constitution (1822) were the Amerindians, the indigenous inhabitants of America (Perrone-Moisés 1992; Almeida 2003). This omission is significant because it took place despite the diversity of statuses they were granted during the modern period.[17] In contrast with their legal condition in Spanish or North American Constitutional thought, in the Portuguese Constitution of 1822 native Americans were neither citizens nor "domestic independent nations" (Clavero 2000, 206; Herzog 2006, 226–227). Instead, Article 240 of that Constitution (which became

16 The different cultural backgrounds of imperial populations, entailing a great variety of distinct legal cultures and various legal orders has been insistently recalled by the works of Stoler 1995; Stoller and Cooper 1997; Benton 2010; Hespanha, this volume; Engle 2010; and many others.

17 "Indios aldeados" and "Nações aliadas," with whom the colonial administration made political alliances and legal treatises against the "índios hostis," "índios bravos" ou "índios estrangeiros" (Perrone-Moisés 1992, 121–128)

immediately obsolete due to the independence of Brazil), turned the Amerindians into subjects of a "civilizational mission" that could convert them into future Portuguese citizens (Silva 2009; 266–284; Sposito 2006). But slavery and its institutions, as well as the indigenous from America and their status, were not the only feature of the imperial demography that upset the image of universalism and uniformity. Different categories of citizens were also the norm in the colonies as well as in the metropolitan territory, for, as was common to the constitutional culture of the nineteenth century, Portuguese citizens had varying access to political or even civil rights (Silva 2009, 145–160).

3. UNIVERSALISTIC APPROACHES TO COLONIAL CITIZENSHIP IN PORTUGUESE EMPIRE

The assertion that "all those who were born in overseas provinces are Portuguese citizens[…]," no matter their origin, culture, or the color of their skin, was emphatically proclaimed in the Portuguese political discourse of the nineteenth century. As indicated above, this assertion gained legitimacy in the Portuguese Constitutional Charter of 1826 (Art. 7). This universal character of citizenship was more than once put into action in central and local projects led both by the agents of colonial power and by some groups of the "colonized." What is noteworthy is that when leading such projects, the colonized presented themselves as Portuguese citizens and claimed corresponding rights. Bernardo de Sá Nogueira Figueiredo, Marquês de Sá da Bandeira (1795–1876), was the Portuguese politician who over the course of the 19th century strove the hardest to reform and enlarge the overseas territories. In the course of these efforts he appealed more than once to the universality of rights and to Portuguese citizenship to promote the inclusion of the indigenous groups of several territories. He sought support for his campaign for the abolition of slavery by drawing attention to the declaration of freedom as a right in Article 145 of the Charter (Sá da Bandeira 1873, 13–14). He did the same when he attempted to put an end to the practices of forced labor in Angola, reminding the local authorities that the negroes recruited for this work in the interior of Angola were citizens and that freedom of work was a right recognized by the Constitution as belonging "to all Portuguese citizens, irrespective of their place of birth, race or color."[18] In 1839, he had already declared his support in favor of the citizenship rights of the Muxiluandas, the inhabitants of the islands adjacent to São Paulo de Luanda, as well as his opposition to their subjection to forced labour in maritime activities related to the slave trade.[19] Later, in the context of his plans for expansion on the Mozambican coast, and also in the context of local conflicts between Portuguese-born colonists, traders from India, and Muslim populations, he granted citizenship and political rights to the Muslim inhabitants of Sancul, in the Island of Mozambique in 1858. In doing so, he went

18 *Portaria* of 22 September 1858, *Annaes do Conselho Ultramarino*, Parte Oficial, série I, cited, p. 639.

19 Portaria de 21 de Março de 1839, *Boletim do Conselho Ultramarino, Legislação Novíssima*, Lisboa, Imprensa Nacional, 1867, vol. I (1834–1851), p. 85.

against a decision of the Government Council of Mozambique, which in 1846 had denied these Muslim inhabitants the right to vote by arguing that they were not Portuguese citizens.[20] One of his aims was to motivate the inhabitants of Sancul to register their slaves, an aspect of the abolitionist legislation he was trying to enact. This allows us to conclude that Sá da Bandeira´s legal arguments in favor of universal citizenship rights were directly related to his plans to develop a modern plantation system based on free labor in the African territories.

Despite his programmatic interests in Mozambique, Sá da Bandeira was nevertheless committed to the principles that he based this program on. This is evidenced in the manner in which he asserted the citizen status of all the Hindu and other non-Christian populations living in Portuguese Asia or Africa.[21] His objective was to take a position in a long-lasting conflict in Portuguese Asia, centered on the territory of Goa in the Indian subcontinent.[22] But his decision shows that he admitted not only the multi-religious and polylingual nature of Portuguese nation, but also overseas legal pluralism: as we shall see, non-Christian populations from India were not submitted to Portuguese Law.

The same universalistic approach was taken by Hassan Musa Lukusedi, the Sheik of Sancul himself, when asking the Queen of Portugal to grant him political rights (Pélissier 1994, 63–64), and by a deputy of Indian origin from Goa, João Xavier de Sousa Trindade, Bishop of Malaca, when arguing in the Parliament in favor of the political rights of the non-Catholic inhabitants of the Goan territories named "New Conquests", by claiming that they were Portuguese citizens.[23] These Goan Catholic elites of Indian origin were the most persistent authors of the notion that an equal relationship linked the Portuguese metropole to its colonies. Their arguments provide a clear example of how the agency of the colonized was central to the recognition of their rights, as well as in the construction of colonial ideologies. In a certain way, those elites were seen as a kind of living proof of the universal nature of Portuguese citizenship, for since the beginning of the liberal regime they had been represented by elected deputies of Indian origin in the Portuguese Parliament. Two of the three deputies elected to represent the Estado da India in the first Portuguese Constituent Assembly (1820–11), where the decision was made in favor of the political representation of all the overseas' provinces, had been recruited from this group. This group then continued to elect representatives to other constituent and ordinary assemblies throughout the nineteenth century (Carreira 1998, 664 ff.; Oliveira e Carmo 2011, 55 ff.). One of them was Bernardo Peres da

20 *Annaes do Conselho Ultramarino, Parte Oficial, série I*, cit., p. 177.

