

The haitian constitutions: why an untold story about popular constitutionalism and fundamental rights?

As constituições haitianas: por que uma história não contada sobre constitucionalismo popular e direitos fundamentais?

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Abstract

This paper discusses the outstanding process of political effervescence seen in Haiti during the nineteenth century, after the revolution of slaves in the French colony through a bloody fight for emancipation, delivering to its illiterate people written constitutions in the period between 1801 and 1816 and, supposedly, the freedom by the way of a Constituent assembly. Those documents astonishes, as they portray many fundamental (and even social) rights and guarantees, much more forcefully than later seen in the Americas or even in Europe. Important scholars gave fair attention for that on history and social studies, but the same does not occur in Law, and even less in constitutional law. The main argument of this article is that the suppression of the insurgency also perpetuates it with the subsequent constitutional silence about the episode and that this silence remains, unjustifiably, nowadays between the constitutional scholars studying popular constitutionalism.

Keywords: Constitutional History. Silence on history. Haiti Revolution and fundamental rights. Constituent Power.

Resumo

Este artigo discute o impressionante processo de efervescência política visto no Haiti durante o século XIX, após a revolução dos escravos da colônia francesa por meio de sangrenta luta pela emancipação, entregando aos seus analfabetos constituições escritas no período entre 1801 e 1816 e, supostamente, a liberdade pelo caminho de uma Assembleia Constituinte. Esses documentos surpreendem, já que retratam diversos direitos e garantias fundamentais (e mesmo sociais), com muito mais intensidade do que visto mais tarde nas Américas ou até mesmo na Europa. Estudiosos importantes deram a devida atenção para que nas disciplinas de história e ciências sociais o tema fosse destacado, mas o mesmo não ocorre no Direito, e menos ainda no direito constitucional. O principal argumento deste artigo é que a supressão acadêmica da insurgência também se perpetua com o silêncio constitucional posterior sobre o episódio e que este silêncio permanece, injustificadamente, hoje em dia entre os estudiosos constitucionais ao tratar do tema do constitucionalismo popular.

Palavras-chave: História Constitucional. Silêncio na história. Revolução haitiana e direitos fundamentais. Poder Constituinte.

1 Introducing the conflict: written constitutions are necessary

In an early period for what we call “constitutional” history in the western democracies, the former colony of São Domingos - how the province was called before it turns Haiti - built its republic of “Negros”.

“Negros” or *black people*, because it created a revolutionary identity and erected constitutions founded in a racial element, in which the nationalizing aspect of the people was precisely “being black”, even if you were *not black* (as a racial element). Here, *early* is used as a comparison between the discourse of liberation in other countries of Latin America and Europe in this period. Haiti was the scene of the first and only slave uprising that actually succeeds with the revolutionary use of violence against the slave owners in the XIX century, which is due to essentially numerical and relatively strategic factors in organizing the riots. At the same time, was the only revolution that used the expression “Black Republic” as a way to call the pre-condition of rights of enjoyment, the structure of something very similar (and maybe unique) to an initial and unlimited *Constituent power* seeking citizenship as our idealized theory sees today: Constituent Power as the political tragedy in the heart of maquiavelianism since *The Prince*, NEGRI (1999, p. 05); LOUGHLIN (2004, p. 102).

Concomitant with this new Republic created, at least six written constitutions have been written: respectively in the years 1801, 1804, 1805, 1806, 1807 and 1816¹. The constitutional norms not only brought individual freedoms or the “first generation” of rights as we learn in constitutional theory in that period. The Haitian constitutions exceeded in time and matter this classical category of “first generation rights” relegated by our contemporaries to the constitutional movement in that turn of the century: the achievement of freedom against the power of the state or the will of the *Prince*, the rise of a class as dominant or an individual bill of rights, that is called universal and now positivized (NEGRI, 1999, p. 06). Haitian constitutions were all this, but they were not just this.

In a central study on this subject, FISCHER (2003, p. 17) pointed out that some of the black republic texts spoke of ethnic identity, treated racism as an international problem, erected Haiti as the first nation to effectively abolish slavery in the international plan, and, among the internal policy of immigration, granted a kind of “political asylum” to black slaves from anywhere in the world, as long as they aimed to seek shelter in the state against slavery. The Republic in the XIX century paid them, for example, pension for this permanent stay in the country. As we will discuss below, those constitutions had a sophisticated constitutional stature in the *black* government.

