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MERÊA, Manuel Paulo (Lisbon, 1889 – Caramulo, 1977)

Born on 2 September 1889, Manuel Paulo Merêa was described by António Manuel Hespanha as "the most important historian of law in contemporary times" (Hespanha, A. M., "Historiografia ..." [Historiography...], 1982, p. 807). Born in Lisbon, the son of Adriano Merêa — a literary critic, piano teacher at the National Conservatory, and author of the art collection *crônicas Musicais* [musical chronicles] — Merêa initially wished to study philology at the Curso Superior de Letras in Lisbon (then the only higher institution for literary studies in Portugal) after completing his studies at the Liceu do Carmo. However, he ultimately enrolled at the Faculty of Law in Coimbra in 1906, where he studied alongside António Sardinha, Cabral de Moncada, and Hipólito Raposo, among others. In Coimbra, Paulo Merêa began his career in the history of law and institutions, publishing his first book in 1912 (at the age of 22), a work he completed while pursuing his law degree (1906-1911). *Origens do Feudalismo e Caracterização deste Regimen* [The Origins and Characterisation of Feudalism]. This was followed by *Evolução dos Regimes Matrimoniais: Contribuições para a História do Direito Português* [The Evolution of Marriage Regimes: Contributions to the History of Portuguese Law] (2 vols.), in 1913. These were not his first noteworthy works. In 1910, following the establishment of the Republic and the appointment of Manuel de Arriaga as rector of the University, he delivered a lecture titled "Idealism and Law". The main ideas of this text included: "the opposition to scientific monism, emphasising the importance of all methods by which the human spirit can engage with reality; the opposition to intellectualism, valuing practical (W. James) and intuitive (Bergson) approaches for understanding reality; the opposition to monism, underscoring the 'redundancy' and 'overabundance' of experience; and humanism, restoring humanity to the centre of the cosmos and combating its objectification by sociologists." (Hespanha, Idem, p. 798). It is worth mentioning that this lecture was written after he had taken a break from his studies due to a health issue in 1908-1909. While in Lisbon during this period, he took the opportunity to attend various classes, notably those of Adolfo Coelho at the Curso Superior de Letras [a higher education institution focused on History, Philosophy and Literary Studies].

The early years of Merêa's academic and intellectual life were marked by significant upheaval in Portuguese political life. After beginning his law degree, he witnessed João Franco's dictatorship, the regicide, and the establishment of the Republic. In 1914, the year he began teaching at the *Faculdade de Direito*



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[Faculty of Law], the First World War erupted. He spent the turbulent years of the First Republic in Coimbra, starting as an assistant professor in the 1st group at the Faculty of Law and later progressing to regular professor in 1915. Between 1920 and 1924, he taught in the History group at the Faculty of Arts and Humanities of Coimbra as a provisional professor, at the invitation of António de Vasconcelos, the History of Portugal course. There, he inspired students such as Paulo Quintela, Sílvio Lima, Costa Pimpão, Torquato de Sousa Soares, and Vitorino Nemésio (Mello, G. S., "Paulo Merêa", 2013, p. 65). In 1924, he returned to Lisbon to be closer to the Torre do Tombo, then returned to Coimbra in 1931, where he taught until 1948 (delivering his final lecture on 16 April of that year). Alongside his university career, Merêa was awarded *honoris causa* degrees by the Faculty of Arts and Humanities of the University of Coimbra and the Faculty of Law of the University of Compostela. He was also a member of several academies, including the *Academia das Ciências de Lisboa* [Lisbon Academy of Sciences], which he left to become a founding member of the *Academia Portuguesa da História* [Portuguese Academy of History], where he held chair no. 23 from 1945 to 1948. He was also a member of the *Real Academia de la Historia* in Madrid. After retiring from teaching early in 1948 due to health reasons, Paulo Merêa remained intellectually active, publishing an extensive body of work throughout the 1950s and 1960s. In 1972, he retired to Caramulo, where he died on 5 January 1977. Throughout his academic career, Merêa had several followers, so much so that some historians claimed to be "his followers without even having been his students" (Faria, M., "Doutor Manuel Paulo Merêa", 1979, p. 3). Guilherme Braga da Cruz was his successor at the Coimbra Faculty of Law, continuing the work of Paulo Merêa but approaching it from a different perspective (Ourliac, P., "L'histoire du droit...", 1982, p. 776).