21 *Portaria* of 7 November 1838, Vide *Boletim do Conselho Ultramarino, Legislação Novíssima*, vol. 1 (1834–1851), Lisbon, 1867, p. 68.

22 This territory was marked by the presence of three dominant groups of local elites: Portuguese from the kingdom (the "reinóis"), the caste of the Portuguese descendants (the "Luso-descendentes"), and the native Catholic elites ("naturais"). It was the discussion around the inclusion or the exclusion of a fourth group, the non-Christian elites, from the right to choose the deputies that would represent the territory in the Parliament, that opposed the first three groups (Lobo 2013, 113–119).

23 *Diário da Câmara dos deputados* (*DCD*), 15 September 1840, 334.

Silva (1755–1844), another "natural" from India, who was nominated Governor (Perfeito) of the Estado da India after the liberal civil war. In 1832, while asserting the fidelity of Goans to the new liberal regime, he systematically elaborated the idea that indigenous people from the Overseas were Portuguese citizens (Silva 1832; Lobo 2013, 8–16). This argument is once again very revealing of the negotiated nature of Portuguese colonial citizenship.

Also represented in the Parliament, although with less influence, were other colonial elites of indigenous origin from the African territories, especially Angola. One of these "sons of the soil" ("filhos da terra"), Joaquim António Carvalho e Menezes, who was descended from a slave woman and managed to be elected deputy for Angola in the early 1840's, was a singular but expressive example (Dias 1981, 269; Corrado 2007; Havick and Newitt 2007). It is worth recalling that full Portuguese status ("naturais portugueses") had been extended to both these "filhos da terra" as well as to the "naturais" from India during the modern period due to their birth in Portuguese territory, but also (or mainly) due to their conversion to Catholicism. During this period non-Catholics ("gentios") could not accede to the status of "naturais" unless they converted; their baptism was described by modern legal doctrine as a kind of new birth which turned them into "naturais portugueses" (Hespanha 1995, 29–30; Hespanha, this volume). This status formally subjected them to Portuguese common law, Portuguese courts and also to the privileges of the "reinóis," even though this general rule almost always suffered from distortion in its local observance (Hespanha, this volume; Xavier 2011).

4. OTHER (CONFLICTING) NARRATIVES ABOUT CITIZENSHIP AND LAW IN PORTUGUESE EMPIRE

Statutory texts like the Portuguese Constitutional Charter or Sá da Bandeira's local decrees present us with a universalistic and inclusive approach to colonial citizenship. Nevertheless, it is also possible to demonstrate how the legal status of indigenous people was a much more open-ended question and also how, far from being general phenomena, the patterns of the application of Portuguese law in overseas territories were marked by legal discontinuity and a multiplicity of jurisdictions. To illustrate this, I will concentrate on three related aspects that produced negative effects in what concerned the inclusion of all indigenous people in Portuguese citizenship: religion; the coexistence of Portuguese law with customary legal contexts; and, finally, common perceptions of what being Portuguese meant in nineteenth century discourses on the Portuguese nation and nationality.

Catholicism was the official religion of the State in all the Portuguese Constitutions of the nineteenth century. In Article 6, the Constitutional Charter accepted observance of other religions, but only in private and only for foreigners who had became naturalized citizens. It was assumed that persons of "Portuguese origin" were Catholic, and a great number of Portuguese politicians, jurists, and other Portuguese elites refused to conceive of the non-Catholics in the overseas territories as Portuguese (Silva 2007). Their existence, however, was one of the main arguments used by those who, like Sá da Bandeira, sought to put an end to the official status of

the Catholic religion or to enlarge the number of indigenous people able to vote (or to be counted to calculate the number of deputies to be elected) in each overseas province. It was in the context of this discussion that António Luís de Seabra, the author of the first Portuguese Civil Code (1867) argued that the Constitutional Charter presupposed that "Portuguese citizens, the residents or natives of the Kingdom, were really Catholic." Seabra believed that Article 6 of the Constitutional Charter did not refer to people of other religions in the overseas because these populations were not composed of Portuguese citizens. His opinion on this subject was definitive on what concerned the status of indigenous people from the Empire:

> As for the Portuguese subjects of the overseas provinces who profess other beliefs, and carry out some of their worship in public […], we reply that, in our humble opinion, Article 6 of the Charter *considered only the Kingdom, and its indigenous citizens or those who are in fact Portuguese,* and not the peoples who, due to conquest or any other means, have been submitted to Portuguese dominion (Seabra 1866, 32).

