

# **António Manuel Hespanha: A Constant Guide for My Research**

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## Abstract

The first part of my essay focuses on the significance of the international conference on the juridical dimension of social history, organized by Paolo Grossi in Florence (April 1985), at which I met António Manuel Hespanha for the first time. I was consequently able to learn about, and later study, his *História das Instituições: Épocas medieval e moderna* (1982), which has subsequently proved an essential tool for my research. The second part focuses on the significance of Hespanha's essay "Revuelta y revoluciones" (1993) for my studies over the last twelve years on the question of the early modern revolts as forms of lawful resistance according to the jurisprudential literature of *ius commune*.

## Keywords

Juridical dimension of social history, History of political institutions, Constitutional history, Early modern revolts and revolutions, Lawful resistance.

## Resumo

A primeira parte deste ensaio centra-se no significado da conferência internacional organizada por Paolo Grossi em Florença (Abril 1985) sobre a dimensão jurídica da história social, quando conheci pessoalmente António Manuel Hespanha e, por consequência, tomei contacto e pude estudar a sua *História das Instituições: Épocas medieval e moderna* (1982) que era (e ainda é) fundamental para a minha investigação. A segunda parte foca-se no significado do artigo de Hespanha *Revuelta y revoluciones* (1993) para os meus trabalhos nos últimos 12 anos sobre as revoltas da época moderna enquanto formas de resistência legítima de acordo com a literatura jurisprudencial do *ius commune*.

## Palavras-Chave

Dimensão jurídica da história social, História das instituições políticas, História constitucional, Revoltas e revoluções na Época Moderna, Resistência legítima.

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## 1. Just Thirty-Five Years Ago

In the last essay written for *Quaderni fiorentini per la storia del pensiero giuridico moderno* (published posthumously in 2019) António Manuel Hespanha reassesses, after more than thirty years, the fundamental issues that led the journal's director, Paolo Grossi, to gather together an exceptional group of jurists and historians to discuss the juridical dimension of social history. The meeting took place in Florence on April 26-27, 1985 (Grossi ed. 1986). This was the first time I met António, as well as other distinguished scholars<sup>2</sup> with whom I have continued to maintain scholarly and friendly relations since then, albeit not with the same frequency and intensity in all cases.

For me, an early modern historian<sup>3</sup> without any juridical training, that conference represented a fundamental turning point: shortly afterwards, given the questions that I had been dealing with up to that point, as well as the ones I was about to commence, I began to follow the research being carried out at the Italian-German Historical Institute in Trento, above all the work being undertaken by Pierangelo Schiera.<sup>4</sup> The history of political institutions and the history of administration were the general fields of study, and the relationship between center and periphery in an early modern Italian state was the general issue, whilst the political role played by the city of Bologna in the State of the Church was my specific case-study, e.g. the self-government of Bologna opposed to the pontifical central administration, on the one hand, and the relationship between the city and its land (*contado*), on the other hand (De Benedictis 1984).

In Italian historiography, the questions that I was concerned with had already been a subject of much debate for roughly fifteen years, being discussed within the broader context of the modern state/the origins of the state in Italy, following the translations of some remarkable works from German constitutional historiography, such as those by Brunner (1970; 1983), and the consequent possibility of comparing Italian political history with the German historiography on 'estates-polity' (Standesstaat) and the corporate society of the Old Régime (Rotelli-Schiera eds. 1971-1974; Kirshner ed. 1995).

It was only after I met António personally, however, that I came to know his monumental *História das Instituições: Épocas medieval e moderna* (1982),<sup>5</sup> even though I had already read two of his fundamental essays (Hespanha 1983; Hespanha 1984b). For me the

<sup>2</sup> Bartolomé Clavero, Pietro Costa, Julius Kirshner, Anthony Molho, and Mario Sbriccoli.

<sup>3</sup> At the time, I was an assistant professor of Early Modern History at the Facoltà di Lettere e Filosofia (School of Humanities) in the Università degli Studi di Bologna.

<sup>4</sup> He, too, was among the scholars invited by Paolo Grossi to take part in the international conference.

<sup>5</sup> Also Hespanha 1984a.

*História* was (and still is) an essential work for three reasons. The book shows and proves his deep knowledge of German constitutional historiography. By analyzing the methodological issues of that same historiography (even though this was not the only one that he considered), António was able to prove the fundamental significance that the juridical literature of *ius commune* had for analyzing late medieval and early modern political institutions. Moreover, inasmuch as that juridical literature was the hallmark of the archival sources, he succeeded in establishing the necessary tools for studying jurisdictional conflicts between central and peripheral institutions in every early modern monarchy. António's specific case-study was the Portuguese monarchy. For me, at that time, it was the papal monarchy.

In spite of the differences between the two monarchies and their corresponding political and institutional systems, both at the central and the peripheral level, thanks to the *História*, I was able to understand, for instance, that Bologna (a city whose government was placed in the hands of magistrates) had relied on the competence of jurists who discussed the relationship between *potestas absoluta* (absolute power) and *potestas ordinata* (ordained power) based on the same reasonings as those used by Portuguese jurists, such as Juan Bautista Fragoso and Domingo Antunes Portugal, and quoted in memorials defending the city's own prerogatives and privileges. I was able to realize to what extent the argument about “Privilégio contractual ou remuneratório” (contractual privilege), which marked the jurisdictional conflicts between the Bolognese government and the papal monarchy, was considered normal. Furthermore, I learned through the *História* that the definition used by Bolognese magistrates to distinguish between the higher and lower magistrates' jurisdictions was precisely the one that dated back to Roman law, namely *uffici da onore* (office of honor) and *uffici mercenari/da utile* (mercenary office).

Mostly for these reasons, I decided to use the *História* as a textbook for my classes on the History of Political Institutions at the School of Archival Science, Paleography and Diplomatics of the State Archives of Bologna in the academic year 1991-1992. Since I could not present the whole *História* to students in the course, both because of the Portuguese language and the extensive length of the book, I resolved to translate into Italian only some parts of certain chapters that I found most significant and useful for the classes. The result of my labors was a text of 139 pages (instead of the 569 of the *História*), which I typed out with my Olivetti Studio 44 in February 1991 (Hespanha 1991).<sup>6</sup> Of course, this text only circulated among students attending the School of Archival Science, Paleography and Diplomatics. Nevertheless, it was doubtless more detailed than António's only book to be

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<sup>6</sup> See the typescript in <https://unibo.academia.edu/AngelaDeBenedictis>

published in Italy two years later with the same title *Storia delle istituzioni politiche* (Hespanha 1993g).

The case-study “Bologna in the Papal State,” whose documentary heritage is very clearly mentioned in several collections of the Bolognese State Archive, represented (and still represents) a classical example of that “resistência das elites provinciais” which António had analyzed in his *Vísperas del Leviatán* (Hespanha 1989), as well as in the volume dedicated to the Old Régime of the *História de Portugal*, which he also edited (Hespanha 1992).<sup>7</sup> In my book on the contracts between Bologna and the popes from the fourteenth to the seventeenth century (De Benedictis 1995),<sup>8</sup> I was able to note in a more detailed way that the issue of a lawful resistance to claims of a *potestas absoluta* (absolute power) lay at the core both of the genre of the broad juridical literature on *consilia* (legal advice) and of juridical treatises on the crime of *lèse-majesté*. At the same time, I also discovered that the same question of lawful resistance lay at the core of those early modern events variously defined as revolts and revolutions.

## 2. From About Twelve Years Ago until Now

Even in those terms, António’s writings were very helpful for me in my research by analyzing *consilia* and treatises about the crime of *lèse-majesté*, starting with one of the first essays I wrote on the question of revolts and rebellions for the miscellaneous book *Revolts and Revolutions in Southern Italy 1547-1799* (*Rivolte e Rivoluzione nel Mezzogiorno d’Italia 1547-1799*) (De Benedictis 2008).

Among the essays published in the collection *La Gracia del Derecho*, in the one entitled *Revoltas y Revoluciones*, António argued:

[I]n the society of the Old Regime, the resistant groups had available to them a particularly effective instrument: *the law*. (...) Precisely because of this, nothing was more effective than a strategy of resistance which demonstrated that the government was acting against the law or against justice or that it was innovating in an imprudent fashion. Furthermore, thereafter, everything was possible: from the accusation of tyranny (*in titulo* or *in exercitio*), with the political consequences

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<sup>7</sup> See also Hespanha 1993e.

<sup>8</sup> See what I wrote later on, enhancing a wider European comparative level (De Benedictis 2001).

that this implied, to the legitimization of the disobedience, the rebellion, and, also, the tyrannicide<sup>9</sup> (Hespanha 1993d: 315).

Just in those *consilia* about individual and specific lawsuits alone, as well as in the treatises on *lèse-majesté* that were (and still are) the sources for my research, I was able corroborate António's statement. 'Lawful resistance' was the same as lawful self-defense against an unjust government, the disregarding of customs and local statutes, exorbitant taxation, and oppressive quartering (De Benedictis 2013; De Benedictis 2018).