According to Gizlene Neder, Merêa's departure from Coimbra for the University of Lisbon, where he stayed from 1924 to 1931, was evidence of a certain academic isolation and discomfort with Coimbra. The researcher hypothesised that the historian had a conservative political ideology with a strong Catholic influence, although he kept a healthy distance from the ideological intricacies of Salazarism (Neder, G., "História das ideias..." [History of the ideas...], 2012, pp. 22-23). However, little can be said about Paulo Merêa's political stance, as the historian did not allow his opinions to surface in his written work. Mário Júlio de Almeida Costa wrote that Merêa had never allowed himself to be seduced by "fashionable ideologies", largely because of the liberal thinkers he had studied, and had always remained sceptical about politics. An example of one of the liberal thinkers worked on was Alexandre Herculano, whose personal conception of liberalism was studied by Merêa (Merêa, P., "O Liberalismo de Herculano" [Herculano's Liberalism], *Estudos de Filosofia Jurídica...* [Studies on Legal Philosophy], 2004, pp. 281-296). Paulo Merêa believed that "the supreme path to freedom was culture, as he felt it led to the highest form of independence". Nevertheless, Almeida Costa highlighted Merêa's religious and conservative nature, noting his "profound Catholicism, with hints of mysticism, though admittedly 'troubled' by the liturgical innovations he observed" (Costa, M. J. A., "Prefácio" [Preface]. Merêa, P., *Estudos de Filosofia Jurídica...*, 2004, p. 9).

According to A. M. Hespanha ("Historiografia...", 1982, p. 807), M. P. Merêa's work can be divided into four fundamental phases. The first, from 1915 to 1923, focused on the history of second scholastic political thought;



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the second, from 1923 to 1943, was devoted to the history of the feudal constitution; the third, from 1943 to 1951, focused on the history of Visigothic law, particularly the "personality" and "territoriality" of Visigothic legislation; and the fourth, from 1951 to 1961, was the phase in which he outlined legal education in the 19th century. There was no single field of study that could encompass the historian's entire body of work. In the words of Mário Júlio Almeida Costa, his work extended "into the fields of the history and philosophy of law, comparative legislation and even non-legal areas such as philology, diplomacy and palaeography" (Costa, M. J. A., "Evocação dos Profs. Doutores..." [In remembrance of Prof.], 1987, pp. 233-234).

Let's start with the years between 1915 and 1923. During this period, Merêa focused particularly on the study of second scholasticism and the political and legal culture of the 16th and 17th centuries. On these topics, the following studies by the historian can be highlighted: "Desenvolvimento da Ideia de Soberania Popular nos Séculos XVI e XVII" [Development of the Idea of Popular Sovereignty in the 16th and 17th Centuries] (1915), "Suarez, Jurista. O Problema da Origem do Poder Civil" (1917), "As Teorias Políticas Medievais no *Tratado da Virtuosa Benfeitoria*" [Medieval Political Theories in the Treatise on Virtuous Benefaction] (1919), *O Poder Real e as Cortes* [Royal Power and the Courts] (1923), "Os Jurisconsultos Portugueses e a Doutrina do «Mare Clausum»" [Portuguese Jurisconsults and the Doctrine of 'Mare Clausum'] (1924) and "A Cultura do Direito entre Nós" [The Culture of Law Among Us] (1925) (A. M. Hespanha, "Historiografia...", 1982, p. 807), works currently re-edited by the Imprensa Nacional in *Estudos de Filosofia Jurídica e de História das Doutrinas Políticas* [Studies on Legal Philosophy and the History of Political Doctrines] (2004) and *Estudos de História do Direito I. Direito Português* [Studies on the History of Law I. Portuguese Law] (2007). This field of research should not be seen only as the study of the second scholasticism, but rather as the study of political doctrines, a field that Merêa considered to be *neglected* by Portuguese historians. This was the expression used by Paulo Merêa himself in 1919, when he wrote on the *Tratado da Virtuosa Benfeitoria* [Treatise on Virtuous Benefaction]: "[...] to draw attention to this inexhaustible source that is the *Virtuous Benefaction* and, at the same time, for to area of study that is so neglected among us: the history of our political doctrines" (Merêa, P., *Estudos de Filosofia Jurídica...*, 2004, p. 189). Alongside the texts mentioned above, there are two additional works from this period of Manuel Paulo Merêa's life and research, focusing on political doctrines as a whole, rather than solely on the second scholasticism: "The *fair war* according to Álvaro Pais" (1917) and the study on the *Treatise on Virtuous Benefaction*. More than this, the history of political doctrines remained present until the end of Merêa's academic life, if we consider his studies on Alexandre Herculano, "O Liberalismo de Herculano" [Herculano's Liberalism], (1941) and Rousseau, "O «Legislador» de J.-J. Rousseau (algumas notas)" [The "Legislator" of J.-J. Rousseau (some notes)] (1967).