What is important in this discussion about the religion of Portuguese people is that it gave rise to an interpretation that dramatically contradicted the universal character of Article 7 of the Constitutional Charter. This contradiction was repeated in the case of Article 18 of the Civil Code approved in 1867: it undermined the broad *ius soli* of the Charter, establishing instead that Portuguese citizens were "those who are born in the Kingdom, of a Portuguese father and mother."[24] In this case, the principle of *ius soli* was retained as the primary criterion for discriminating between Portuguese citizens and foreigners. But both the Civil Code and the civil doctrine that commented on it remained silent on the matter as regards the *dominions* (Ferreira 1870, 40). This omission gained significance with the (re)introduction of the criterion of *ius sanguinis*. Being the son of Portuguese parents had been the main criterion in defining nationality/citizenship in the first Portuguese Constitution (1822). This requirement of birth was also specified in the works of the jurists from the late eighteenth and the first part of the nineteenth century whom we quoted in the introduction of this text, who nevertheless made reference to the *dominions*. If we interpret their words in the light of the opinions of the author of the Civil Code, then the universalistic scope of the discourse of those jurists, suggested by the reference to Caracalla, becomes weaker. As I noted above, the phrase "son of Roman citizens" was lacking in Caracalla's edict as a condition for being a Roman citizen, and also in the Portuguese Charter of 1826. The presence of this qualification in Portuguese legal texts as well as in the decision taken in 1867 not to include the dominions in the *ius soli* compel us to question who the sons of Portuguese citizens overseas were. Its presence also enables us to present the hypothesis that the doctrinal reference to the extension of Portuguese law to those territories had more to do with the presence of European/Portuguese "naturais" and their descendents in extra European territories than with the *en masse* submission of their indigenous people to Portuguese law. The situation created by the decree of 1869 that extended the

24 *Código Civil Português, aprovado por carta de lei de 1 de Junho de 1867*, Lisboa, Imprensa Nacional, 1868, 2ª ed. (http://www.fd.unl.pt/Anexos/Investigacao/1664.pdf, 10.10.2013, accessed in October 2013).

Portuguese Civil Code of 1867 to the overseas territories provides us with some more information about these questions.

The decree of 1869 sought to continue the liberal colonial policy of enforcing Portuguese law codes in the colonies. The aim of the decree, as expressed in its preamble, was to put an end to the inequalities that stemmed from the submission of overseas citizens to a different civil legislation.[25] This distinction was one that had come into force after the approval of the Civil Code in the Kingdom, in 1867. Nevertheless, it was that same decree that offered large groups of indigenous people the opportunity to opt for their "customary law," instead of the Civil Code, in their private dealings. Afterward, the actual legal pluralism of the overseas territories was officially recognized as the "law of everyday life" in those distant provinces (Hespanha 1995; Ferreira 2012, 88–128; Silva 2004–5). The Civil Code and customary law would formally overlap. Nevertheless, there were some important theoretical limitations introduced in the enforcement of customary law in order to give life to the idea of the *civilizing mission* carried on by the colonizers. For example, as was set out in the 1869 decree, customary law would not be valid when clashing with "morals or the good order." In addition, it should be interpreted in a "civilized" way through its codification by the colonial authorities, who would also apply them in special courts (Silva 2004–05). In accordance with the lessons of Henry Sumner Maine (1822–1888), Portuguese colonial administrators, like colonial administrators of other colonial empires, would take, "[…] a special responsibility to adjust law in ways that would encourage gradual change" (Benton 2010, 246). As a consequence, although very gradually, traditional usage and customs ("usos e costumes") should be modified, in consonance with what were claimed to be more civilized legal principles (Silva 2004–5). As had been the case in the Roman Empire after the Antonine Constitution, "homogeneity had to be produced out of heterogeneity, unity out of plurality, without disruption to preexisting social and economic relations" (Ando 2011, 21). Nevertheless, in contrast with the Roman case, the existence of separate bodies of law remained legally possible in the Portuguese Empire.

The result of the application of the Civil Code overseas was that from 1869 onward, a large segment of the indigenous populations of the Portuguese territories were legally able to choose, as individuals, the legal system to which they wished to be subject. But no rule was enshrined as to the effect of this choice with regard to Portuguese citizenship, as was the case in other countries where legal pluralism had been recognized in their respective colonies. In French Algeria, an example that was referred to in the Portuguese 1869 decree, Muslim populations who opted to be ruled by the Islamic law were classified as French "nationals"; they had the opportunity to acquire French citizenship, although only if they renounced Islamic law and submitted to French Civil Code. But no provisions of this type were established in the 1869 Portuguese decree. Did this absence mean that those who opted to be submit to a legal system other than the Portuguese one could still be Portuguese

25 "[…]à desigualdade dos cidadãos de além mar continuarem sujeitos a uma legislação civil diferente da que vigora no continente do Reino," Decreto de 18 de Novembro de 1869, *Diário do Governo*, nº 265, 20 de Novembro (http://www.fd.unl.pt/Anexos/Investigacao/7521.pdf., acceded 10.10.2013).

citizens? Or did it mean that submission to the Portuguese legal system was the feature that identified a Portuguese citizen in the Empire, as had been the case with the Christianized populations in the modern period?