Almost in a revanchist way, on the other side, the constitutional system restricted the participation of policy to whites, although white, as we shall see, it was not precisely

1 Although seven new constitutions supervene until 1867, this work will summarize this research to those six constitutions, because of the expressiveness of their contents

a skin pigment, but a feeling of *belonging or not* to what was being built for the first time as a nation under a popular constitution. The argument of this article is that the Haiti is a great example of development of rights in its robust constitutional texture. In an old slave colony (France's largest productivity), and in the early nineteenth century, we can only see something similar in the next century, and, as history tells us in form of "constitution granted by populism or military movements", not by revolutions, mainly in America. In other words, no country would contain an uprising so early to reach fundamental and social rights, and it was only effective because even its legal discourse was made promulgating constitutions.

It draws attention the fact that the constitutional researches does not speak openly about this episode in the constitutional history studies nowadays², not only in the Americas, but in the European context as well. The constitutional history does not put in its script the Haitian revolution, but we can see some untold stories timidly appearing in other fields of human sciences. Because of all that, this work also aims at the present. Why aren't we speaking about Haiti in constitutional law? Why, involving popular constitutionalism, we keep our eyes always on the United States or European history? Among the unstable period of attempts to turn the French colony in an economic system controlled by groups of masters, several armed conflicts have made impossible any attempt to unify this unfeasible power, especially because the intellectual organizations of this new regime was given by black leaders that conflicted with each other. They had to grant fundamental rights as a bargaining power, and that made Haiti a great laboratory of popular constitutionalism. However, these stories are untold.

It is important to say that we do not intend to treat the revolution in Haiti as a linear period of revolution that ended with the slave liberation, next to an idealized fashion of promulgation of written Constitutions to represent the popular will through an unconditioned constituent process. There is more than our modern imagination in this narrative mode of description. The interesting fact is that the armed conflict at that time culminated in constitutional texts that already anticipated the discourse of contemporary constitutionalism, but that this fact, paradoxically, seems to be off the constitutional history in the West, as if it was a fear of that, perhaps, is still present.

Our argument, similar to one already wrote in the history by Trouillot (1995), focuses on only one of the possible and inexplicable silences: the constitutional. Trouillot was concerned about the fact that the narratives of episodes in Haiti were, in

2 The historical works and reviews about the events in Haiti was already well disseminated, and, in fact, propose a critical view of history seeking to strengthen attention to the events. The bibliography of this article is an example, although almost entirely published in the past 20 years. It happens that in constitutional law theory these texts and episodes do not appear with the minimum frequency that it should, even less in the books and manuals. There is a doctrinal and academic silence on the facts that already been denounced in other areas of knowledge, but that not includes the constitutional law, or at least the study of constitutional history in the western democracies.

its entirety, Eurocentric, accompanied by all this liberal imagination, and those silences were given in various fields. More precisely, Trouillot speaks about four silencers movements: the silence on *historical sources*, on *the files*, on the *choices of events* as more or less important to narrate the episodes and on the *omission of the narrators* dealing with the debate.

As it will be seen later, our linear imagination in history of fundamental rights suffers from similar pathology, which tells that since French Revolution it was possible the realization of rights until we reach the complex role that we have today in modern and normative constitutions, but emphasizes the events that the teller prefers, and Haiti is never present. Why the Haitian revolution is not a big part of the history of our constitutional maturity? Do their normative and institutional State brought by constitutions have any influence in the next centuries of abolition of slavery? In the next chapter, we want to discuss the episodes that help to understand the idiosyncratic process of revolution in Haiti, being aware that describe the history of Haiti, here, is only to hear reports of other researchers. Then, we will point out the main elements of the constitutions as pioneer documents during impressive events, highlighting the success in emancipation. Finally, this work points out the problem of this cyclic forced historical silence on the Haitian episode, something that can bring weakness to constitutionalism studies. It would be unfair with its history.

2 At the eve of the uprising

The former colony of São Domingos represented the largest colonial productivity of Europe: between 1783 and the outbreak of the French Revolution, São Domingos exported an estimated of 70 tons of white sugar and 50,000 tonnes of raw sugar (DAVIS, 1928, p. 25). For that, more than one and a half million slaves were employed in various types of enterprises, including cocoa, sugar, tobacco, coffee and cotton, making the colony of “São Domingos” more than a third of the entire French commercial production, one of the greatest economies in the world³.

At that time, the colony was administered by a governor-general and a superintendent, both appointed by the Minister of the French Navy, responsible for the administration of the colonies. The quasi-military management still occurred, interestingly, during the French outbreak in 1789, which allowed some discussion in the city’s environment about the granting of equal rights between whites and blacks.

In order to protect the regime, the colony had many “colored men”, as they were called: mulattos, but also landowners, slave masters and freemen. Churches and public spaces granted them special seats, and the numerical growth of *mulattos* in these

3 “The value of these products at the present market values would exceed \$ 5,000,000. The full value of the establishments, lands, slaves, and livestock was estimated at \$ 193,500,000.” (DAVIS, 1923, p. 25).

conditions would relate the profitability of São Domingos with a specific method of segregation⁴. In other words, mulattoes were slaveholders; mulattos exercised civil rights restricted to those who held freedom. This fact expands the possibility of racist conflict by allowing new discrimination within already segregationist institutions.

With the National Constituent Assembly and the Estates-General in French, 1789 seemed to be the perfect time for the realization of the abolitionist project in Haiti. That is the reason why the white masters of the colony of São Domingos sent representative committees to the Metropolis, given the urgency of this agenda. The hostility to the regime and the popular dissatisfaction had crossed the Atlantic as we see in the narrative of the Minister of Marine to the French National Assembly in 1790:

[...] The colony is at this moment in the greatest agitation. Two parties divided it. The first, entirely devoted to the General Assembly, demands its continuation; The other seeks its dissolution. This Latter party is the more Numerous, and contains the intelligent and responsible most citizens. Nevertheless I very much doubt Whether it will be successful For the other party is made up of the discontented, the Declaimers against pretended despotism, and the mass of working men and artisans, who are persuaded que Their opponents are composed. (DAVIS, 1928, p. 33).

On May 15, 1791, the French National Assembly has determined that mulatto children of freedmen could participate in general meetings in São Domingos and discuss political affairs. In response, the governor of the colony curiously defined the urgent and necessary “suspension of this right”. Miscegenation was admitted at an initiative of the metropolis (it was the “great right” that the revolutionary bourgeoisie granted, keeping, however, the slavery), but was immediately suppressed by authorities in the colony. Obviously, the rise of hate speech occurred since then in the country (DAVIS, 1928, p. 34).

The speeches of liberation, therefore, were easily dodged by France. It is documented that the revolutionary men of French revealed cynical discourses, and some important revolutionaries as Robespierre arrived at the assemblies just proposing the change of a nomenclature in São Domingos: *slave* to *non-free*. The Estates-General created by French revolutionaries then summed up the freedom of the French Revolution to France, to the metropolis, not to the colonies.

At the same time, isolated uprisings contributed to a necessary popular disorganization before the revolutionary movement outbreaks. Chavanes, one of the

4 “In 1789 it was estimated que the mulattoes possessed at least ten per cent of the productive land and owned over 50,000 slaves. Many of them had been educated in France, where They Were not discriminated” (DAVIS, 1928, p. 29).

leaders of the liberating project, was also easily defeated and executed with cruelty along with some leaders in March 1791, increasing the discontent of mulattos.

Jean-François, who had acknowledged that he was the leader of the blacks with some delay, assumed the title of “Grand Admiral of France” and, with men like Biassou, Boukmann, and Jean Jannot, completely controlled the insurgent Negroes of the North. The country was in a state of unutterable confusion, the people was divided not only by color and race, but also by conflicting political ideas. The Negroes, who outnumbered the combined whites and mulattoes by not less than eight to one, had to some extent begun to perform their strength, but they were yet unorganized and had not yet well-defined plans for the abolition of slavery (DAVIS, 1928, p. 37).

When the city announces the impossibility of liberating project, it seemed impossible to resist. Why the French revolutionaries recognized the freedom only far away from the colony? The colonial north was prepared to initiate the revolution, since Jean-François was declared a black leader. More than 500,000 blacks joined the fight for independence and freedom by violence and not by petition, mainly led by Boukman, a voodoo leader who found a certain syncretism with western elements. The confusion was evident: there was a clear plan for how the abolition of slavery plans would be defined, but soon a political *document* would need to establish that power almost created.

In June 1793, the main town of the colony, Cap Français, was set on fire by slaves. The lords, if not decimated violently, left the colony desperately. Some authors narrates the event as the biggest massacre of Latin America, “Estimating the death toll between 3,000 and 10,000, and Popkin calls the city’s destruction the most murderous instance of urban conflict in the history of the Americas (presumably overlooking the sack of Tenochtitlan in 1521)” (GEGGUS, 2013, p. 201).

In 1794, an armed black group of São Domingos finally forced the French Republic to recognize the slave abolition on that island, although persistent armed uprisings occurred even before, specifically in 1679, 1713, 1720, 1730, 1758, 1777, 1782 and 1787 (BUCK-MORSS, 2000, p. 833). There was resistance, and several attempts to restore the slave regime made the movement even more conflicting.

Toussaint-Louverture sign then the first constitutional “unifier” text of 1801, and its terms know how to complete bravely: “one French Republic and indivisible.” However, that was not a challenge against Napoleon Bonaparte, who was concerned to accelerate the mission of colonial reconquer, and his prime minister denounced this problem. In response, Toussaint declared that the people were a *friend* of Bonaparte, fearing obviously retaliation (JANVIER, 1806, p. 24).

Haiti’s image closes in a bloody episode in this dialectic (Metropolis/Colony) to the intermediation of an irrepressible conflict. The last step of this turning is the crowd of white public being systematically assassinated. However, this movement of disorder did

not made the revolution a movement without any order. It is here that the constitutional texts contribute to put this desire for power in an institutional organization, and this movement is impressive when we look to the constitutions wrote.

We intend to give some examples of this impressiveness in the next chapter, outlining the precocity of the freedom and social rights granted in the process of emancipation.

3 A Pointless silence

As we tried to sum above, the Haitian episode is a great study case to the history of constitutionalism. More specifically, what might be called *real* popular constitutionalism. The revolution not only culminated in constitutional texts filled with normative rights similar to what we tried to call today in contemporary constitutionalism as “systems of human rights” or “constitutional blocks”. Above all, it represented a very concrete way that our presentism idealizes as unlimited constituent power, original and absolutely able to establish the list of fundamental guarantees and liberal protection against the State, even if it does so using racial violence.

We do not mean that the precocity of the Constitutions is the result of a revolution, occurred as an isolated fact in the world. After all, slave uprisings had occurred and destabilized political and legal systems established in Americas. The colonial Brazil saw in their Bahian territory, movements like the Balaiada in Maranhão (with the support of Quilombos) and the “Inconfidência mineira” as nineteenth-century movements that had similar ideals, where the anti-slavery black audience was, if not forced to drive the uprising, one of its good arguments. However, nowhere we saw something like the big uprising occurred in Haiti. No colony, empire, kingdom or city witnessed the bloody execution of this abolitionist effort with the subsequent and immediate positivation of constitutions with expansive catalog of fundamental rights in constitutional texts.

For instance: the first constitution, led by Toussaint Louverture in 1801, states that São Domingo is “part of the French Empire” (although France was, until 1804, a Consulate since the coup of 18 Brumaire where Napoleon was crowned Emperor only in 1805), giving a reflection of the Bonapartist fear mentioned above. Making the constitution demands a symbolic statement that showed international respect. However, the internal political sovereignty was secured, and never was submissive: according to the political system erected, no law would be valid on its territory if was not approved by the São Domingos Assembly (FISCHER, 2003, p. 18). Slavery was finally abolished in a very significant text: “Article 3. There can be no slaves in the territory. Slavery is abolished forever here, and all men are born, live and die free and French...”.

Free and French. Note that the Constitution lists that the people finally “are born and shall live as free men”. A necessary script, after all the abolitionist discourse of that time was perverse, acted as an excuse for the next generations of slaves been kept and isolated at a lower social caste. The people of São Domingos understood that freedom is a condition with which it is born, lives and dies (FISCHER, 2003, p. 18). Not coincidentally, the constitution gave the state protection for all men in the plantation system, suggesting agrarian reform, and created bases for judicial and administrative organization under the principles of full equality, away from racial discrimination⁵.

In 1804, Dessalines declared independence, although its constitution comes with one-year delay, in 1805, suggesting some institutional discussion on its writing: now the Executive and Legislative powers are absolute, cutting the French empowerment. Dessalines also took advantage of this strategic populism: the text is referred to as the “protector of freedom,” and his generals promises him “blind obedience” on this project FISCHER (2003, p. 18). Dessalines celebrated on October 6, 1804 his consecration as Emperor, and “[...] without knowing how to write his name, entrusts his secretaries to draft a constitution” (FISCHER, 2003, p. 20), scheduled for May 20, 1805. Its preamble provides that “all mortals are alike, and it’s widespread in world so many different classes of beings for the sole purpose of manifesting his glory and power through the diversity of their works”. But in the constitutional text appears the first *political* segregation: “Art. 12. No white person, whatever their nationality, may enter this territory as Lord or owner, or may in the future acquire ownership at all.” This principle will remain until the constitutional reforms of 1918 (FISCHER, 2003, p. 21). Article 14, finally, lists the most peculiar national element in the history of constitutionalism: “Having to disappear all color distinction between children of the same family, from whom is a father of the head of state, Haitians will be known from now on the generic name of *black*”.

This leads FISCHER (2003, p. 20) to recognize an impressive “radical constitutional reinterpretation” in the text of 1805, the “most disturbing paradox of modern universalist politics” while calling on all Haitians, no matter what the color of their skin, *black*. “*We, the people*” as “*We, the blacks*”, even though not being black, maybe is one of the biggest phenomena in popular constitutionalism all over the world. They are no longer linked to the territory element: Haitian, German, French, American, Brazilians. They are black. Claude Moise (1988), cited by Fischer (2003, p. 21) mentions the case as a legal fiction that highlights the problem of race in Haiti, although this legal category is not, in fact, repeated or used to distinguish other rights and duties, but only the enjoyment of property FISCHER (2003, p. 21). Calling “all blacks” as

5 “Art. 4. All men, no matter the color of your skin, can be admitted here for any office. Art. 5. There is no other distinction than that of virtues and talents, and there is no other superiority than that which gives the law in the exercise of a public function. The law is the same for all, so that punishes as protecting”.

citizens is a radical political act that brings a redefinition of legal categories: “Es, por cierto, un signo de cuán diferentemente pudo haberse desarrollado la teoría política si el pensamiento sobre la libertad, la igualdad y la fraternidad se hubiese concentrado en aspectos de raza y color antes que, digamos, de nación o clase” (FISCHER, 2003, p. 22).

Befallen the Republic in 1806, the concern with the racial element returns now to define the exceptions strictly where white can be landowners, “those who perform civilian jobs or are part of the army” (FISCHER, 2003, p. 24). The first constitution of Christophe, finally, establishes the category of citizens (Art. 1) “any person who resides in Haitian territory, is free by law.” The constitutions of 1816, on the other side, suggest aspects that are more interesting: the idea of a welfare Haitian state taking into account the elements of color and black slavery. Here there is not only transnational concern for the slavery phenomenon, an early international condemnation because “el antiesclavismo radical de Haiti no podía circumscribirse sin dificultad a las fronteras del Estado” (FISCHER, 2003, p. 26), but still a very positive benefit, protectionist, to all those who seek refuge from slave regimes for Haiti. Article 6 of the Constitution of 1816 provided at the end of its text that “all those born abroad of a Haitian, man or woman, are Haitians, as well as those who already currently hold recognition as Haitians.” Art. 7 concluded: “All Africans or Indians and their descendants could become Haitians. The law shall regulate procedures for naturalization.”

FISCHER then cites the Decree of 1818 where, following the norms leaders above, Dessalines is committed to a social and humanity fight against slavery according to this constitutional novelty: “Considering that a large number of native blacks and colored people are suffering in the United States lack of dignity and intends to return, DECLARES that will be sent to American craft the sum of \$ 40 for each individual if they return to their country [...]. *that one copy to be shipped to the US Congress immediately*” (FISCHER, 2003, p. 26). Let us recall that the Constitution of 1801 calls itself as a “asylum”, a “safe haven” for all oppressed blacks in the international plan (FISCHER, 2003, p. 31), a public international law discourse that will only be known later, at least in the transition to the twenty century, and after the segregationist policy in Unites States.

In Brazil, for example, positive benefits and effective social assistance as a function of the state or anything similar will only be seen with the *Eloy Chaves* law and the wave of totalitarianism on the twentieth century, accompanied by the New State in the opening of 1920. This function was until then restricted to religious institutions in the imperial stage, and charities institutions as “Santa Casa” is an example, always parallel to the state institution in the nineteenth century. While United States and Brazilian constitutions were absent from any positive social right involving slavery issues and social inclusion of blacks in 1800, what can be said about the constitution of 1801 of Haiti to ensure, as seen, asylum to foreign slaves?

One last interesting point is how to interpret these Constitutions and the upcoming conflicts on this process. FISCHER (2003, p. 33) asks how popular sovereignty would be held, the authority of the people, when the Head of State (Cristophe) and the vast majority of the population are unlettered? The less accessible to the people the constitutional text was, the more difficult can be their normative force. For FISCHER (2003, p. 34), this is an indication of the constitution as a “tautological” element in which a literate minority exercise the power, a very present problem of legitimacy in the field of Popular Constitutionalism since the well-known “declarations of independence”.

Haiti reached the actual release through a violent process, killing lords and opponents, discriminating public management against whites. First abolished slavery, slavery became then an international issue in a constitutional text after a violent seizure of power. We can call this, with Antonio Negri, a *real* constituent power even if their people could not read. This movement was not seen in any other colony in the colonial period. Interestingly, the written constitution was necessary for this partial success possible. The legal textuality was a crucial necessity made by leaders.

There are many hypotheses that might explain this textuality working *for* the people, and not against them. The exegetical positivism, positivism in its most rudimentary form, was the asset that French lawyers alleged to have: the greatness of text that “not needs to be interpreted”. Duguit and the Napoleonic Code are clear demonstrations of that rudimentary positivism in legal theory. There are evidences of a constant dialogue between Napoleon and the former colony, as seen above, sometimes resuming his control, sometimes allowing its opening, indicating evident emperor political manipulations that weakened the young Republic and later surrendered the state again to France. However, it indicates a possible explication to the question of why constitutions were written.

The fact is that a written constitution (and perhaps the French influence of the written text, grueling, authoritative) was a set of ideas that came out of France to its colony São Domingo in a subtle transportation, evidently an invisible process of colonization. Something essential and spiritual that, somehow, allowed all that will of power to the Haitian illiterate that were not dispersed, were not dissipated between “violent crowd.” The fact is that slavery never returned in the country. They were free and French.

We need to emphasize that this moment is crucial to the history of constitutionalism, and should be studied as a relevant “constitutional moment” for fundamental rights. It seems an unpardonable mistake to omit it. The passage of such events may have, if not more, at least the same relevance as judgements like *Marbury vs. Madison* or *Brown vs. Board of education* for understanding the constitutionalism as phenomenon or the fundamental rights as something important to protect, as well

as the movement of American constitutionalism. The revolution in Haiti have the same important of works about *constitutionalism away from courts*, and the endless bibliography on those missions. Studying the American apartheid of the twentieth century in place of the Haitian revolutions in the nineteenth century is not a fair process with history, is more like an option. There is no point on giving less historical significance to the Haitian constitutional process and its implications, as there is no sense in miss the opportunity to study it as a constituent process, as popular constitutionalism, as history of constitutionalism that could have made great influence on another abolitionist movements.

Outside the law, perhaps the greatest work to problematize the Haitian episode is the article of Susan-buck Morss (2003, p. 825), a great reading about the revolutionary events and the philosophical reading of Hegel in his dialectic known about master and slave. Her concern is similar, with the difference that the analysis lies in a provocative question about the possibility of the European philosopher had accessed this information, and then highlighted or omitted those insights it in his work. Montesquieu entered at the same time in this context in France, but did not say a word about Haiti revolutions. The dialectic of master and slave, essential figure for understanding the *Spirit* phenomenology in Hegel, arises when Hegel read Minerva newspaper in Jena. The attention of the author is the ability of the young Hegel grasps that movement, or hides it in his essays on the dialectic of the master and slave. Morss questioned, somehow, the problem of the “omission” of the philosophers around this new world that surrounded them.

As stated above, the silence it is highlighted by other authors who care about this hiding process in the Haitian history, when we speak about the formation of a “rational” modern state, especially the constitutional:

There are four silences that we must be aware of in regard to Haiti. One is the silence in the making of the sources, that is, which events get remembered, described, or Reported in the way que allows this to transcend the present. Two, the silence in the creation of archives and repositories of historical records is a basic consideration. What records are preserved and used? What archives are accessible and present to the historian? Three, choices in terms of what is broadcast and what is not is a profound arena for silencing. Four, the silence que comes from people, historians, and interpreters of narrations Ultimately produces history. This means not everything that is narrated will be accepted the history. It might not become a part of the corpus unless it is received and accepted by those who would ensure its success to the narration (ASSANTE, 2011, p. 285).

