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CAETANO, Marcelo José das Neves Alves (Lisboa, 1906 – Rio de Janeiro, 1980)

Studies on Marcelo Caetano have primarily focused on his political career within the Estado Novo (initially emerging as an enthusiast of corporatism), his doctrinal significance in the areas of Administrative and Constitutional Law and his work as an educator. However, Marcelo Caetano also left behind a significant body of work as a historian such fields as the history of law and its institutions, medieval courts, central, local and corporate administrative organisation, administrative coding and Portuguese colonial administration.

A historian equipped with rigorous analytical methods, and who cultivated the supremacy of the written document, primarily legal documents (capable of inserting them into a *scholarly framework*), Caetano always allied his foundation of legal training to historical thought, singularly translated in the assertion that, "problems of law always offer three distinct aspects: historical, political and technical/legal" (*Estudos de História da Administração Pública Portuguesa*, Studies of the History of Portuguese Public Administration, 1994, p.451). In this sense, as noted by Jorge Borges de Macedo, "his studies were, first and foremost, usually had grounds outside the field of history: they aimed to analyse legal problems, which Marcelo believed demanded a rigorous and complete background treatment, where the factor of time had much to say, in order to grasp a sufficient margin of experience to unwaveringly include the array of the occurrence" (*Marcelo Caetano historiador*, Historian Marcelo Caetano p. 10). José Adelino Maltez emphasised that Caetano as a historian is largely a reflection of Caetano the jurist, in that "there is no universal and temporal content of law: what is categorised in the form of the law must be regarded historically according to its time and place" (*História do Direito Português, Fontes direito público: 1140-1495*, History of Portuguese Law, Public Law Sources: 1140-1495, 1981, p. 14). Historical fact is thus a hallmark of the author's thinking, a condition of understanding the background and evolution of the realities that constitute the subject he was interested in as a historian. But historical fact, according to Marcelo Caetano, could not be understood without observation and the combination of various social and economic factors, beyond the strictly political, which would be important in structuring his thinking and historiographical criteria. Demonstrative of this reality, as well as the author's unceasing pedagogical concern, Caetano explains his entire method of analysis and study in his book *Monografias sobre os concelhos portugueses* (Monographs on the Portuguese Municipalities, 1935), especially dedicated to students of the topic.

His body of work is divided among short articles, monographs on specific themes and works of broad chronological periodisation. His scientific publications were ideologically influenced, as in his theorisation of



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corporatism (he was named the first chair of the discipline at the Lisbon School of Law), as well as his studies on municipalities in the field of administrative law and colonial issues, which he carried out as professor of colonial law, and his study of the Courts and Constitutions in the wider framework of his studies on political science and constitutional law.

Born and raised in a devout Catholic family of the Lisbon petty bourgeoisie (his father was a Customs officer), he completed his early studies at the Liceu Camões, and was admitted to University of Lisbon School of Law in 1922, at the age of 16. During this period of intellectual formation, he began to define lines of thinking and completed his first historical legal study: *Um grande jurista português – Fr. Serafim Freitas* (Offprint in *Nação Portuguesa*) (A Great Portuguese Jurist - Friar Serafim Freitas, 1925). The "overseas controversy" – the issue of colonisation – was constantly in the author's thoughts and publications. This was a period of intellectual formation, and the start of his political involvement dates from this time, influenced by Italian fascism and the Action Française as well as, from his Portuguese experience, Integralismo Lusitano. An activist on the Academic Board of the latter, he worked on the magazine *Nação Portuguesa*, where he was secretary, and on other publications such as *A Época*, *A Voz*, *Ideia Nacional* and *Jornal do Comércio e das Colónias*.

With the assistance of his friend and future organiser of Estado Novo corporatism, Pedro Teotónio Pereira, and Manuel Múrias, he founded the magazine *Ordem Nova* (1926), which characterised itself as "anti-modern, anti-liberal, anti-democratic, anti-bourgeois and anti-Bolshevik". This movement was essentially based on Integralismo Lusitano and the thinking of António Sardinha, who largely influenced Marcelo Caetano regarding the study of corporatism and the municipality. It should also be noted that his participation in this movement is indicative of his conception of the authoritarian state ("A ditadura", The Dictatorship in *Ordem Nova*, No. 3, 1926, p. 98).