This idea that it was submission to Portuguese law that turned indigenous people into Portuguese citizens had been articulated on some occasions during parliamentary discussions. For example, when João Xavier de Sousa Trindade, the Indian deputy referred to above, asked for political rights for the non-Catholic people of the "New Conquests," he justified his claim by stating that he *saw* that they were Portuguese citizens precisely because they submitted themselves to Portuguese laws[26] and obeyed Portuguese authorities:

> […] I see that the inhabitants of those Provinces are Portuguese citizens; they observe the laws that we do here; they respect and comply with the Portuguese authorities and they have all the requirements that the Constitution demands. As such, they are as good citizens as we are here except for the difference of religion, and that is no reason for their exclusion.[27]

When describing the legal world after Caracalla, Mathisen suggests that the Antonine Constitution "was not a one-time grant but was meant to be self perpetuating," because, after its promulgation, "Barbarians held office, owned and transferred property, made wills, went to Roman courts, and generally made use of *ius civile* all without formally receiving citizenship."[28] It is possible that a similar process was ongoing in the territories of the Portuguese Empire before and after the 1869 decree: indigenous people of the Empire became Portuguese citizens simply by functioning as such (i. e., by making use of Portuguese law in Portuguese courts, just as, in the modern period, by becoming Catholics and making use of Portuguese law). But we should not forget that, unlike in the age of Caracalla, juridical belonging to the Portuguese community and the conditions required for it were now codified in the Law. Both the Constitutional Charter and the Civil Code defined the conditions that had to be met to be a Portuguese citizen or to gain access to Portuguese citizenship. If, in this framework, we recall Article 7 of Constitutional Charter, we arrive at the conclusion that both those who chose Portuguese civil law or indigenous "customary law" were Portuguese citizens as soon as they were born in Portuguese territory, which included the *Dominions*.[29] However, as referred to above, the Civil

26 This was not accurate, since from the time when the territories they inhabited were incorporated into the territory of the Estado da Índia in the latter part of the eighteenth century, they enjoyed the privilege of being submitted to their own customary law (Lopes 1999, 80).

27 "[…] eu *vejo* que os habitantes daquelas Províncias são cidadãos Portugueses; eles observam as leis que nós aqui fazemos; eles respeitam e obedecem às autoridades Portuguesas, e têm todos os requisitos que a Constituição exige, e por isso são eles cidadãos tão bons, como nós, que estamos aqui, com a única diferença da Religião, e não há razão nenhuma para a sua exclusão […], D. C. D., 15/10/1840, p. 334.

28 All free foreign *peregrine* were potential citizens as long as "[…] they settled in the Roman Empire and took up the same obligations and identity as had the provincial peregrine of 212" (Mathisen 2012, 754–755).

29 And what about all the individuals who could chose Portuguese law but were not born in Portuguese territory? At least in theory, they would have had to first to gain access to Portuguese citizenship by observing the criteria established in the Constitution for foreigners to become a Portuguese citizens.

Code had changed the amplitude of the *ius soli* criterion by restricting it to the kingdom at the same time as it gave a new centrality to the *ius sanguinis*. On the other hand, nothing in the letter of either previous law code allows us to think that submission to the Portuguese law turned colonial indigenous people into Portuguese citizens, unless this submission could be interpreted as a sign of being a "son of a Portuguese citizen," which was far from clear.

The first conclusion that we can draw from the previous paragraphs is that legal discourses and positive law about Portuguese citizenship overseas gave rise to what we might call a *principle of uncertainty*. This uncertainty was reflected in the legislative and administrative documents produced centrally and locally, and was probably one of the reasons why no attempt was made to calculate overseas representation on the basis of a population headcount. Since the beginning of the liberal regime the number of deputies for each of these territories was determined through a procedure which took no account of the size of their respective populations. Counting the number of free people in the overseas territories during the nineteenth century would be a difficult task, a difficulty compounded by the challenges in demarcating tiny and widely dispersed Portuguese territories in Asia and Africa. In order to get around these problems, the deputies of the first Constitutional Assembly (1820–22) had agreed that, as the territories in question were thinly populated, exceptional criteria were needed to calculate the number of their deputies, so that each of those territories would elect at least one deputy, irrespective of the number of their *free* inhabitants. In order for the islands of São Tomé, Mozambique and its dependencies, Goa and Macao, to be represented at national level, for example, they established the "[…] principle that the key consideration was not the population of each one of these establishments […] but rather the interests of these extremely wealthy possessions, what they are today and what they may become in future, and also the glorious memory of their incorporation into Portuguese territory."[30] These criteria were frequently questioned by the deputies from Angola and India, who claimed, without success, that the demography of both their provinces justified the election of a larger number of deputies (Silva 2009, 176–178).

It was in accordance with those principles that 7 deputies from the African and Asian provinces were elected to attend the first Constitutional Assembly, in 1822, even though not all of these representatives actually attended the assembly. After the civil war, the first electoral law (Instruções de 7 de Agosto de 1826), established the number of 6 deputies to represent the overseas territories (1 to Estado da Índia; 2 to Cabo Verde, Guiné and Cacheu; 1 to Reino de Angola e Benguela; 1 to Moçambique and also 1 to Timor, Solor e Macau). Few changes to these numbers were introduced over the course of the century, except in the case of India, where the number of deputies oscillated between 1 and 4. The contingent of overseas deputies was at its largest – fourteen – under the law of 9 April 1838, due to the influence of

30 *Diário das Cortes Gerais Extraordinárias e Constituintes da Nação Portuguesa (DCGECNP)*, session of 18 June 1822, p. 474. Dep. Borges Carneiro.