The most serious omission, finally, refers to the class struggle, the political process, silencing the constitutional synthesis of a fight between black and white people, slaves and masters in a clash that ended with fundamental rights erected in constitutions even at the early turn of the eighteenth century, and within a nice institutional design. Throughout the revolutionary phase, the driving motor of the revolution is the constant weakness of that “black” power: the concern about restoring the slave regime.

The revolution, says Karl Marx, is the locomotive of history. Here is a locomotive that had worked in an amazing speed, because in April 1792, or after three years of the fall of the Bastille, the White Patriots at Port au Prince were being besieged by a combined army of realistic commanders, white farmers, skin mulattos brown, black slaves; all volunteers, and for now, free and equal partners. No doubt most of the rich was just waiting for the restoration of order to put the slaves back in their places, but the simple fact of having a revolutionary association and a temporary equality meant that the old spell was broken and things would never be the same (JAMES, 1989, p. 112).

Why important narratives as those are unnoticed in the history of constitutionalism? What is irrelevant here? The news that the revolution had arrived in France, published in German and French newspapers, frightened slaveholders. Since at that time, it is noticed that “The Moniteur, day after day, was wondering why no news from Blanchelande? On November, the Moniteur printed a copy of the letter that the colonists had written to the *Jamaican Governor*” (JAMES, 1989, p. 114). Two centuries later, relevant stories are untold. The revolutionary upsurge does not seem to be part of any history, at least as it is treated. Meanwhile, the popular constitutionalism doctrine selects another repetitive targets: the courts in judicial review, the courts against de Legislative Power, or the “innovation” of the example of the Court Warren to diagnose the problem of lack of popular legitimacy. This *lack of memory* on constitutional history must be outlined as something wrong or even harmful.

4 Conclusion

The political process of slave emancipation in Haiti by popular violence is a rich environment for constitutional research. This place, however, is empty, not explored in the history of constitutionalism, much less by Popular Constitutionalism, although it would be a living example of the most central object of the Constitution in the hands of a people oppressed, giving them fundamental rights even more deeper than the commonly studied revolutions in another scenarios.

It would be a good reflection of what can be achieved if we give full historical accessibility of these events to the society, in times when we still have difficulties to discuss or implement, for example, policies of racial inclusion, refuted by parties in Brazil (ALENCASTRO, 2010), or, worse than that, while we still see racial violence episodes mainly in the United States.

At least on Brazil, the history of Haiti is not present in the primary, secondary or higher Brazilian studies degrees, much less the strength of its constitutionalism. This story seems to be much closer to us, and not only geographically, than the United States or Europe. The constant challenge with the French metropolis goes unnoticed, contradictorily also a revolutionary movement. This disturbing political process is not even discussed in most of the contemporary legal schools. At least in our context, racial revolutions studied are the Brazilians, which, interestingly, we know well the outcome.

This historical silence of constitutionalists toward the Haitian revolution is something inexcusable. This omission is irresponsible, as long as Haiti's constitution is an object of study for important subjects such as constituent power, fundamental rights and constitutional history. Perhaps the great fear on the disclosure of these events has not yet been gone, may still be present. If the data tell us something, we know that the black population is more than half of the Brazilian population and that, at least in 2010, in the age groups of 18, only 7.7% blacks were college students (ALENCASTRO, 2010, p. 08). We also know that, numerically, the Brazilian slavery was practiced on a scale never seen before⁶, but we do not want to use these numbers as conclusive impressionism argument. A first step to continue this discussion would be another census that simply questioned in a University sample space, especially postgraduate programs in Public Law with emphasis on constitutional history, the following question: "Do you know what the revolution in Haiti was or remember to have studied it at some point in your basic or higher education? Can you tell what the content of their constitutions at that time? Was more or less developed than the European and American constitutionalism that after became?" The number of scholars studying in depth the American constitutionalism would only be justified because of the vast literature and structure that the United States universities environment itself offers, but not the significance of the facts themselves. At least when we look at Haiti as a comparison.

6 "In fact, no American country practiced slavery on such a large scale as Brazil. Of the total of about 11 million Africans deported and living arrivals in the Americas, 44% (nearly 5 million) came to Brazil for a period of three centuries (1550-1856) the other major slave country on the continent, the United States, the slave trade practiced for just over a century (between 1675 and 1808) and received a much smaller proportion - close to 560,000 Africans - which means 5.5% of total transatlantic trade" (ALENCASTRO, 2010, p. 02).

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