Furthermore, the possibility of using lawful resistance as a form of self-defense meant acting according to one of the keywords that António highlighted as essential for the political bond, namely friendship (Hespanha 1993b: 157-158; Hespanha 1993a: 325-326)—not only in a nonviolent way, but also in that admissible violent way which, in some cases, could repel violent oppression based on the juridical principle *vim vi repellere licet*. Besides a huge number of late-medieval jurists, such as Bartolus of Sassoferato onwards, that principle was also maintained—for instance—by a jurist whose treatise, *De privilegiis rusticorum*, António quoted in his essay “Sabios y rústicos” (Hespanha 1993f: 32, 34), namely the French humanist André Tiraqueau (1480-1558).

Tiraqueau also wrote a treatise on the moderation of punishments (*De poenis temperandis aut remittendis*) (1562), in which he similarly dealt with the issue of moderation for the penalty of rebellion. Neighbors, blood relatives, and friends who resisted an official acting unjustly towards a neighbor could not be punished as rebels. Actually, it was lawful that neighbors and friends should run to help anyone who was injured in order to take up his defense, even though the injured person had not called for help. They could even strike the aggressors up to the point of actually killing them.

In the twenty-second case (*Causa vigesimasecunda*) (Tiraqueau 1562: 87-88),<sup>10</sup> the authority of Aristotle, among others, supported the argument that anyone, in whatever way, might repel violence inflicted on a kinsman, while a strong and close friendship also allowed them to repel violence perpetrated on a friend, because true friends are one true soul in several bodies. Between consanguinity and friendship, it was the latter that was undoubtedly more valuable.

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<sup>9</sup> “... los grupos resistentes disponían en la sociedad del Antiguo Régimen de un instrumento particularmente eficaz: el derecho. ... Por esto mismo, nada resultaba más eficaz que una estrategia de resistencia que demontrara que se estaba governando contra el derecho o contra la justicia o que se estaba innovando de un modo imprudente. Además, a partir de aquí todo era posible: desde la acusación de tiranía (in titulo o in exercitio), con las consecuencias políticas que esto suponía, hasta la legitimación de la desobediencia, la rebeldía e, incluso, el tirannicidio.”

<sup>10</sup> See De Benedictis 2013: 146; De Benedictis 2018: 113-114.

In the twenty-third case (*Causa vicesimateria*) (Tiraqueau 1562: 96),<sup>11</sup> Tiraqueau considered the *affectio* of *vicinitas*, the affection of being a neighbor. If a crime was committed in defense of a neighbor, the corresponding penalty had to be forgiven or diminished. If the defense of a neighbor was at stake, neighbors could resist an official acting unjustly by their own authority. The *Heautontimoroumenos* by Terence was a source for Tiraqueau in noting that neighborship was a type of affinity remarkably close to friendship. Citing *Proverbs* 27, the jurist maintained that it was better to have a neighbor nearby than a brother faraway. He also cited the parable of the lost sheep in the Gospel of Luke (15:6)—a man who found a sheep he had lost goes home and calls his friends and neighbors, and invites them to rejoice with him because he has found it.

It is worth underlining that the rules followed by Tiraqueau were not only those drawn from the learned law of the *ius commune*. Of course, the French jurist cited Bartolus of Sassoferato, Baldus of Ubaldi, and others (whom I have not recalled here). Those rules were also drawn from Aristotle's *Ethics*, Terence's comedy, and the Book of Proverbs in the Old Testament.

The issue of lawful resistance was therefore tackled and discussed in accordance with normative pluralism (or the concept of multi-normativity), which, already in the preface to *La gracia del derecho*, António had declared to be a central methodological theme for his historiographical interest (Hespanha 1993c: 13), and which he summarized as essential for a reassessment of the discussion on the juridical dimension of social history in his posthumous essay “Is There Place for a Separated Legal History?” (Hespanha 2019: 10, 16, 27). It is not by chance that, in this essay, António underlines once again that “friendship and love, based on the virtues of grace and liberality” were a “fertile field in the emergence of rules and prescribed behaviors” (Hespanha 2019: 19).

In conclusion, among the juridical works that António did not cite expressly in the above-quoted passage from *Revueltas y Revoluciones* (Hespanha 1993d: 315), there was also one that he knew very well, namely Manuel Alvarez Pegas' *Commentaria ad ordinaciones Regni Portugalliae*. In his *Commentaria*, Pegas explicitly used the term *resistencia* as the basis for a discussion about the possible lawful resistance to an official acting unjustly (Pegas 1680: 141). António was fully aware that the term and the concept of *resistance* pertained to the *economia de la cultura en la edad moderna*.<sup>12</sup>

<sup>11</sup> See De Benedictis 2013: 147; De Benedictis 2018: 114.

<sup>12</sup> We discussed this question the last time we met, on the occasion of the international workshop *Violent Political Conflicts and Legal Responses: A Transatlantic Perspective (18th to Early 19th Century)*, which took place at the Max-Planck Institute for European Legal History in Frankfurt am Main on October 21-23, 2015.

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