As early as 1915-1916, when discussing the origins of the concept of popular power, the author anticipated a significant theme that would shape his contributions to this field (and remains relevant for historians today): the importance and innovation of neo-scholasticism in Iberian political doctrines, with the development of Thomist thought and, consequently, the "doctrine of initial popular sovereignty", a term the historian used to



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distinguish it from Rousseau's democratic theory (Idem, p. 92). As early as 1917, Merêa once again emphasised the innovations of neo-scholastic thought on the international stage. If in 1915-1916 the historian had argued that Iberian authors were pioneers in developing the doctrine of popular sovereignty (a fact that became particularly evident during the years of the Portuguese Restoration), in "Suarez, Jurista. O Problema da Origem do Poder Civil", Merêa went so far as to claim that, contrary to popular belief, Hugo Grotius was not "the bearer of a distinct method and an entirely original doctrinal current". Grócio had found many of his ideas in the Spanish theologians of the 16th and 17th centuries, particularly Francisco Suárez (Idem, p. 177). Later, in 1923, with *O poder real e as cortes*, Merêa summarised power relations between the Middle Ages and the 19th century. Although the scope of the study is very broad, it should be emphasised that a significant part of the work was dedicated to the most recent centuries between Restoration theorists and nineteenth-century constitutionalism. In 1941, Paulo Merêa published lessons on the History of Political Doctrines: *Suárez – Grócio – Hobbes*. In these lessons, the professor was less interested in the theory of international law and more focused on these authors' ideas concerning "the State, government, and sovereignty in domestic relations". Merêa chose these names "because they are the three defining figures of this critical era [the emergence of the modern world]". The distant thesis of 1915-1916 was maintained by the professor of 1941: the Spanish neo-scholasticism appeared to be fundamental in the development of modern political ideas, in particular in the formation of "that liberalism which was to play such a great role in 18th century Europe" (Idem, pp. 299-301).

The second phase of Merêa's work was dedicated to the history of feudal constitution and the history of medieval family and inheritance institutions. The main works of this second phase of Paulo Merêa's career were the summaries of the *Lições de História do Direito Português* [Lessons in the History of Portuguese Law] (1925), the chapter "Organização social e administração pública" [Social organisation and public administration], in *História de Portugal* led by Damião Peres (1929), and a few articles on "A concessão da terra portuguesa a D. Henrique no séc. IX" [The granting of Portuguese territory to King Henrique in the 9th century] (1934), "*Conventus nobilium*" (1943) or "De 'Portucale' (civitas) ao Portugal de D. Henrique" [De 'Portucale' (civitas) to the Portugal of King Henrique] (1943) (1943). On family institutions and succession, a few particularly relevant texts were "Arras. Achegas para a solução dum problema filológico-jurídico" [Arras. Suggestions for the solution to a philological and legal problem] (1936), "A 'arra penitencial' no direito hispânico" [The "arra penitencial" in Hispanic law] (1937), "Em torno do casamento 'de juras'" [On the "de juras" marriage] (1937), "Sobre a revogabilidade das doações mortis causa" [On the revocability of *mortis causa* donations] (1937), "Sobre as origens do executor testamentário" [On the origins of the will executor] (1940), "Sobre as origens da terça" [On the origins of "terça"] (1940), "Estudos sobre a história dos regimes matrimoniais" [Studies on the history of matrimonial property regimes] (1942) or "O problema das doações *post obitum*" [The issue of *post obitum* donations] (1943).