Sá da Bandeira as Minister of the "Marinha and Ultramar." However, from then on, the tendency was for a smaller group, falling to a minimum of six.[31]

The electoral principles and numbers identified above could have been be related to uncertainty about the demography of the empire and its territorial limits, as well as to the minuscule dimensions of the extra-European Portuguese territories in the nineteenth-century. But they can also be related to the ideas that Portuguese citizens were the sons of Portuguese parents, or those who obeyed and submitted to Portuguese law, or even those who were Christians, ideas that could significantly limit the number of indigenous people who could be counted as citizens in the overseas territories. In addition, we must recall that the exclusionary effects of these ideas were amplified by other (metajuridical) discourses, where the concept of a Portuguese nation increasingly acquired an organic meaning. For instance, the statements about being Portuguese in the constitutional assemblies of the nineteenth century reveal how difficult it was for these representatives to imagine the Portuguese nation as multicultural or multi-religious one. In 1821, when the deputies decided in Article 21 of the first Portuguese Constitution, that Portuguese citizens were the sons of Portuguese parents, they agreed that Portuguese were all those who "follow the same religion, speak the same language, obey the same King, embrace and defend the same free Constitution."[32] Portuguese legal doctrine added that the Portuguese were those who "love the Portuguese fatherland,"[33] this feeling being one of the duties inscribed in the text of that Constitution to be observed by Portuguese citizens.[34] Some moments in the Constitutional discussion were even marked by the language of descent and blood. To most of the deputies, being Portuguese was not just a question of political or legal status, but implied also a cultural and even "ethnic" identification, as we have already seen in the discussions of religion. These kinds of discourses also arose later, in the context of the conflicts and local episodes of resistance to the colonial authorities that occurred in the 1830s, when it was stated that overseas peoples could hardly be subjected to the reforms underway in the metropolis, because the "new institutions" were unsuited to the "character, temperament and customs of these peoples."[35] This was the opinion taken by S. X. Botelho, a deputy who had been elected to the constituency of Goa in the legislature of 1838–1840 despite having been born in Lisbon and with weak relations to the Goan territories.[36] In the previous year, another deputy had been clear in his opinion that "the majority of the settlements in the Provinces in question (mainly from Cape Verde southwards) are not all homogenous: *strictly speaking, these people cannot*

31 The electoral legislation was consulted in Almeida, 1998.

32 *DCGECNP*, session of 13 August 1822, p. 139.

33 Basílio Alberto identified a love for the fatherland as the fundamental condition for access to Portuguese nationality, a sentiment which was to be discovered "first by blood, and second by the place of birth" (Pinto 1840, Lesson no. 9, 113).

34 On the coexistence an of an organic "historical nation" and the "constitutional patriotism" in this first constitutional debate see Silva 2009 and Catroga 2012, 360–370.

35 Câmara dos Pares, session of 15-03-1836 in *Diário do Governo*, 12 April 1836, p. 487, S. X. Botelho.

36 Câmara dos Pares, session of 21-03-1836, *Diário do Governo*, 21 April 1836, p. 527.

be called Portuguese. There are peoples of castes and civilizations very different from our own."[37]

The idea that the Portuguese national community was composed of those who shared the same customs, religious beliefs and language also played a central role in the legal texts of the nineteenth century. These texts were rich in references to the idea that nations were and should be homogeneous in matters which concerned race, idiom, and costumes, like those of the Portuguese (Salema 1838, 22; Brito 1871, 357). On the other hand, doctrinal references to the overseas provinces, to the pluricontinental nature of Portuguese nation, or to the diversity of their peoples were a rare exception in those texts, probably because, as was the case with the institutions of slavery, it was difficult to conceptualize the Empire within a liberal legal order. Nevertheless, we must also underline that these narratives were not only related to genuine self-perception of Portuguese identity. Another question perturbing some metropolitan circles was the subversion of colonial systems of social differentiation involved in the grant of equal rights to some of the indigenous population of the Empire. The words of S. X. Botelho were eloquent and expressed the radical approach of some "reinóis" who felt that equality would erase the distinction between conquerors and conquered:

> […] from Cape Verde to far-flung Goa, the inhabitants are conquered peoples, who far outnumber the locally born population of European descent, and the Europeans stationed there for trade, or military purposes, meaning that the elections will always play into the hands of the indigenous peoples descending from the conquered, and we, the descendants of the conquerors, would remain in their dependency.[38]

Finally, all these disparate narratives about Portuguese colonial citizenship coexisted with an intellectual effort to resolve the tension existing between uncertainties around the status of indigenous people and universal ideas about citizenship. In the nineteenth century, this effort gave rise to an abstract and vague discursive narrative according to which *all* those people would be, in the future, converted to Catholicism, to the Civil Code, and to the "Portuguese culture." Within this narrative, several groups of indigenous people were sometimes perceived as a kind of "civilizing subjects in transition to citizenship" (Hall 2002, 6–22). These last statements, along with important legal facts – such as the constitutionally recognized status of overseas provinces as equal to those of the metropole, the grant of Portuguese citizenship to all freedmen in all the Constitutional texts (which legally meant, as a deductive consequence, that all freeborn Africans were citizens), or the universalist manner of defining citizenship in the Constitutional Charter – were the raw material that fed later persistent ideas about the "assimilationist" nature of Portuguese colonial policies, an element that colonial authors of the twentieth century have explored as an example of similarity with Roman Empire's universalistic and erroneous "assimilationist" approach. As I have already demonstrated in the first paragraph of

37 *Actas da Câmara dos Pares do Reino de Portugal*, ordinary session of 11 April 1835, p. 313, Par Sarmento. This organic approach to Portuguese nationhood was emphasized in the legal doctrine published after the independence of Brazil.

38 Câmara dos Pares, session of 21-03-1836, *Diário do Governo*, 21 April 1836, p. 527.

this text, their critical views about both universalism and "assimilationism" had consequences on the colonial citizenship policies enacted in the first half of the twentieth century. During this period, the territorial enlargement of the African provinces, the related task of governing growing numbers of African people and the problem of their increasing presence in the demography of the Empire (and its feared consequences in the representative institutions), and a new ideological context where racist approaches gained force gave rise to the enforcement of the exclusionary *indigenato system*. The invention of the legal categories of *indígenas* and *assimilados* reflected a shift in the conceptualization of citizenship that explicitly rejected universalistic approaches, and coincided with the invention of the idea that earlier nineteenth century policies had automatically turned all indigenous people into Portuguese citizens, an oversimplification that sought to justify new approaches to colonial citizenship.