He completed his law studies in 1927 and launched a career as an academic and historian. In 1925, as chair of Public International Law, he presented his first historical legal study – mentioned above – specifically dedicated to the memory of António Sardinha. Analysis of a legal problem set in a historical context would become a significant part of his future publications. After completing the law degree, Marcelo Caetano devoted himself to a PhD, and presented a thesis that was unique among his publications: *A depreciação da Moeda depois da Guerra* (Currency Depreciation After the War, 1931). He thus became the first Doctor of Political and Economic Sciences from the Law School of the University of Lisbon. This economically and financially-based study is not, however, unusual. The social sciences and economic and financial viewpoints had great influence in the Faculties of Law at that time. As legal auditor of the Minister of Finance since 1929, he collaborated on the drafting of the Constitution of 1933. It was an important year for Marcelo Caetano, who also took and passed the examinations for the position of professor at the Law School.

During the 1930s, he dedicated himself to his academic career and the doctrine of corporatism, publishing the textbook *Lições de Direito Corporativo* (Lessons in Corporate Law, 1935). It should be noted that in this book, Marcelo Caetano states that a corporate state did not truly exist yet in Portugal (p. 148). Indeed, he would sustain that thought for some time. In another work, *O Sistema Corporativo* (The Corporate System,

1938), he attempted to trace the historical path of Portuguese corporatism, taking into perspective the "Portuguese experience" and explaining "its way of seeing people". Seeking to reveal the origins, both distant and recent, of Portuguese corporatism, rooting it in the medieval guilds and Catholic corporatism, he tried to support what he saw as a certain originality in Portuguese corporatism. He launched post-graduate courses in Corporate Law at the Law School, held the position of chair of Administrative Law and ran the programme in Colonial Administration. He was also in charge of Constitutional Law, Criminal Law, Portuguese Legal History and Political Economy. In short, from 1939, the year he became full professor, to 1968, he held all the chairs in the Political Science department. Serving in these positions allowed Marcelo Caetano to compile various textbooks, some of which are still used as reference works today. In 1936, the first edition of the *Manual de Direito Administrativo* (Manual of Administrative Law) was published. In that same year, the first editions of the *Corso di Diritto Amministrativo* by Guido Zanobini and *Traité Élémentaire de Droit Administratif* by Marcel Waline were also published. These were works of great importance, in that they boosted the renewal of European Administrative Law. Marcelo Caetano thus found himself part of the movement for the renewal of Administrative Law, more connected to the General Theory of Law and with an interdisciplinary approach, removing himself from the French school of positivism (*Marcello Caetano – Professor da Faculdade de Direito de Lisboa*, 1987, p. 182). In 1934 he was commissioned by the Portuguese government to prepare a draft of the Administrative Code. When preparing his PhD and the professor examinations, he was required to study scattered and confusing legislation, which led him to take an interest in the problems of local administration. This research, in a historical perspective, resulted in *A codificação administrativa em Portugal – Um século de experiência (1836-1935)* (Administrative Codification in Portugal - A Century of Experience, 1836-1935). These works, along with his being abreast of foreign law, allowed him to lead the compilation of the Administrative Code of 1936 (*Minhas Memórias de Salazar*, 1977, p.61).

Also in the 1930s, Marcelo Caetano became acquainted, in the truest sense of the word, with the African continent, and the impact on his legal and historical work could be felt over the subsequent years. As chair of Public Portuguese Colonial Law, he compared national legislation with that of other colonial powers, reviewing the history of Portuguese colonisation since the time of the *feitorias*, or trading posts. In 1935 he had his first real contact with Africa. He was appointed pedagogical director for a trip organised by the magazine *Mundo Português*, which aimed to visit the colonies in the 'Atlantic Zone'. Orlando Ribeiro was one of his assistants.