The titles and chronology of the publications suggest that, for Paulo Merêa, the study of institutions and private law was done *pari passu*. For the historian, grasping the workings of institutions necessarily required an



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understanding of private law, and this was one of the most prominent features of his historiographical approach. In fact, when in 1923 Merêa published his first collection (*Estudos de História do Direito*, 1923), he included texts on private law in the same volume, such as "Considerations on the Need to Study Portuguese Customary Law", as well as on institutions (for example, "How Portugal's Claims over the Canary Islands Were Sustained" or "Considerations on the Visigothic *judex* "). In the article on customary law, which takes the form of a questionnaire intended to guide future studies, the fluidity between the history of institutions and private law is readily apparent: among the various "issues to which attention is drawn" are, for example, "collective life", "procedural and criminal law", and "property relations (property, contracts) — popular economy" (Merêa, P., *Estudos de História do Direito I...*, 2007, pp. 102-105). When Paulo Merêa republished a portion of his studies on medieval Hispanic law in 1952, he outlined some of the foundations for studying law in that period. Firstly, that the best sources available were the diplomas, as they are the sources that "most effectively shed light on this obscure period of our legal history." (Merêa, P., *Estudos de Direito Hispânico...*, t. I, p. vii). Likewise, the historian argued that unlike what happened in France, where the *Breviary* played a leading role, in the Iberian Peninsula it was superseded by the *Visigothic Code*, alongside the continued influence of Roman legislation (Merêa, P., *Estudos de Direito Hispânico...* [Studies on Hispanic Law], t. I, pp. vii-viii). In this regard, the element Merêa prioritised most in his work on medieval Hispanic law was the Roman tradition, which led him to study Visigothic legislation, charters (where "the continuity of the Roman element is most evident"), and foral texts. With this, the author aimed to incorporate Roman law into the Germanic elements of Reconquest law, arguing that "To speak of a 'Germanic period' and to treat foral law as a chapter of the *Germanische Rechtsgeschichte*, to prioritise a questionable connection with Norwegian-Icelandic law over the enduring weight of Roman tradition, which appears to me as a series of aberrations" (Idem, p. ix). We used the author's own words to illustrate what he regarded as the major innovation of his work: shifting a historiography that viewed medieval Hispanic law merely as a reincarnation of Germanic law to the background, in order to bring the focus to the Roman element and, beyond that, to demonstrate how the Roman element proved to be essential in the development of medieval institutions. This perspective, which became especially prominent in the second phase of the author's work, was already evident in his study on feudalism, published in 1912. Merêa's role in the study of medieval Hispanic law was fundamental. It was this historian who, in the early decades of the 20th century, chose to move away from a positivist historiography he regarded as flawed, instead returning to earlier historians such as Alexandre Herculano and Fustel de Coulanges. In his view, although their conclusions were less detailed, they were more reliable due to a stronger foundation in the available sources. In his very first book, Paulo Merêa chose not to identify the origin of feudalism with Roman or Germanic elements. He wrote that "the remote germ of the future fiefdom [was neither] [...] in the public institutions of Roman society, nor in those of Germania". For the historian, "feudalism was not born out of a political system; it has its roots in the sphere of private life" (Merêa, P. *Introdução ao Problema...*, 1912, p. 37), and there it would be difficult to argue the prevalence of a Roman or Germanic system.