5. CONCLUSION

In spite of the omnipresence of a universalist approach to Portuguese citizenship until the last years of the nineteenth century, uncertainty and controversy also surrounded the question of the legal status of indigenous people. Several factors can explain this uncertainty. In the first place, it concerned conflicting visions for the governance of the Empire, conflicts whose rationale cannot be understood without methodological approaches that reject simple oppositions between colonizers and colonized. Different narratives about the legal status of indigenous people coexisted, expressing contrasting interests and ideological visions. Sá da Bandeira's legal documents, for instance, were directly related to his ideological position. But, as discussed above, they were also linked with concrete situations that he faced and had to resolve, such as the enforcement of the abolitionist legislation that he got approved in the Parliament. Another example was the maintenance of good relations with the Muslim sheiks whose support Sá da Bandeira needed in order to preserve Portuguese "semi-sovereignty" over strategic Mozambican ports, and who could, in that situation, negotiate their "Portuguese citizenship" with Portuguese authorities.

Both these uncertainties and instabilities were also a result of the geography of the Portuguese empire, which was largely composed of tiny dispersed settlements in the interior, trading posts on the coast, and some shifting areas of shared sovereignty with African and Asian authorities. After the independence of Brazil, the empire lost the bulk of its territory and its colonial possessions were reduced to a few towns and commercial enterprises, most of them near the coasts of Africa and Asia. The weakness of the administrative appropriation of the hinterland or the absence of even a minimal infrastructure in these territories is attested in contemporary documents as well as in historiographic texts (Alexandre 1998, 46 ff.). As in other empires, this configuration of the overseas territories had consequences for the application of metropolitan law and the legal status of at least part of the indigenous people: geographically discontinuous territories and patterns of legal variation gave rise to different and shifting categories of subjects, some of them occupy-

ing "[…] positions simultaneously within and without the imperial legal order" (Benton 2010, 226). In the first years of the twentieth centuries the establishment of the *indigenato system* tried to solve this problem of uncertainty in an anti-universalistic and nationalistic way. This was the context that explains why the universalistic Roman model, that in the legal doctrine of the early nineteenth century was a dignifying one, came to be identified in the first years of the next century as the cause of a mistaken tendency to cultural, political and legal "assimilation," a tendency that should be contradicted by the positive and scientific colonial approaches that were being discussed and theorized in national and international Colonial Congresses promoted all over Europe. It was now believed that "Science" would correct the colonial mistakes introduced by the "Latin character" of the Portuguese nation. Future Portuguese colonial policies would be shaped by scientific knowledge of the variety of local circumstances and peoples. As a result, "metaphysical principles" that had favored previous forms of Latin universalism and assimilation as well as their Roman sources of inspiration would be definitively set aside.[39]

WORKS CITED

Albuquerque, J. Mouzinho de (1956). *Mousinho – governador de Lourenço Marques – 25 de Setembro de 1890–4 de Janeiro de 1892*. Lourenço Marques. Imprensa Nacional de Moçambique.

Alexandre, Valentim (1998). "As Periferias e a Implosão do Império." In F. Bethencourt and K. Chaudhuri, eds., *História da Expansão Portuguesa*. Lisboa. 4: 46–60.

Almeida, Cândido Mendes de, ed. (1870). *Código Philippino ou Ordenações e leis do Reino de Portugal recopiladas por ordem d'el rey d. Philippe I*. 14º ed. Rio de Janeiro.

Almeida, Maria Regina Celestino de (2003). *Metamorfoses indígenas. Identidade e cultura nas aldeias coloniais do Rio de Janeiro*. Rio de Janeiro.

Almeida, Pedro Tavares de (1998). *Legislação eleitoral portuguesa (1820–1926)*. Lisboa.

Ando, Clifford (2011). *Law, language and empire in the Roman tradition*. Philadelphia.

Benton, Lauren (2010). *A search for sovereignty, Law and Geography in European Empires, 1400–1900*. Cambridge.

Biedermann, Zoltán (2004). "De regresso ao Quarto Império: a China de João de Barros e o imaginário imperial joanino." In R. Carneiro and A. Matos, eds., *D. João III e o Império, Actas do Congresso Internacional comemorativo do seu nascimento*. Lisboa: 103–120.

Bradley, Keith (2010). "Freedom and Slavery." In A. Barchiesi and W. Scheidel, eds., *The Oxford Handbook of Roman Studies*. Oxford: 625–635.

Blackburn, Robin (2012). "Slavery, Emancipation, an Human Rights." In Kate E. Tunstall, ed., *Self Evident Truths? Human Rights and the Enlightenment*. London: Boomsbury.

Brito, Joaquim Maria Rodrigues (1871). *Filosofia do Direito*. Coimbra.

Burbank, Jane and Cooper, Frederick (2008). "Empire, droits et citoyenneté, de 212 à 1946." *Annales HSS* 63: 495–533.

Cahen, Michael (2012). "*Indigenato* before Race? Some Proposals on Portuguese Forced Labour Law in Mozambique and the African Empire (1926–62)." In F. Bethencourt and A. Pearce, eds., *Racism and Ethnic Relations in the Portuguese Speaking World*. London: 149–171.