The period from 1920 to 1940 did not result in a great number of historical publications, although it was clearly apparent, in particular in his textbooks and some studies. The period represents, more generally, an affirmation of his areas of knowledge and study, in which one observes the major themes that will be addressed and developed in his later works, starting in the 1940s.

His appointment to the post of National Commissioner of the Portuguese Youth (Mocidade Portuguesa, MP) in 1940 marked the beginning of a period that, although continuing to perform his teaching duties (between 1942 and 1944 he was chair of Political Economy and Industrial Law at the Instituto Superior

Técnico; he also took on duties at the Law School at the University of Lisbon), would mark his entry into the politics of the state apparatus and, as such, a greater prominence in his public life. From the outset, he imposed a makeover of the MP's principles of action, abandoning some of the ideals of his predecessor, the pro-German Nobre Guedes, opting for, instead of militaristic conceptions, a platform inspired by the principles of Baden Powell. This position brought him even closer to issues related to education in general, particularly teaching. It is no coincidence that he started to reflect on the University and the roles played by university professors, as well as the student statute. His text *Universidade Nova – O problema das relações entre professores e estudantes* (Universidade Nova–The Problem of Professor-Student Relations, 1943), was a clear example of these concerns. Serving as Commissioner of the MP afforded Marcelo Caetano the opportunity to put his political and pedagogical experience into practice. Concerns about education, and in a broader sense, about the University, would become a constant during his university career (*Marcelo Caetano, historiador e professor*, forthcoming). He also became a member of the Board of Directors of the Institute for Higher Culture (IAC), and there he participated in the IAC's mission to open the position of chair for Portuguese Studies at the University of Rome.

His work as a minister in the Ministry of the Colonies, in 1944, marked, among other political concerns, a greater interest in the issue of colonial education. During his two-year term he created a Directorate General of Education within the Ministry and proceeded to reform the Escola Superior Colonial, giving rise to the Instituto Superior de Estudos Ultramarinos. Also of note were diplomas regulating missionary activity, colonial scientific research, technical education in the colonies and support for African students in Portugal. These measures lead to a progressive review of the problems with education in the colonies ("Marcelo Caetano", 2003, p. 220).

The 1940s were, in many ways, a significant decade for Marcelo Caetano. Rich with historical output, he began to deepen the themes for which he was best known, as well as performing duties within the political apparatus of the regime. His historical output was very prolific until he occupied the office of President of the Council of Ministers. In 1941 he published the first *Lições de História do Direito Português* (History Lessons of Portuguese Law), which was a first step toward what we would become his final work, published in 1981. It also displays the interdisciplinary approach he proposed for the History of Law. An article entitled "*O Município em Portugal*" (The Municipality in Portugal, *O Século*, 1940, p. 97) symbolically marked the beginning of this period. In the article he attempted to highlight the structural importance of the municipality and its communities for the life of the nation. Covering a broad chronological period, he reviews the Roman, medieval and [...] liberal periods, outlining the characteristics, strengths and weaknesses of each era, primarily highlighting the dichotomy between centralisation and decentralisation. He urged, however, that municipalities held an important role in the present day. It was interesting to note Marcelo Caetano's departure from the medievalism of Alexandre Herculano: "Herculano did us a great disservice in persuading us that the modern municipal institutions would be not only more perfect, but also closer to those of the Middle Ages. Each century has its spirit and its demands..." (p. 98).