In this work as well, it is important to highlight a consistent concern throughout Paulo Merêa's scholarship:



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the precision of concepts and terminology. For this reason, the author was intent on distinguishing between closely related concepts, such as "fiefdom" and "feudalism", as well as "manor" and "fiefdom" for instance (Idem, pp. 102 ff.) According to Torquato de Sousa Soares, the rigour of the concepts was the greatest virtue of Paulo Merêa's writings, as it was this accuracy that lent validity to his conclusions (Soares, T. S., "Prof. Doutor Manuel Paulo Merêa...", 1969, p. 12). In this regard, Merêa asked: "Isn't this imprecision and confusion in terminology, common among renowned historians, one of the main causes — if not the primary cause — of the uncertainty that still surrounds the question of feudalism today, and, more broadly, many historical issues related to medieval institutions?" (Merêa, P. *Introdução ao Problema...* [Introduction to the Problem], 1912, p. 120).

Paulo Merêa refuted Herculano's theses, as he also did in the case of D. Teresa's dowry and *arras*. On this topic, the historian presented evidence previously overlooked by Herculano, enabling him to refute Herculano's conclusions (Soares, T. S., "Prof. Doutor Manuel Paulo Merêa...", 1969, pp. 14-15). Once again, Merêa conducted an in-depth analysis of the sources to validate his conclusions and challenge earlier historiographical theories.

This explains Merêa's numerous articles dedicated to clarifying the meaning of certain terms: "Sobre a palavra «atondo» (contribuição para a história das instituições feudais na Espanha) [On the word "atondo" (contribution to the history of feudal institutions in Spain)] (1924), "Reflexões sobre a origem da «jugada»" [Reflections on the origin of the term "jugada"] (1932), "Sobre a palavra «caritel»" [On the word "caritel"] (1933), "Sobre a palavra «manda»" [On the word "manda"] (1936) or even "Um problema filológico-jurídico: a palavra «arras»" [A philological and legal problem: the word "arras"] (1937). These articles were collected in 1937, in *Novos Estudos da História do Direito* [New Studies on the History of Law]. Merêa continued his philological studies, publishing in 1940 "Nótulas Filológicas" [Philological notes], "Sobre a palavra «angueira»" [On the word "angueira"] and "Para um glossário do nosso latim medieval" [Towards a glossary of our medieval Latin], in the following years, he continued to address philological and legal matters, as he referred to them in a 1945 article ("Dois problemas filológico-jurídicos" [Two philological and legal issues]), texts collected in *Estudos de História do Direito I. Direito português*. The author himself confessed that this was his *violon d'Ingres*, his favourite occupation (preface of *Estudos de Direito Hispânico Medieval*, t. 1, p. xix). Paulo Merêa's careful study of the sources of law has enabled him to support his innovative positions in the field of the history of law and institutions. These positions did not go unnoticed by the historiographical community of his time. In Portugal, Torquato de Sousa Soares criticised the historian's position as early as 1937, only to be later won over by his arguments (Soares, T. S., "Prof. Doutor Manuel Paulo Merêa...", 1969, p. 15). In Spain, Valdeavellano and Sánchez-Albornoz opposed Merêa's theses on the ownership of the Portucalense lands (Valdeavellano, *História de España*, vol. I, 1952, p. 850; Sánchez-Albornoz, C., *España...*, t. 2, 1956, p. 426). To his critics, Merêa always gave answers based on reading and analysing documentary sources, mostly from private law (Soares, T. S., "Prof. Doutor Manuel Paulo Merêa...", 1969, pp. 15-18).

In the field of the history of medieval institutions, Paulo Merêa's work has made important contributions.



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Firstly, in the field of municipal institutions. Merêa believed that examining these institutions enabled the historian to "remain connected to the real and dynamic aspects of society" (Merêa, P. *Estudos de História de Portugal*, 2006, p. 439), in other words, in a way, real-world history. But this couldn't mean a narrowing of sources. He wrote that there shouldn't be an obsession with forals (which might not even be the most important sources). Similarly, studies should not focus on the judiciary, as "the concept of the municipality may have existed before the judiciary was established; moreover, it has been observed that small towns with a judge elected by the community were not always recognised as municipalities" (Idem, p. 440). However, Paulo Merêa's efforts in the historical investigation of institutions did not end with the municipalities. On the contrary, as A. M. Hespanha observed, Merêa conducted an in-depth study of the Portuguese feudal constitution — that is, the structure and organisation of medieval institutions in Portugal. The results of this work are summarised in the *História de Portugal* led by Damião Peres, in the chapter entitled "Organização social e administração pública" [Social organisation and public administration].

The last phase of Paulo Merêa's work was devoted to the study of legal education in Portugal from the end of the Modern Period to the beginning of the 20th century, these works were collected by the Imprensa Nacional (Merêa, P., *Estudos de História do Ensino Jurídico...* [Studies on the History of Legal Education...], 2005. The latter part of his work can be divided into two large groups. First, from 1947 to 1957, he developed a historiographical perspective on the teaching of law and on the Faculty of Law itself, with particular emphasis on the post-Pombaline period and the early 19th century (times when major changes occurred in legal education in Portugal). Then, from 1957 to 1970, he focused on more prosopographical aspects of legal education, including lists of Professors and brief biographies. Most of these texts were published in various issues of the *Boletim da Faculdade de Direito* [Bulletin of the Faculty of Law]. But there were a few exceptions, such as the chapter "O Ensino do Direito em Portugal de 1805 a 1836" [The Teaching of Law in Portugal from 1805 to 1836], which was chapter number II of vol. I of *Jurisconsultos Portugueses do Século XIX*, published by the General Council of the Portuguese Bar Association. The "Esboço de uma história da Faculdade de Direito" [Outline of a history of the Faculty of Law], published in separate issues of *Boletim da Faculdade de Direito*, was also written to be expanded on a possible vol. II of this work, which was never published (a second volume was published, a continuation of part 2 of vol. 1, but vol. 2 was not originally planned, which would cover the creation of the Faculty of Law) (Merêa, P., *Estudos de História do Ensino Jurídico...*, 2005, p. 106).

Above, we wrote that Paulo Merêa took part in historiographical debates. In this regard, it is important to consider the extensive review recension work the historian has conducted over the years. In the *Boletim da Faculdade de Direito* alone, he published 68 recensions of works by a vast range of historians, with particular emphasis on Iberian authors (such as Francisco Elías de Tejada, Alfonso Garcia Gallo, Claudio Sanchez-Albornoz, and Luís Cabral de Moncada), as well as French and German historiography (such as Marc Bloch and Hermann Krawinkel) and even Italian historiography authors (Piero Rasi) ("Prof. Doutor Paulo Merêa", [n.d.]). Paulo Merêa's influence on Portuguese historiography was extensive and multifaceted. Beyond his



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works in the history of law and institutions, and his numerous recensions, he also authored other significant works. Together with Damião Peres, he wrote *História de Portugal* for year six and seven for secondary schools, published in 1920 and re-edited several times. Later, as part of the celebrations marking the double centenary of Portugal's foundation and restoration, Paulo Merêa and Rui de Azevedo oversaw the publication of the *Documentos Medievais Portugueses* [Portuguese Medieval Documents].

Alongside his historiographical work, Paulo Merêa also contributed to the field of comparative legislation early in his career, publishing three studies on the subject between 1915 and 1923, as well as additional studies on law. This body of work, which was not further developed in the author's later career, can be attributed to the courses he taught during his early years as a professor: Comparative Constitutional Law, Roman Law and Comparative Civil Law (Merêa, P., *Estudos de Filosofia Jurídica...*, 2004, pp. 16-17). In the 1960s, Merêa collaborated with Justice Minister Antunes Varela in the stylistic and grammatical revision of the 1967 Civil Code draft (Mello, G. S., "Paulo Merêa", 2013, p. 66).

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