39 It was, for example, the opinion expressed by Almeida Ribeiro, the Colonial Minister who first got an indigenous system approved, in 1914 (Ribeiro 1917, 6).

Cardim, Pedro (2010). "La aspiración imperial de la monarquía portuguesa (siglos XVI y XVII)." In G. Sabatini, ed., *Comprendere le Monarchie Iberiche: Risorse Materiali e Rappresentazione del Potere*. Rome: 37–72.

Cardim, Pedro and Sabatini, Gaetano (2011). "António Vieira, Roma e o universalismo das monarquias portuguesa e espanhola." In P. Cardim and G. Sabatini, eds., *Roma e o Universalismo das monarquias portuguesa e espanhola*. Lisboa: 13–28.

Carreira, Ernestina (1998). "Índia." In J. Serrão and A. H. de Oliveira Marques, eds., *Nova História da Expansão Portuguesa*. Lisboa 10: 657–714.

Catroga, Fernando (2012). "'Quimeras de um façanhoso Império': O patriotismo constitucional e a independência do Brasil." In J. Hermann and F. Nogueira de Azevedo, and F. Catroga, eds., *Memória escrita da história e cultura política no mundo luso-brasileiro.* Rio de Janeiro: 327–387

Clavero, Bartolomé (2000). *Ama Llunku, Abya Yala: Constituyencia Indígena y Código Ladino por América*. Madrid.

Cooper, Frederick (2005). "States, Empire and Political Imagination." In F. Cooper, ed., *Colonialism in Question: Theory, Knowledge, History*. Berkeley: 153–204.

Cooper, Frederick and Stoler, Ann Laura, eds. 1997. *Tensions of Empire. Colonial cultures in a bourgeois world*. Berkeley.

Corrado, Jacopo (2007). "The Rise of a New Consciousness: Early Euro-African Voices of Dissent in Colonial Angola." *E-Journal of Portuguese History* 2. (http://www.brown.edu/Departments/Portuguese_Brazilian_Studies/ejph/html/issue10/html/jcorrado_main.htm)

Dench, Emma. "Roman Identity." In A. Barchiesi and W. Scheidel, eds., *The Oxford Handbook of Roman Studies*. Oxford: 267–280.

Dias, Jill (1981). "A Sociedade colonial de Angola e o liberalismo português." In M. H. Pereira, ed., *O Liberalismo na Península Ibérica na primeira metade o século XIX*. Lisboa 2: 267–286.

Dubois, Laurent (2004). *A Colony of Citizens: Revolution and Slave Emancipation in the French Carribean, 1787–1804*. Virginia: University of North Carolina Press.

Ferreira, José Dias (1870). *Codigo Civil Portuguez Annotado*. Vol. I. Lisboa.

Ferreira, Roquinaldo (2012). *Cross-Cultural Exchange in the Atlantic World. Angola and Brasil during the Era of the Slave Trade*. Cambridge.

Fradera, Josep M (2008). "Esclavage et la logique constitutionnelle des empires." *Annales HSS* 63: 533–563.

Freire, Pascoal José de Melo (1789). *Instituições de Direito Civil Português, tanto público como particular*. Portuguese version published in the *Boletim do Ministério da Justiça*.

Gonçalves, Caetano (1897). *Organização Judiciária do Ultramar (Bases para um projecto de Reforma)*. Lisboa.

Grinberg, Keila (2008). "Re-escravização, direitos e justiças no Brasil do século XIX." In S. H. Lara and J. M. N. Mendonça, eds., *Direitos e Justiças no Brasil: ensaios de história social*. Campinas: 101–128.

Hall, Catherine (2002). *Civilizing Subjects. Metrópole and Colony in the English Imagination 1830–1867*. Cambridge.

Havick, Philip J. and Newitt, Malyn, eds. 2007. *Creole Societies in the Portuguese Colonial Empire*. Bristol.

Herzog, Tamar (2006). *Vecinos y Extranjeros, hacerse español en la Edad Moderna*. Madrid.

Hespanha, António Manuel (1995). *Panorama da História Institucional de Macau*. Macau.

Lara, Sílvia H. (2000). "Legislação sobre Escravos Africanos na América Portuguesa." In J. Andrès-Gallego, ed., *Nuevas Aportaciones a la Historia Jurídica de Iberoamérica*. Madrid. Fundación Histórica Tavera/Digibis/Fundación Hernando de Larramendi (Cd-rom).

Liz Teixeira, António Ribeiro de (1845). *Curso de Direito Civil portuguez para o ano lectivo de 1843–44, ou Comentário às Instituições* do Sr. Paschoal José de Mello Freire *sobre o mesmo direito*. Vol. I. Coimbra. Imprensa da Universidade (http://www.fd.unl.pt/Default_1024.asp, "Biblioteca Digital").

Lobo, Sandra Maria Calvinho Ataíde. (2013). *O dessassosego goês. Cultura e Política em Goa do Liberalismo ao Acto Colonial*. Lisboa.