In the years leading up to his appointment to Chancellor of the University of Lisbon (1959), he was very



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active in historiography, publishing the works for which he would become definitively known as a historian. His most noteworthy monographs were on the issues of municipalities and the Courts, such as *A Antiga Organização dos Mesteres da Cidade de Lisboa* (The Ancient Guild Organisation of the City of Lisbon, 1942), *A Administração Municipal de Lisboa durante a 1ª Dinastia* (The Municipal Administration of Lisbon During the First Dynasty, 1951), *O Concelho de Lisboa na Crise de 1383-85* (The Lisbon Council in Crisis from 1383 to 1385, 1951), *As Cortes de 1385* (The Courts of 1385, 1951), *As Cortes de Leiria de 1254* (The Courts of Leiria of 1254, 1954) – the result of a proposal from the Portuguese Academy of History to gather documentation for the commemoration of the seventh centenary of the first Portuguese courts with popular representation – and his editing of the *Regimento dos Oficiais das Cidades, Vilas e Lugares destes Reinos* (Official Procedures of the Cities, Towns and Places of these Kingdoms, 1955) which contributed to the overview of medieval municipalities found in his *História do Direito Português* (History of Portuguese Law, 1981).

These publications, resulting from his work as an academic, situated Marcelo Caetano among the authors who studied municipalism (mainly the origins of medieval municipalities), such as Alexandre Herculano, Teófilo Braga, Alberto Sampaio, Torquato de Sousa Soares and Paulo Merêa, among others. He distanced himself from them, however, namely Herculano, as regards the Roman origins of medieval municipalities. He stated that, due to social circumstances and the surroundings, "the vestiges of Roman municipal institutions preserved at the end of the Visigothic monarchy disappeared during Muslim rule, and were also not retained in the kingdom of Asturias" (*História do Direito Português, Fontes direito público: 1140-1495*, 1981, p. 221). Abreast of the issues surrounding municipalism, this period also marked the beginning of his interest in constitutions. His *Manual de Ciência Política e Direito Constitucional* (Handbook of Political Science and Constitutional Law, 1952) and *Breve História das Constituições Portuguesas* (A Short History of Portuguese Constitutions, 1965) demonstrate his study of Political Law and the history of constitutionalism.

Colonial issues returned to the spotlight in this work, possibly resulting from the experience he gained in the positions he held, but also from his own thinking on these subjects. As an example, we can highlight publications such as *Do Conselho Ultramarino ao Conselho do Império* (From the Overseas Council to the Council of the Empire, 1943), *Antologia Colonial Portuguesa* (Portuguese Colonial Anthology, 1946) and *As Campanhas de Moçambique de 1895 segundo os Contemporâneos* (The Campaigns of Mozambique in 1895 According to Contemporaries, 1947). The introduction he wrote for the latter work was somewhat significant, as he again focused on the international aspect of the colonialism, a matter he would develop further in a later study: "the campaigns of 1895, in Mozambique, are one of the pivotal moments of contemporary Portuguese history. They demonstrated, on an international level, our ability to effectively occupy the colonies," (p. 5).

The 1947 government reshuffle dictated Marcelo Caetano's temporary removal from the government (due to tensions within the União Nacional) and some of his choices for seats of government. Nonetheless, he became Minister of the Presidency in 1955. He first occupied the position of head of the Executive Committee of the União Nacional, and then went on to the presidency of the Corporate Board until 1958.



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The appointment to the post of Chancellor of the University of Lisbon (1959-62) gave Marcelo Caetano a more direct handling of issues related to university education. As the Chancellor, he headed the official Portuguese delegation to the Fourth International Colloquium on Luso-Brazilian Studies, held in Bahia, Brazil, where he returned to an issue that was already well-known to him: "Frei Serafim de Freitas and the controversy of the freedom of the seas." As Chancellor he sought to create a university environment across the different faculties. He can also be attributed with the promotion and administration of the first university holiday courses in Angola and Mozambique. In 1961 he inaugurated the current building of the Chancellor's Office of the University of Lisbon, with the Schools of Law and Literature already constructed. He continued his historical research. One example was his study on the Law School itself, *Apontamentos para a História da Faculdade de Direito de Lisboa* (Notes on the History of the Lisbon School of Law, 1960) – an essential reference for a historical perspective on the professors, staff and legislation, among other aspects, on the University of Lisbon School of Law, from its founding in 1913 until 1953. To this day, it is one of the few works on the School. Marcelo Caetano's involvement as Chancellor in a controversy with the University of Coimbra over the antiquity of the University of Lisbon should also be noted. The entire situation created enormous friction between the University Senates of both Universities, to the point that the Senate of the University of Coimbra stated that there was an "attempt to falsify historical truth" by the Senate of the University of Lisbon (*Pela Universidade de Lisboa*, 1974, pp. 65-93).