Lopes, Maria de Jesus dos Mártires (1999). *Goa Setecentista, Tradição e Modernidade*. Lisbon.
Marcocci, Giuseppe (2013). *A Consciência de Um Império. Portugal e o seu Mundo (Séculos XV–XVII)*. Coimbra.
Marnoco e Sousa, José Ferreira (1906). *Administração Colonial, Prelecções feitas ao curso do 4º ano jurídico do ano de 1906–1907*. Coimbra.
Marques, João Pedro (2006). *The Sounds of Silence. Nineteenth-century Portugal and the Abolition of the Slave Trade*. New York.
Marry, Sally Engle (2010). "Colonial Law and Its Uncertainties." *Law and History Review* 28: 1067–1071.
Mathisen, Ralph W. (2006). "Peregrini, Barbari, and Cives Romani: Concepts of citizenship and the legal identity of barbarians in the later Roman Empire." *The American Historical Review* 111: 1011–1040.
Mathisen, Ralph W. (2012). "Concepts of Citizenship." In Scott Fitzgerald, ed. *The Oxford Hanbook of Late Antiquity.* New York: 745–763.
Oliveira, Luís Pedroso de Lima Cabral de and Costa, Pedro do Carmo (2011). "Na Dobragem do Meio Milénio – Elites e Genealogia na *Oriental Lisboa*." *Raízes e Memórias*: 1–25.
Oliveira, Maria Inês Cortes de (1988). *O Liberto: seu mundo e os outros, Salvador, 1790–1890*. S. Paulo.
Pagden, Anthony (2002). "Introduction." In A. Pagden, ed., *The Idea of Europe, From Antiquity to the European Union*. Cambridge.
Pagden, Anthony (1995). *Lords of All The World, Ideologies of Empire in Spain, Britain and France (c.1500-c.1800)*. New Haven.
Pélissier, René (1994). *História de Moçambique, Formação e Oposição*. Vol. I. Lisboa.
Perrone-Moisés, Beatriz (1992). "Índios livres e índios escravos, Os princípios da legislação indigenista no período colonial (séculos XVI a XVIII)." In M. Carneiro da Cunha, ed., *História dos índios no Brasil*. S. Paulo: 121–128.
Pinto, Basílio Alberto de Sousa (1840). *Lições de Direito Público Constitucional* (http://www.fd.unl.pt/Default_1024.asp, "Biblioteca Digital," accessed in October 2013).
Ribeiro, Artur Almeida (1917). *Administração financeira das províncias ultramarinas, proposta de lei orgânica e relatório apresentados ao Congresso pelo Ministro das Colónias Artur R. de Almeida Ribeiro e leis n.º 277 e 27*. Coimbra.
Román, Ediberto (2010). *Citizenship and Its Exclusions. A classical, Constitutional and Critical Race Critique*. New York.
Roque, Ricardo (2003). "The Razor's Edge: Portuguese Imperial Vulnerability in Colonial Moxico, Angola." *International Journal of African Historical Studies* 36: 105–124.
Sá da Bandeira, Marquês de (1875). *O Trabalho Rural Africano e a Administração Colonial*. Lisboa.
Saada, Emmanuelle (2006). "The History of Lessons: Law and Power in Modern Empire." In C. Calhpun, and F. Cooper and K.W. Moore, eds., *Lessons of Empire, Imperial Histories and American Power*. New York: 34–47.
Salema, João de Sande Magalhães (1841). *Princípios de Direito Político applicados à Constituição Política da Monarquia Portugueza de 1838 ou a Theoria Moderada dos governos monarchicos constitucionaes representativos*. Coimbra.
Seabra, António Luíz de (1866). *Duas palavras sobre o casamento pelo redactor do Código Civil*. Lisboa.
Silva, Bernardo Peres da (1832). *Diálogo entre um Doutor em Filosofia e um Português da Índia na cidade de Lisboa sobre a constituição política do Reino de Portugal, suas vantagens, e meios de mantê-la[…]*. Rio de Janeiro.
Silva, Cristina Nogueira da (2012). "Natives who were Citizens and natives who were *Indigenas* in Portuguese Empire (1900–1926)." In A.W. McCoy, J.M. Fradera and S. Jacobson, eds., *Endless Empire. Spain's Retreat, Europe's Eclipse, America's Decline*. Madison: 295–306.
Silva, Cristina Nogueira da and Grinberg, Keila (2011). "Soil Free from Slaves: Slave Law in late 18th – early 19th century Portugal." *Slavery & Abolition* 32: 431–446.

Silva, Cristina Nogueira da (2009). *Constitucionalismo e Império. A cidadania no Ultramar português*. Coimbra.

Silva, Cristina Nogueira da (2009b). "Modelos coloniais" no século XIX (França, Espanha, Portugal)." *E-legal History Review* 7: 1–34. (http://www.iustel.com/v2/revistas/detallerevista.asp?id=)

Silva, Cristina Nogueira da (2007). "Liberdade e tolerância religiosa: 'portugueses não católicos' no Ultramar do século XIX." *Historia Constitucional: Revista Electrónica de Historia Constitucional* 8: unpaginated electronic publication. (http://hc.rediris.es)

Silva, Cristina Nogueira da (2004–5). "'Missão civilizacional' e codificação de 'usos e costumes' na doutrina colonial portuguesa (séculos XIX–XX)." *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno* 2: 33–34. (http://www.centropgm.unifi.it/quaderni/33/index.htm)

Sposito, Fernanda (2006). *Nem cidadãos, nem brasileiros, Indígenas na formação do Estado nacional brasileiro*. S. Paulo. (http://www.docudesk.com)

Stoler, Ann Laura (1989). "Rethinking Colonial Cathegories: European Communities and the Boundaries of Rule." *Comparative Studies in Society and History* 31: 134–161.

Ulrich, Ruy Ennes (1909). *Política Colonial. Lições feitas ao 4º ano jurídico do anno de 1908–1909*. Coimbra.

Xavier, Ângela Barreto (2011). "Conversos e Novamente Convertidos. Law, religion and identity in the Portuguese kingdom and empire (16th and 17th centuries)." *Journal of Early-Modern History* 15: 255–287.