After the end of the 1962 academic crisis, in which he resigned as Rector due to disagreements with the Minister of Education, Lopes de Almeida, Marcelo Caetano (who sided with the students..) chose to move away from political life. He returned in 1968, succeeding Oliveira Salazar in the Presidency of the Council. The academic crisis may have ended up strengthening a certain more reformist and "liberal" image for Caetano, in addition to his previous criticism of Salazar. His five-year break from active politics allowed him to return to the "refuge" of teaching and intellectual work, turning back to themes related to the colonies, medieval courts and Portuguese legal history. Evidence of latter was his *Lições de História do Direito Português* (Lessons in Portuguese Legal History, 1962; he left the chair of this department the following year), in which one observes an evolution from his textbook published 1941, in particular deeper analysis, at the expense of scope (*Marcelo Caetano, historiador*, p. 14).

During this same period Marcelo Caetano published what could be considered one of his major studies – besides those commonly highlighted on medieval institutions – suggestively entitled *Portugal e a Internacionalização dos Problemas Africanos* (Portugal and the Internationalisation of African Problems, 1963). Covering a broad chronological range, Marcelo Caetano addresses Portugal's relationship with major international issues relating to overseas territories, from the "controversy of the freedom of the seas", with Serafim de Freitas, until the end of World War II and the creation of the United Nations (UN). The subtitle added to the fourth edition (1971): "*História de uma batalha: da liberdade dos mares às Nações Unidas*" (History of a Battle: from the Freedom of the Seas to the United Nations) reveals the circumstances in which it was published.



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From 1968 to 1974 Marcelo Caetano served as President of the Council of Ministers, succeeding António Oliveira Salazar. Although Marcelo Caetano's presidency was initially understood as a time of possibilities for gradual reform within the regime itself, with the affirmation of Liberal Wing and reforms in some institutions, these reforms were commonly seen as 'cosmetic', and in reality, the changes were very limited. His vision surrounding the colonies is indicative of this (though written in the 1950s, one can see Caetano's thoughts on race, and on a certain "generation", in *Os Nativos na economia africana*, 1954, p. 16). Marcelo Caetano tried to create a new policy platform for the Estado Novo regime called *Social State*, rooted primarily in his idea of corporatism (*Estado Social*, 1970), and took some steps in that direction. Following the events of 25 April 1974 and the end of the Estado Novo, Marcelo Caetano was sent to Madeira, later exiling himself in Brazil on 25th of May. The final years of his life and his output in the field of historiography deserve particular attention.

Until his death in 1980, Caetano produced a significant body of work. Essential for understanding this final period of his life is the collection of letters he exchanged with Maria Helena Prieto and Joaquim Veríssimo Serrão (a friend who always kept Caetano's image alive). Because of his work in the areas of History and Law, Marcelo Caetano was highly respected at universities in Brazil. In addition to being a professor at Gama Filho University, where he lectured as chair of History of Philosophical and Political Ideas in Portugal, he travelled throughout Brazil presenting at research conferences. He was a member of the Brazilian Historical and Geographical Institute and the Brazilian Academy of Letters. Some notable lectures on history and law include: "Carlos Malheiro Dias, Historiador" (Carlos Malheiro Dias, *Historian*, 1975), "Alfrânio Peixoto e a História de Portugal" (Alfrânio Peixoto and the History of Portugal, 1976), "Alexandre Herculano e a História de Portugal" (Alexandre Herculano and the History of Portugal, 1977), "O município na História do Direito Brasileiro" (Municipalities in the History of Brazilian Law, 1978) (*Marcelo Caetano no exílio...*, 2006). In his lecture on Alexandre Herculano, Marcelo Caetano is ambiguous, presenting Herculano as worthy of praise, but also severely criticising him, albeit personally: "*Gentlemen: it is the great admiration I have for the historical work of Alexandre Herculano that leads me to deplore the negative facets of his personality*" (*Marcelo Caetano no exílio, Estudos...*, p.193). He returned to writing textbooks and his study of constitutionalism, already covering the Constitution of 1976, in *Constituições Portuguesas* (4th edition), which was updated to include analysis of the 1976 Constitution in 1978. He resumed historical research on Portuguese law, with the final product published posthumously, the first and only volume of *History of Portuguese Law, Sources – Public Law, 1140-1495*, commonly viewed as a new interpretation of *Lições de História do Direito Português*, from 1941 to 1961. Nevertheless, it was widely recognised his magnum opus, though it is now outdated in some respects. Creating it was a difficult task that required much of the author. The lack of interlocutors with whom he could discuss problems, illness and a lack of new reference works on the subject all contributed to the difficulty of his final work, as witnessed in the letters exchanged with Joaquim Veríssimo Serrão and Maria Helena Prieto.

However, it was also in Brazil, at the conference on Alfrânio Peixoto, that Marcelo Caetano reaffirmed his vision of the study of history: "We are increasingly aware of the intimate solidarity of all aspects and



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manifestations of the life of a given society at a certain time. Political history is incomprehensible without knowledge of institutions, which is further connected to knowledge of Law. In all of this, social structure and economic dynamics are present, the political and philosophical ideas expressed in literature hang over the whole, are manifested in art, rooted in habits and customs, entwined with religion ... " (Ibid, p. 178).

In an attempt to categorise his work by period, bearing in mind the risks that such an approach entails, we suggest the following 'macro' periods: the first, between 1920-40, mainly corresponds to the beginning of his intellectual and doctrinal formation, when he began to explore the issues related to law for which he would become known. At this time he focused on corporatism, trying to understand it and give it a unique meaning for Portuguese reality. However, some of the major issues of historical content that he would later approach, such as colonialism and issues surrounding municipalities were already evident. The second period, from 1940-68, was Marcelo Caetano's most prolific. In addition to being marking his entry into the regime's political apparatus, noteworthy works from that period include those on the medieval period, mainly on municipal issues, studies on the courts and constitutions and treatment of colonial issues, summarised and published in 1963. The final period, 1975-80, was spent in Brazil deepening and reflecting on various topics mentioned above. Jorge Borges de Macedo made a more detailed suggestion: "the period between 1940 and 1945 included a series of works focused on administrative history across a broad chronological timeline, presented within Marcelo Caetano's working technique, such as the combining of regulatory laws and reference to the evolution of foundations, with manifest disinterest in incidents. This type of work disappeared completely after 1950, to give rise to two basic concerns: the courts and guilds, understood similarly. Beginning in 1955, his concern for the constitutional experience became predominant, including his previous studies on the courts" (p. 14).

Among the various scientific associations in which he participated were the Institute of Coimbra, the International Academy of Comparative Law (Paris), the Royal Academy of Moral Sciences and Politics (Madrid), the International Institute of Different Civilizations (Brussels), the Instituto Luso-Hispanico-Americano de Direito Internacional, and the International Institute of Administrative Sciences. He was also Director of *Verbo – Enciclopédia Luso-Brasileira de Cultura*, in the Juridical Sciences section, with about 86 entries. He did not participate in the *Dicionário de História de Portugal*, led by Joel Serrão, because the coordinator did not want to include him (*Jornal de Letras*, 31 January 31 1989, p. 18). In 1936, he became one of the founders of the Portuguese Academy of History (later becoming its vice-president), alongside Queirós Veloso, Reynaldo dos Santos, António Vasconcelos, Damião Peres, Paulo Merêa, Alfredo Pimenta and Carlos Malheiro Dias, among others.

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APOIOS:

