

Historical Approach to the  
Constitutional Regulation of  
Political Rights and its Evolution  
in the Political Participation in  
El Salvador

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## **Aproximación Histórica a la Regulación Constitucional de los Derechos Políticos y su Evolución en la Participación Política en El Salvador**

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### **Resumen**

El presente artículo presenta brevemente el proceso histórico, jurídico y político que se ha producido en el Estado salvadoreño con respecto a los requisitos y circunstancias que han motivado en las Constituciones de la República la exigibilidad de determinadas condiciones a fin de establecer si un habitante ostenta la calidad de ciudadano, y si, por tanto, está habilitado por el Sistema Jurídico para ejercer los Derechos Políticos, siendo el más representativo de ellos el derecho al sufragio activo, aunque paulatinamente se extiende al sufragio pasivo. Se analizan las modificaciones progresistas que el constituyente plasmó en la Carta Magna, de tal manera que es posible apreciar los diversos pasos que van desde el reconocimiento del voto censitario, acorde a las legislaciones europeas decimonónicas que habían cambiado su forma de gobierno de Monarquía Absoluta a Repúblicas, hasta las últimas reformas, decretadas por la Asamblea Legislativa, e interpretaciones, por parte de la Sala de lo Constitucional de la Corte Suprema de Justicia, que permitieron incluir en el ámbito de participación política para elegir Presidente y Vicepresidente de la República a los ciudadanos salvadoreños que residen en el exterior, así como la aprobación de reformas transitorias al Código Electoral que permitieron votar en las recién pasadas elecciones a los agentes de la Policía Nacional Civil y estudiantes de la Academia Nacional de Seguridad Pública, los cuales históricamente estuvieron imposibilitados para votar en toda elección. Es por tanto, la síntesis de un proceso de mayor inclusión en el Sistema Electoral salvadoreño.

**PALABRAS CLAVE:** CIUDADANÍA – DERECHOS POLÍTICOS – DEMOCRACIA REPRESENTATIVA – ELECCIONES – SISTEMA CONSTITUCIONAL – SISTEMA ELECTORAL – SUFRAGIO ACTIVO – SUFRAGIO PASIVO.

### **Historical Approach to the Constitutional Regulation of Political Rights and its Evolution in the Political Participation in El Salvador**

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### **Abstract**

This article presents the historical briefly, legal and political process that has occurred in the Salvadoran State regarding the requirements and circumstances that motivated the Constitutions of the Republic enforceability of certain conditions in order to establish whether a resident holds the condition of citizen, and if, therefore, is enabled by the Legal System to exert Political Rights, specially the most representative one: right to active suffrage, but it gradually extends to passive suffrage. Progressive changes that the constituent embodied in the Magna Carta, so that we can appreciate several steps ranging from the recognition of census vote, according to the nineteenth-century European legislation which had changed its form of government from Absolute Monarchy to Republics, until the latest reforms enacted by the Legislature Assembly, and interpretations by the Constitutional Chamber of the Supreme Court of Justice, which allowed the inclusion of the scope of political participation for choosing President and Vice President of the Salvadoran citizens living abroad, as well as approval of transitional Electoral Code reforms that allowed to vote in the recent elections to the agents of the National Civil Police and students of the National Academy of Public Safety, which historically were unable to vote in every election. It is therefore the synthesis of a process of greater inclusion in the Salvadoran Electoral System.

**KEYWORDS:** CITIZENSHIP – POLITICAL RIGHTS – REPRESENTATIVE DEMOCRACY – ELECTIONS – CONSTITUTIONAL SYSTEM – ELECTORAL SYSTEM – ACTIVE SUFFRAGE – PASSIVE SUFFRAGE.

# Historical Approach to the Constitutional Regulation of Political Rights and its Evolution in the Political Participation in El Salvador

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*“For this city is not ruled by one man, but is free. The people rule in succession year by year, allowing no preference to wealth, but the poor man shares equally with the rich.”<sup>TN 1</sup>*  
(Euripides, *The Suppliants*. 4th century B.C.)

## Introduction

The purpose of this article is to present, in memory of PhD José Rodolfo Castro Orellana's<sup>2</sup> and in tribute to the thirty-first anniversary of the Constitution of the Republic of El Salvador, a study of the historical, legal and political development of the several amendments that the Constitutions of El Salvador have shown with regard to the regulation of political rights, in order to demonstrate the gradual process of inclusion of social sectors in the terms

Translation note:

- 1 This quote was taken from The Internet Classics Archive |The Suppliants by Euripides \* Translated by E. P. Coleridge |Retrieved from <http://classics.mit.edu/Euripides/suppliants.html> (Athens).

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- 2 PhD. José Rodolfo Castro Orellana (August 1, 1944 – March 25, 2014) was a lawyer, sociologist, political scientist and professor at the School of Law and Social Sciences from the University of El Salvador in the courses Introduction to Political Science and State Theory of which he was coordinator until 2013. He has an extensive knowledge of methodology in social research, legal sociology and study of law. He was also a methodological advisor for thesis defense and an author of various research papers in the area of political science and history of El Salvador.

“citizen”<sup>3</sup> and “electorate”. In addition, this article features the most recent interpretations of the Constitutions that include the Salvadoran people who lived abroad and the potential participation of the agents of National Civil Police and the students of the National Public Security Academy in the exercise of suffrage and its impact on political participation, the electoral system and therefore on the Salvadoran political system.

It would seem that analyzing the importance of the Constitution as a fundamental normative body and a supreme legal and political order of the current States is an exhausted subject since one thing is obvious to the community at large: the existence of fundamental rights and their priority recognition in the Constitution of the Republic. Although it should be noted that it was not always in that way especially with regard to political rights. These are initially reflected in the requirements for a person to have the status of being a citizen as the ability to vote. This recognition of the fundamental rights, including suffrage, has been produced in the Western world and particularly in El Salvador as a long process not without political and social conflicts, which have currently led to constitutional regulations much more related to the insertion of sectors that were previously excluded from the possibility of influencing a political impact on the affairs of the State either in a total or partial way. The conflict, armed or not, for the inclusion of fundamental rights and especially the political rights and their evolution, is a historical phenomenon that is not different to our national reality, and we need to identify the ways these rights have been regulated by the most important political, legal, and social instrument in the last few centuries: the National Constitutions of El Salvador.

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3 “Based on logic it should be also *Polites* instead of *citizen*, because it is not exactly the same for the Greeks as it is for us. *Polites*, in fact, is the one who participates in the affairs of the polis and of the courts and people’s assemblies. It identifies with the “political man”, that is the one who permanently retains the responsibilities of the government. Consequently it expresses much more than what the simple word “*citizen*” means for us. ARISTOTELES. *Politeia (La Política)*. Prologue, direct version of the Greek original and notes by Manuel Briceño Jáuregui S. J. Preliminary study and introductions by Ignacio Restrepo Abondano: Publications of the Institute Caro and Cuervo, n° 84. Bogotá, Colombia. 1989. p. 44

# I. The nineteenth-century constitutionalism

## 1.1 The rise of nineteenth-century constitutionalism

Modern states arise on the basis of ensuring their stability through absolute monarchies<sup>4</sup> where the monarch was the only one to rule the state, create and enforce laws, and judge according to their own judgment. It is until the 18th-century, according to Duverger,<sup>5</sup> that two kinds of documents appear in the United States of America and the revolutionary France that reflected the basic principles of a Democratic State: the declarations of rights (the declaration of independence of the United States and the declaration of the rights of man and of the citizen in France) and the constitutions themselves. The former specified the natural rights of man which the State must respect, the latter regulated the organization of public authorities and the fundamental structure of the State. Over time, both kinds of documents would merge resulting approximately in the constitutions as they are known today.

In Europe, the French Revolution, despite its criticism and disagreements, was the event that made possible the origin of the constitutional states. These states had the purpose of delimiting the political power that the monarchs had held during the Middle Ages and early modern times through

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4 "The absolute State, theorized by Hobbes and Bodino, rested on the omnipotence of the royal sovereign without relevant juridical restraints, since the limitations of divine and natural right and even of the fundamental laws of the kingdom were symbolic." SOLANO RAMIREZ, M. A. *"State and Constitution"*: Publications Section of the Supreme Court of Justice. First Edition. San Salvador, El Salvador.1998. p. 35.

5 DUVERGER, M. *"Political Institutions and Constitutional Law"*: Ariel Editorial. Sixth Edition. España 1980. p. 28.

their democrat governments<sup>6</sup> based on the right of universal suffrage as opposed to their divine right to govern.

In spite of the conflicts originated from the defense of the ruling rights of monarchs, the Catholic Church and the broad conservative sectors caused the process of replacing the absolutist monarchy model by the democratic model to be limited in the beginning. When this demarcation was extended from France to the rest of Europe, it was reflected in the institutionalization of the division of powers and the guarantee of subjective public rights, especially freedom (expression, assembly, association, etc.) and equality (before the law and no hereditary duties or privileges were recognized); these rights enshrined in the constitutions were intended to be guaranteed to the inhabitants of the new rules of law, in which power is concentrated in legislation, especially in written form, and not in the arbitrary and sole will of the monarchs.

## 1.2 The fall of the Spanish *ancien regime* and the Constitution of Cadiz

In the early years of the 19th century, the Kingdom of Spain was convulsed by the so-called crisis of the *ancien regime*; such term was adopted for the first time in literature by Alexis de Tocqueville.<sup>7</sup> This ancient regime was identified primarily by the absolutist monarchy system that reigned throughout Europe and which was progressively replaced by a liberal model in the style of the French Republic. After 1789, the monarchical and aristocratic system

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6 Democracy has two different moments and visions, the ancient one and the modern one. Descriptively the ancients exercised it as a direct democracy, while the modern ones exercised it as a representative democracy, that is to say that for the ancients democracy had symbols such as the square, the assembly: "The power of *Demos*", While for the modern, democracy has elections as its symbols, the very exercise of the vote: "The power of the representatives of the *Demos*" BOBBIO, N. "Teoría General de la Política": Editorial Trotta. First Edition in Spanish, translated by Antonio del Cabo y Gerardo Pisarello. España. 2003, p. 402 y 403.

7 TOCQUEVILLE, A. *The old regime and the revolution*: Economic Culture Fund. Third Edition. México 2006.

appeared old, outdated and precarious, so according to Duverger,<sup>8</sup> during the following fifty years in Europe a relentless fight between the old monarchical or aristocratic regime and the new democratic regime was developed.

In Spain this process of replacement to the *new regime* was immersed in various internal and external conflicts that triggered the popular uprising called *the Aranjuez mutiny* in March, 1808. This was caused by the pressure from the noble class because of the dissatisfaction of the French Army occupation in charge of the Emperor Napoleon Bonaparte on the Spanish land due to the Treaty of Fontainebleau.<sup>9</sup> The Popular pressure reached such a point that King Charles IV decided to abdicate in favor of his son, King Ferdinand VII, whose reign lasted only from March to May of the same year, given the influence and power of Emperor Bonaparte. On May 5th 1808 Ferdinand VII, in Bayonne France, abdicated his rights, and a month later the Emperor appointed his elder brother, Joseph Napoleon I<sup>10</sup> King of Spain. The new Monarch, once in power in Spain, promulgated on July 7th 1808 the Bayonne Statute, which was intended to be a constitution for Spain, but given the fact that it was granted by a foreign state and without popular will, it was not considered a constitution but an extension of the power of the Emperor Napoleon in the Kingdom of Spain.

These events led to an independence struggle on the part of Fernando VII, and in the middle of this war, the constituent assembly known as the Courts of Cadiz (Andalucia) emerges in Spain in 1810 in order to govern Spain in the

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8 DUVERGER, M. *Political Institutions and Constitutional Law*: Ariel Editorial. Sixth Edition. España 1980. p. 49.

9 Through the Treaty of Fontainebleau of 1807, Spain and France made an alliance to invade Portugal which had allied itself with England, the main enemy of Emperor Napoleon Bonaparte. However, the French army took several localities not provided for in the Treaty as it passed through Spain, disturbing the noble class by triggering the Aranjuez mutiny demanding the abdication of King Charles IV and the resignation of Spain's Prime Minister Manuel Godoy. QUEIPO DE LLANO, J. M. *Historia del levantamiento, guerra y revolución de España*: Tomo Imprenta de Casimir. París, Francia.1838.

10 According to Javier Peñalosa, at this time the French general Leopoldo Hugo travelled to Spain and moved with his wife and children, among them the future writer Victor Hugo. In Madrid he would live and study until the French defeat in Spain became evident, then he returned to France with economic problems. HUGO, V. *The Miserables*: Porrúa Editorial. Preliminary note of Javier Peñalosa. México, 2011.

absence of the legitimate King since they did not recognize the authority of Joseph Napoleon I.

Therefore, after long debates about the best form of government, on March 19th 1812 the “Constitution of Cadiz” was promulgated, in which it was proclaimed that power is exercised by the nation represented in the courts.<sup>11</sup> This is considered the First Constitution of Spain whose validity also applied for the American continent territories under the Spanish rule, among them, the Intendancy of San Salvador.

However, in 1813 Ferdinand VII triumphed over the French army and returned to the throne of Spain. Contrary to what the Liberals expected of him, on May 4th, 1814 he repealed the Constitution of Cadiz to return to absolutism, persecuting the Liberals and suspending all constitutional rights, including citizenship and its rights.<sup>12</sup> This caused political instability that was ensued for years, until 1820, when the Spanish general and liberal politician Rafael de Riego addressed his army in order to express that they all were living under an arbitrary and absolute power, and that since King Ferdinand VII returned to the throne, not only had he repealed the 1812 Constitution but he also had violated the rights of the nation, provoking an anti-absolutist uprising. On March 8th, King Ferdinand was sworn into the Constitution of 1812, and two days later, this manifesto was published with the king’s phrase: *“Let us march frankly, and I the first, by the constitutional path”*. Thus the so-called Liberal or Constitutional Triennium began, in which the Constitution of Cadiz started its second period of validity as a constitutional monarchy.<sup>13</sup>

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11 Art. 3 of the Constitution of Cadiz: “Sovereignty resides essentially in the Nation, and therefore the right to establish its fundamental laws belongs to the latter exclusively.”

12 Art. 23. “Only Spanish citizens may get municipal jobs, and choose for them in the cases specified by law.”

13 However, the Constitution of Cadiz lost validity once more on October 1st 1823 when Fernando VII again repealed it in favor of absolutism during the “ominous decade” in which the monarchic absolutism resurfaced, until the civil war over hereditary disputes following the death of Ferdinand VII. These events did not affect Central America because independence had taken place.



With the second validity of the Constitution of Cadiz, in terms of the Salvadoran jurist and researcher PhD Napoleón Rodríguez Ruíz, Sr.,<sup>14</sup> the political propaganda for independence was allowed to spread legally thanks to the freedom of the press granted by the body of law. Hence two pro-independence newspapers appeared in Guatemala: “*El Editor Constitucional*”, on July 24th 1820, led by PhD Pedro Molina, with a radical current and “*El Amigo de la Patria*” headed by José Cecilio del Valle, with a more moderate ideological tendency.<sup>15</sup> These texts helped spread the ideas of independence throughout the Central American region.

The Constitution of Cadiz governed Central America until its detachment from the Spanish crown. This took place in El Salvador on September 15th 1821<sup>16</sup> and after a series of conflicts with Emperor Iturbide in Mexico,<sup>17</sup> the nascent Central American Federation was annexed with its own Constitution in 1824. This new constitution reflected not only the declaration of “freedom and independence of Spain and Mexico and of any other power or foreign government” (Art. 1 Constitution of 1824), but it also reflected liberal principles along with individual rights and the legal values based on human

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14 RODRÍGUEZ RUÍZ, N. *History of Salvadoran legal institutions*: Publications section of the Supreme Court of Justice. San Salvador, El Salvador, 2006. p. 123.

15 Those who supported Pedro Molina called the followers of Cecilio Del Valle “Los Bacos” in reference to them being drunk, while the supporters of Del Valle called those who followed Molina “Los Cacos” in reference to them being thieves. These groups are considered the seeds of the first factions in Central America, from which the first political parties will gradually emerge. RODRÍGUEZ RUÍZ, N., *op. cit.* p. 123.

16 For a further study of political events in El Salvador between 1821 and 1822, Cfr. article CASTRO, J. R. “Notes about actors, ideas and ideologies in the struggles for emancipation of El Salvador” which is published in seven editions of the journal *Revista Ciencia Política* from the School of Law and Social Sciences of the University of El Salvador in its digital format. June 2010. Año 2. No. 3 a December 2012, year 4 No. 14 en <http://www.jurisprudencia.ues.edu.sv/publicaciones.html> revised on October 16th 2013.

17 On October 1st 1822 the Mexican emperor Iturbide ordered his army to attack on the province of San Salvador if it did not immediately join Mexico, on the basis of an entire submission to the Imperial Government, and without any conditions that could contradict it. (...) On February 9th 1823 the army of Iturbide entered the city of San Salvador, and on February 10th the El Salvador province was declared annexed to the Mexican Empire, but nine days later Iturbide abdicated the Imperial crown of Mexico, so the empire crumbled, and El Salvador and the rest of the invaded countries regained their freedom and independence. MONTERREY, F. *History of El Salvador. Chronological entries. 1810-1842*: Tome I. University Editorial. San Salvador, El Salvador. 1997. p. 95,104.

freedom, which would end in the year 1841 when El Salvador declared itself a unitary, independent and sovereign State, proclaiming its own Constitution of the Republic. Starting from this Constitution, a study of political rights would begin, not without first specifying some aspects that the Constitution of Cadiz imbued with the constitutionalism of the nascent Salvadoran State.

## II. The Constitutions in El Salvador

As noted above, a few years before its independence, El Salvador had experienced a constitutional legal influence coming from Spain. This influence was due to the conflict with the fall and the rise of the absolutist State and the second stage of validity of the Constitution of Cadiz with its principles of constitutional monarchy. Therefore, it is not surprising that the constitutions of El Salvador declared principles inspired both from Spain, especially the relationship with Catholicism, but mostly from the revolutionary and bonapartist France. Thus in 1841 it was decided to form a republican, democratic and unitarian State which was completely separated from the Central American Federation, a process that had begun in 1838.

Regarding to the recognition of political rights, according to Avendaño Rojas,<sup>18</sup> during the two periods of validity of the Constitution of Cadiz, indirect elections were introduced. In America these were exercised in the election of town councils in 1812. Elections were also held to renew the representatives of the courts, of the city council and of the provinces in 1813 and 1820, which were held by electors from the parish, party and province.

Political rights were granted to certain citizens with certain requirements: Spanish people or their children born or living in the Spanish empire; naturalized foreigners or those who had lived for ten years in a village and the castes which served or distinguished themselves by their talents as

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18 AVENDAÑO ROJAS, X *Elections, citizenship and political representation in the Kingdom of Guatemala. 1810-1821.*: bulletin AFEHC N° 12, published on september 2005, page 5, available in: [http://afehc-historia-centroamericana.org/index.php?action=fi\\_aff&id=364](http://afehc-historia-centroamericana.org/index.php?action=fi_aff&id=364) consulted on October 19th 2013.

long as they were legitimate children and married to “a free-born (ingenui) woman”.<sup>19</sup> In addition, to be a citizen, they had to have a recognized job or lifestyle, no debts to the Treasury or pending trials or be a domestic servant.<sup>20</sup> The limitations on political rights, especially the right to be nominally “citizen” of a moral character, have been reproduced in the constitutions of El Salvador, with liberal nuances in each new constitution.

## 2.1 The 1841 Constitution

In article 2, it was proclaimed that El Salvador will be formed under a republican, popular and representative government which would be also exercised by three different powers: the legislative, executive and judicial power.

Article 5 stated those who should be considered citizens and what the requirements will be:

*“All Salvadorans **over the age of 21** who are **parents**, or heads of household, or those who know how to read and write or those who have **the property designated by the law are citizens**”<sup>21</sup>*

In addition, article 8 set out the grounds for suspension and for loss of the citizenship:

*“Citizens’ rights are suspended by criminal proceedings in which a reasoned order of imprisonment has been issued for an offence which, according to the law, is worth a penalty more than correction; by being a legally declared **fraudulent debtor or debtor to public revenues** and judicially required to pay; by a **conduct notoriously flawed** or an **undignified occupation** legally qualified; by **madness**,*

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19 VARGAS VALENCIA, A. *The Institutions of Justinian in New Spain*: Institute of Philological Research, in *Notebooks of the Institute of Philological Research*. Number 25. National Autonomous University of México. México. 2011. p.21 “In Roman law an ingenui is a free-born person” retrieved from <http://132.248.101.214/chiif9/lib/tp/arctic/images/InstJustiniano.pdf> on October 19th 2013.

20 The content of these requirements and limitations are among articles 18 to 26 of the Constitution of Cadiz.

21 The bold in this research, particularly in the text of the normative dispositions, are supplemented by the researcher.

*insanity or mental illness and by being a domestic servant close of the person. Those who admit employment or accept pensions, flagships, hereditary or personal titles from another nation without a license from the General Assembly shall lose their status of citizen; also those sentenced for crimes that are worth a penalty more than correction, until they rehabilitate."*

A series of requirements that limited the possibility of being a Salvadoran citizen by various criteria may be observed in article 5. In addition to the requirements of age and mental capacity, it is highlighted the requirement to own a property with extensions determined by law. This leads to considering article 11 of the same body of law that determines the requirements for a citizen to be part of the legislative power as a member of the Chamber of representatives.<sup>22</sup> These requirements included "to own a property of at least five hundred pesos", and to be a senator the property had to be "a real estate of not less than four thousand pesos, located anywhere in the Salvadoran territory". In the same way, to be President of the Republic, the presidential candidate had "to own a real estate not less than eight thousand pesos, located in any of the departments of El Salvador".

In addition, there were some limitations derived from social status, like being a parent or being financially responsible for the needs of a dwelling as well as knowing how to read and write; the latter is an element that widely limited the number of people able to adapt in the term "citizen".<sup>23</sup>

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22 The legislative power of the Republic of El Salvador as a unitary State was formed by a two-chamber system composed of members of the representatives of Chamber and Senators. This configuration was established in the 1841 Constitution (art. 13) and remained for 45 years until the 1886 Constitution (art. 54). Since then the Legislative Assembly has been configured with the one-chamber system composed of parliament representatives, a system that remains the same until today.

23 "It is estimated that for 1841 80% of the Salvadoran population was illiterate." In this context the importance of the foundation of the University of El Salvador on February 16, 1841 was justified. PICARDO JOAO, O. *Historia y Reforma de la Educación Superior en El Salvador*: Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura, y Ministerio de Educación de la República de El Salvador. p. 28 retrieved from <http://www.wisis.ufg.edu.sv/www.wisis/documentos/M0/M000394.pdf> on October 23rd 2013.

## 2.2 The 1864 Constitution

Article 7 established the requirements for citizenship in this historical period of El Salvador: the minimum age for citizenship remained at 21 years. Those who sought to be a Salvadoran citizen had to show a good behavior but also they had to demonstrate some of the following qualities or conditions: to be a parent or a head of household, to be able to read and write or to have a property designated by law.

There was an exception to age on the basis of educational level or family status, in this context citizens were also those over the age of eighteen who obtained a literary degree or got married.

Articles 10 and 11 determined the grounds for suspension or for loss of the citizens' rights. In general they remained with the same grounds as those related to the 1841 Constitution, except that a ground for suspension was removed, the fact of *being a domestic servant close to the person*. This formally opened up the possibility of access to political rights for those in that capacity.

Aside from the above, the eligibility for membership in State bodies was dependent to the possession of property of various dimensions by type of public official.<sup>24</sup> Thus, the census suffrage<sup>25</sup> still manifested itself both in the requirements to be citizens and in the requirements to be elected governor.

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24 Candidates for President and Vice President were required to own property with a value of eight thousand pesos (Art. 15); for senator, a property of at least four thousand pesos (Art. 16); for parliamentary a property with a value of not less than five hundred pesos was required (Art. 17); to be a judge of the Supreme Court of Justice, it was demanded a capital of a thousand pesos in real estate (Art.19) and for government ministers it was necessary to own property with a value of at least two thousand pesos (Art. 20)

25 *"The censitarian suffrage was the first and most widespread form of restricted suffrage; it is the restriction of suffrage by conditions of fortune"*. Among the forms of census suffrage is that of possessing property, that is to say that *"only people who own land shall be eligible to vote..."* The census vote was justified on the basis that only people who had economic fortunes were truly linked to the nation, an argument supported by the 18th century and early 19th century bona fide bourgeoisie. DUVERGER, M. *Instituciones Políticas y Derecho Constitucional*. Op. cit. p. 95.

## 2.3 The 1871 and 1872 Constitutions

In April 1871 the Guatemalan military man and politician General Santiago González Portillo overthrew President Francisco Dueñas with a coup d'état, and assumed the provisional presidency of El Salvador.<sup>26</sup> The first actions of this provisional government tended to proclaim freedom of expression and press. On May 13th González Portillo called for elections of representatives to the Constituent Assembly. As a result, on October 17th, the fourth Constitution of the Republic of El Salvador was issued (taking into account the one from 1824).

This constitutional rule prohibited the consecutive re-election of the president (during the government of Dueñas, the Constitution of 1864 was amended to allow for re-election up to two consecutive times<sup>27</sup>) and it also stated that the current president would last in office for a two-year period. In addition, religious tolerance, independence of powers and indirect election were established. Finally, in order to legitimize the power, it was proclaimed that those who were not born in El Salvador and had lived for several years could be elected presidents. From this Constitution began progressively the liberal period that would reach its peak in the 1886 Constitution.<sup>28</sup> However the 1872 Constitution increased to four years the period of time that the President would remain in office, thus extending González's "provisional" government to 1876.<sup>29</sup>

The regulations concerning citizens are set up in the Constitutions of 1871 and 1872 in articles 8 through 11, and since they are verbatim identical, they are presented in a single set.

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26 MONTERREY, F. History of El Salvador. Chronological Anotations. 1843- 1871 Tomo II: University Editorial. San Salvador, El Salvador. 1997 p. 360-364.

27 MONTERREY, F. *Op. cit.* p. 351.

28 *Ibid.* p. 364.

29 *"All officials of the highest powers, whether elected by the people or by the Legislative Body, who began to exercise their functions in the current year, in accordance with the Political Code of October 16th 1871, shall continue to operate until the end of the period allocated to them respectively in this Constitution."* (Transitional Additional Article to the 1872 Constitution)

Article 8 determined the conditions for being a citizen: to be over twenty-one years old, to have a good behavior and also to have at least one of the following conditions: to be a parent or head of household, to know how to read and write or to have an independent lifestyle.

It is important to note that this constitution abolished the requirement to own a property in real estate in order to be a citizen, which set a standard for the elimination of the census vote. It was also abolished the exception of age for those who already had a literary degree at the age of eighteen years as well as the mandatory marriage requirement listed in the 1864 Constitution.

Similarly, Articles 10 and 11 determined the grounds for suspension and loss of citizens' rights, which were the same in both constitutions, except that the 1871 Constitution included selling the vote in the popular elections as grounds for loss of citizenship.

These constitutions were the intermediate point in the process of breaking with the conservative system widely linked to the power of the Catholic Church that had prevailed in the Salvadoran State. For example, in the assigned sections to elections in the 1871 Constitution, as well as in the 1841 and 1864 Constitution, the term "souls" was referred to the number of people in a "perimeter, district or canton", whereas in the 1872 Constitution the term "inhabitants" was used. In addition the prohibition of any clergyman to hold elected office was reinforced.

Finally, the 1872 Constitution contained two other changes: the first and most relevant one refers to the recognition of the inalienable nature of the right to vote (Art. 49); the second one was related to the administrative division of the State, which was previously divided into "perimeters" and thereafter into "departments", a division which nowadays remains.

## 2.4 The 1880 Constitution

At the end of Santiago González's presidential term and in the knowledge that he himself had promoted the 1872 Constitution which prevented his re-election, Gonzalez proposed Andrés del Valle as his official candidate, who under the influence of the Gonzalez regime was elected to office and began his government on February 1st 1876. However, this influence produced popular rejection, since Santiago González continued in government after he was appointed Vice-president of the Republic and General in Chief of the Armed Forces,<sup>30</sup> a charge that according to the Constitution belonged to the President (Art. 89). A few days later, Andrés del Valle faced a bloody revolutionary movement on the part of the Guatemalan government that ended in his resignation from the presidency on May 1st 1876. Rafael Zaldívar<sup>31</sup> was elected provisional president for the period from May 1st 1876 to February 1st 1880. At the end of his term as Interim President, Zaldívar promulgated the 1880 Constitution in order to remain in the power, which stated in article 131: *"As a one-time only exception, the National Constituent Assembly shall directly elect and appoint the President of the Republic for the first constitutional term, the judges of the Supreme Court of Justice and the three appointees referred to in the seventh section of article 69."*

The constitutional requirements in article 7 of this body of law, regarding to those of the 1872 Constitution, contained some updates, such as the inclusion of those who were twenty-one years old enlisted in the militias or in the Salvadoran army. Individuals who were eighteen years old could be citizens if they had "some literary degree" and those under twenty-one years old if they were married.

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30 CARDENAL, R. *The ecclesiastical power in El Salvador. 1871-1931*. Second Edition: Direction of Publications and Printed Salvadoran History Library. San Salvador, El Salvador. 2001, p. 135- 138.

31 This election was not of a popular character; moreover, it was the result of a pact of coffee landowners, which was called by Andrés Valle as part of the agreement with Guatemala made up of around 200 Salvadoran among them, including incipient coffee growers, landowners, merchants, politicians, military and jurists *vid.* CARDENAL, R. *"The Power..." Op. cit.* p. 137.



The 1871 and 1872 Constitutions annulled the inclusion of people over the age of eighteen who had no literary degree but were married.

In the 1880 Constitution the inalienable nature of suffrage was reinforced and the mandatory nature was established (Art. 45). The term of office of the President of the Republic was four years, and the president could not be re-elected immediately until at least one presidential term had elapsed (Art. 78).

## 2.5 The Constitution of 1883

The 1880 Constitution had begun the process of the secularization of the State, in which the Catholic religion was always recognized as “the one professed by Salvadorans” with the protection of the State. However the profession of faith of other religions was fully guaranteed with the only aim of maintaining public order. In this constitution the establishment of conventual congregations or any other religious institutions were also prohibited (Art.40). In addition religious ministers were not allowed to hold elected office (Art. 50). Another liberal tendency that was gaining momentum at the moment was the “coffee state”, which was producing large profits for the businessmen, so that between 1881 and 1882, *ejidos*<sup>32</sup> and communal lands<sup>33</sup> were exploited in order to be used for coffee growing. In 1880 the Salvadoran State acquired more strength and stability.

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32 **Dictionary of the Spanish Language.** 22nd Edition. *Ejido*. (From lat. *\*exītus*, from *exītus*, output). *A common field of a village, adjacent to the village and which has not been worked and where cattle is usually gathered. Established eras. Cfr. OLMEDO LOPE, H. J. “Breves Consideraciones al régimen de titulación de inmuebles en la legislación salvadoreña” Tesis doctoral: Universidad de El Salvador. Facultad de Jurisprudencia y Ciencias Sociales. San Salvador, El Salvador. 1969. p. 3 “The word Ejido began to be used for the lands found at the exit of places or towns. However this word was later applied to the lands that the municipalities had in use and enjoyment first by concession of the Spanish Crown and after independence by concession of the state.”*

33 **Communal Lands:** “The communities were extensions of lands managed by corporations that had legal registrable personality. The lands of the community were possessed in individuation.” (8) *The communal lands were those that belonged to the communications of indigenous and ladinos which were managed by corporations that enjoyed legal personality being owned by the indigenous and ladinos in Proin division. They disappeared with the community extinction law in 1881. OLMEDO LOPE, H. J. “Brief Considerations...” Op. cit. p. 3.*

The State apparatus began to have a more effective presence in the national territory, especially in the western region, which was the most economically developed region with the growing and export of coffee. For the first time in several years the national territory was able to get rid of the wars with other countries; in addition the president managed to stay longer in his position, such as the term of Rafael Zaldívar in office, who managed to stay nine consecutive years until 1885.<sup>34</sup>

This situation of stability and interest in continuing in office caused Zaldívar to convene another Constituent Assembly on October 18th 1883. This new Constituent Assembly approved on December 4th a new constitution which was ratified by Zaldívar two days later. This Constitution abolished the prohibition on the re-election of the President of the Republic (Art. 77), calling for elections on December 23rd, with the same provisions of the 1873 electoral law, and Zaldívar was re-elected for the period 1884-1888.<sup>35</sup> However, he resigned as president on May 14th 1885.<sup>36</sup>

Articles 43 to 46 determined the rights of the citizen as well as the grounds for suspension and loss of citizenship, these did not vary at all within their essence compared to those set forth in 1872.

The Zaldívar government ended by resigning in 1885 due to a popular uprising led by Francisco Menéndez, in which several social sectors participated. Zaldívar's social and economic policy turned against him because opponents thought that Zaldívar only benefited a sector of people of trust or clique. The emerging landowner class was directly involved for the first time in the political and military opposition of a ruler who they felt was acting outside their interests.

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34 AA.VV. *History of El Salvador*, Tomo II. Ministry of Education. San Salvador, El Salvador. 1994, pp. 22-23.

35 Legislative Power, order of January 28, 1884 published in *Official Gazzete*, Tome 16 Number 25, of January 29, 1884.

36 Vid. VIDAL, M. *Notions of Central American history*. Department Editorial, Ministry of Culture. Fifth Edition. San Salvador, El Salvador. 1957. pp. 304-307.

According to the opinion of Salvadoran historians, “*The opponents considered that Zaldívar had not complied with the fundamental precepts of liberalism, especially those related to the rights of citizens, such as freedom of expression, representative democracy, and equality of citizens before the law.*”<sup>37</sup> The leader of the opposition, Francisco Menéndez, called a constituent assembly when he arrived at the head of the government. The 1885 draft constitution was rejected by Menéndez claiming that it gave very little power to the President of the Republic. For example, the presidential term was reduced to three years (Art. 80), the appointment of ministers without Salvadoran nationality was not allowed and the right to insurrection of the people was implemented for the first time if the people observed that the rulers disregarded fundamental laws (Art. 36). Confronted by the refusal of the government to amend the draft Constitution, Menéndez dissolved the congress, he declared himself dictator and the Constitution remained unsigned. Subsequently, he convened a new Assembly Constituent, which was installed on June 21st 1886.

## **2.6 The 1886 Constitution**

Most of the differences between the 1885 and 1886 constitutions tended to maintain the powers of the executive branch such as that of 1883. The changes in the citizens’ section varied in the sense that the age of majority was set at eighteen years of age, including those who were married or with an academic degree even if they were under that age. (Art. 51) In addition, the grounds for the loss of their exercise were extended by including those who sell votes in elections, those who act to promote presidential re-election and those officials who restrict the freedom to vote (Art. 53 ordinals 5th, 6th and 7th).

Lastly, the bicameral system of the legislative branch was amended and the unicameral system was instituted with a certain number of representatives (art. 54), and its powers and duties were extended with respect to the 1883

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37 AA.VV. History of El Salvador, Tome II, *op. cit.*, p. 31.

constitution (Art. 68). The conditions related to the exercising of elections remained similar to the last Constitution in force. In addition, the right of the people to insurrection was maintained, but it was limited to separating the rulers from their posts by maintaining the legal order without any modification.

The 1886 Constitution is called “liberal” because of the recognition of the principles and rights inherent in this ideological tradition. This has been the Constitution whose period of validity lasted the longest; on its basis the coffee-growing state was consolidated as well as the elite class, and their estrangement from the social sectors such as farmers, day laborers and workers in general. The progressive emergence of sectors publicly revealed against the *status quo* was reinforced, in an era without truly free, secret and egalitarian elections.

### 2.7 The 1939 Constitution

As a historical and political framework, it is necessary to remember the rise to power of General Maximiliano Hernández Martínez through a coup d'état in 1931 against Arturo Araujo, the latter being probably the first president freely elected by the citizenry since 1841. Popular struggles due to inequality among social classes, especially among peasants, labor unions and indigenous sectors, the economic crisis that affected coffee prices since 1929 and the electoral fraud in the municipal and legislative elections of early January 1932,<sup>38</sup> produced the peasant uprising and the massacre in the western sector of the country by Martínez in order to dominate the popular masses. As a result of this, there were various massive mobilizations by both national and foreign people, which made it difficult to control those who were Salvadorans and those who were not. Thus the Residence Card Law was issued for the first time, to issue a document

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38 At that time the votes of various polling stations were annulled, especially in the western part of the country, because it was there that the peasant and indigenous movement was stronger, together with the Salvadoran Communist Party, that during the government of Araujo obtained the legal status that allowed him to participate directly in those elections. *Vid.* ANDERSON, T. *El Salvador 1932*. Publications and Printing Department: Third edition. San Salvador, El Salvador. 2001.

that included a series of data on each person over eighteen years of age<sup>39</sup>, and which presentation was obligatory in order to be able, among other things, to exercise the right to vote. (Art. 8 of the Residence Card Act).

Various authors<sup>40</sup> had determined in their Salvadoran historical studies that for the municipal and legislative elections of 1932, it was still allowed to register independent candidacies, due to the lack of political parties as they are recognized nowadays.<sup>41</sup> Quotas of political power were allocated to candidates who won the elections because of their popularity and government capacity; this was the so-called “caudillismo”, in other words there were mayors who carried out handcrafted work but who were elected because they were considered leaders in their respective communities, far removed from the central government in San Salvador.

Since then, the registration of “independent” candidates for municipal and legislative elections has been prohibited. In addition the administrative and

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39 For Rafael Guidos Véjar, the idea of creating such a document was to control the population, granting the document to those without “communist” traits or backgrounds, a group that became the enemy of the government from that moment. *Vid.* GUIDOS VÉJAR, R. *The rise of militarism in El Salvador*: UCA editors. Third edition. El Salvador, 1986. p. 16. It should be noted that this document was also the precursor to the Identity Card, which in turn was the antecedent of the current Identity Card (Documento Único de Identidad). This is one of the functions of these three documents has been the holder’s capacity to vote. *Vid.* National Registry of Natural Persons. Work memory 2011. El Salvador, 2012. p. 15.

40 *Vid.* ANDERSON, T. *El Salvador 1932*. *Op. cit.* HERNÁNDEZ TURCIOS, Héctor Antonio. Political party regime 1930 1975. Doctoral Thesis: University of El Salvador. San Salvador, El Salvador. 1977. HÁNDAL, Shafik. *Theory of the revolutionary situation*. Editions: Schafik Hándal Institute. First Edition. San Salvador, El Salvador. 2012. DALTON, R., *El Salvador*, monograph: UCA editors. Third Edition. San Salvador, El Salvador. 1993.

41 “This is how we can define our political initiation as the stage in which the political caudillismo develops. In this stage a man by his military or economic power, whichever, would at will seize power or force the obedient to appoint him president. In addition, if this man got bored with power, he would bring to power whomever he would put someone chosen randomly to replace the former in this one which was equally random. (...) At the end of the century (...) the caudillo parties, a new political stage, emerged although carrying the same previous tendencies, changed the modalities of organization and struggle. They formed political parties around a man, so the man and the party were the same thing, and if there was a mass of people around them, the party, mass of people and man was the same. However the interesting thing was that this unity was of such fragility. If an election was lost, passed or removed the man-candidate, the party and the mass of people would disappear. The whole organization, the caudillo party remained until 1960 or 1961.” HERNÁNDEZ TURCIOS, Régimen de partidos políticos...*Op. cit.* p. 28.

economic autonomy of the municipalities had been severely restricted<sup>42</sup>. That same year, the Residence Card Law was enacted. The most essential purpose of this document was the requirement to be presented by citizens in order to vote. This document is the first precedent of the current Identity Card known as Documento Único de Identidad.

The best-known incident regarding the political rights of citizens was the Prudencia Ayala case in 1930. She showed up to the municipal government of San Salvador to register herself as citizen and later to run for the presidential elections. The motion was rejected on the ground that the Constitution of that time did not provide the right to vote for women.<sup>43</sup>

Prudencia Ayala appealed to the Supreme Court of Justice, which declared itself incompetent to hear the case because the Constitution did not consider such petitions to be within its jurisdiction because they were political rights and not civil rights.<sup>44</sup> The actions of Prudencia Ayala alarmed the Salvadoran political sectors, especially because at that time it was a tense electoral period and also the political sympathies from women were not clear;<sup>45</sup> in addition women's suffrage was also being recognized in several Nations.<sup>46</sup>

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42 In fact, Martínez's strategy in the elections of 1932 was to open the candidacies to any sector that wanted to participate in the elections. This was done because at that time, the elections were not secret, since the citizen had to register on specific lists stating his or her electoral preference. So during the massacre, the government used these lists to locate the pro-Salvadoran Communist Party people. HERNÁNDEZ TURCIOS, Héctor Antonio. Political party regime. p. 33-34.

43 Albeit there was no article in the 1886 Constitution limited the right to vote and stand for election for women, during all constitutions validity it was never considered any real section to include women in civil or political rights. This was a general fact at the international level, in addition to the existence of laws that placed women legally below men, as specific articles of the Civil Code (133 and 134) now repealed.

44 Art. 37 of the 1886 Constitution: "Everyone has the right to request and obtain the protection of the Supreme Court of Justice or Second Instance Chamber, if any authority or individual restricts **personal freedom or the exercise of any of the other individual rights** guaranteed by this Constitution. A special law shall regulate the manner in which this right is implemented."

45 The number of women over eighteen years old in 1930 was 85,107. This number is higher than that register of men which was 80,994. Data taken from the Population Census of El Salvador 1930. Virtual Library in Population. Central American Population Center. [http://ccp.ucr.ac.cr/bvp/censos/El\\_Salvador/1930/](http://ccp.ucr.ac.cr/bvp/censos/El_Salvador/1930/) consulted on November 11th, 2013.

46 For the American continent cases *vid.* IRAHETA, C. "First deputies in the Legislative Assembly in El Salvador". AA.VV. *History of women. Women of history in El Salvador*. Secretary of Culture

This recognition was used as an advantage by Martínez to seek popular support and continue in the executive branch, so Martínez included two special articles regarding to women's suffrage in the 1939 Constitution:

*"Art. 21. -The right to vote for women shall be regulated by the Electoral Law."*

*"Art. 144. -The right to choose in an election is inalienable, and its exercise is obligatory, except for women which is voluntary."*

The 1939 Election Regulations Law established the following requirements for a woman to become a citizen: to have the Residence Card, to prove that she was married and over twenty-five years old, and if unmarried she must be over thirty years old. In addition, regardless of marital status, she was required to have completed at least primary school. But if the woman had any professional title, she could be included by proving that she had reached the age of majority.<sup>47</sup>

Furthermore, the 1939 Constitution was the first in El Salvador that not only determined who were considered citizens, but also presented a list of the rights and duties of those of such quality (Art. 20). The rights were the exercise of suffrage and to qualify in a public office, whereas the duties were to serve the nation, respect the authorities and contribute to public expenditure in a proportionate and equitable manner.

However the previous recognition of the political rights of men in general and women in particular was only a kind of concession to the real reason for the repeal of the 1886 Constitution: The re-election of Hernández Martínez<sup>48</sup> as President of the Republic using the same "legal" method that

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of the Presidency. Parliamentary Group of Women, Legislative Assembly of El Salvador: National Direction of Research in Culture and Art. First Edition. San Salvador, El Salvador. 2013. p. 151 y ss. To the rest of the World cases *vid.* URIARTE E, Introduction to Political Science. Editorial Tecnos. Madrid, España. 2012 p. 117 y ss.

47 Article 4 of the Regulatory Law of elections. Decree constituent N° 31 of January 31, 1939, published in the Official Gazzete number 44 tome 126, of February 24, 1939.

48 Prior to the 1935 elections, Hernández Martínez resigned and placed in office his first appointee, Andrés Ignacio Menéndez, six months before the elections. During that time he was minister of war, navy and aviation, so he was able to register as a sole candidate (*pro patria*) and extended his mandate from 1935 to 1939. This was not a secret, to the point that

Zaldívar had used, thus, the third paragraph of Art. 91 the executive branch determined: *“Exceptionally, and due to the national interests demands, the citizen who would exercise the Presidency of the Republic since March 1st of this year to January 1, 1945, according to this Constitution shall be elected by the deputies to the National Constituent Assembly, the incapacities referred to in article 94 would not applied as a one-time exception (prohibition of consecutive re-election).”* So he continued in his position for the third term from 1939 to 1945, since it even expanded the term of office to six-year. (Art. 92)

## 2.8 The 1945 Constitution

By 1941 a Pan-American alliance had been formed in favor of democracies in the struggle against the Hitler and Mussolini’s regimes. This alliance issued openly an anti-dictatorial propaganda. The most effective of these organizations was the Salvadoran Democratic Action (ADS, in Spanish) which by 1943 had to operate underground due to its active campaign against the Hernández Martínez’s re-election.<sup>49</sup> In 1944, Martínez again faced the problem of perpetuating himself in the presidential office in a legal form. Once more, he called a Constituent Assembly.

On February 24th, 1944, this assembly made a series of reforms to the 1939 Constitution.<sup>50</sup> In order to preserve Hernández Martínez’s dictatorial regime, the most relevant one was the reform to Art. 91 which determined:

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the editorial of the Official Gazette expressed on the day of the “presidential handover”: *“The Salvadorans already know the reasons why General Hernandez Martinez had to request permission before the honorable Congress: He’s going to be in charge of the election work that his friends have been organizing for him...”* Official Gazette N° 187, Volume N° 117 on August 29th 1934.

49 AA.VV. History of El Salvador, Tome II. *Op. cit.* p. 142.

50 It should be noted that article 18 of the Constitution was also amended by ratifying the right to vote of women who meet the requirements of the Secondary Law.



In five days the National Constituent Assembly elected, “unanimously” and in the name of the “Salvadoran People,” Maximiliano Hernández Martínez as President of the Republic, until December 31st 1949.<sup>51</sup>

The incidents undermined the will to continue under the dictatorship. On April 2nd, 1944, civil and military groups started a riot provoking more repressive measures from the Executive Body, but without success. Additionally, the international pressure increased, especially from the United States, which after the end of the Second World War was again paying attention to Latin America. So the ministers were resigning their posts progressively and the measure that generated the most pressure was the strike on May 3th known as “the Strike of the Fallen Arms”. Everyone refused to return to work until the shootings were stopped and a way out of the crisis was found with the resignation of the president, which occurred on May 8th, not before appointing General Andrés Ignacio Menéndez as his successor in the presidency.<sup>52</sup>

On October 21st, 1944, a military council requested the resignation of General Menéndez and in his replacement the Legislative Assembly appointed Colonel Osmín Aguirre y Salinas.<sup>53</sup>

At the beginning of his term of office, Aguirre y Salinas announced that he would comply with the constitutional precept of freedom of suffrage. Presidential elections were held in January, 1945. At that time, the freedom of the press had been restricted and the main opposition parties had either abandoned the electoral option or had fled the country as a result of persecution by the

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51 Constituent Decree N° 12 of February 29th, 1944, published in Official Gazette N° 50, Volume N° 136, February 29, 1944.

52 D. L. N° 34 and 35 of May 10th, 1944 published in Official Gazette N° 103 Volume 136 of May 10th, 1944.

53 Miguel Tomás Molina was legally allowed to be the provisional President of the Republic. However the military junta demanded the Legislative Assembly to meet early in the morning of the same day and modify the order of the succession to designate Colonel Osmín Aguirre y Salinas. The resignation of General Menéndez and the appointment of Osmín Aguirre y Salinas as the first designate of the Presidency and then as the President of the Republic can be retrieved in the Legislative Decrees Numbers 109, 110 and 111 of October 21st 1944. These events were published in El Diario Oficial Número 234 Tomo N° 137 del 21 de octubre de 1944.

Government. So the only candidate, General Salvador Castaneda Castro, was elected president, taking office on March 1st, 1945.

Among the unpopular measures of Castaneda Castro, one of the most notorious ones was the declaration of validity of the 1886 Constitution, throughout a series of reforms. The discontent of the Salvadoran people stemmed from the fact that this Constitution was no longer considered capable of leading to the modernization of the State because it was obsolete. Among the reforms carried out was section "P". This section determined that the electoral law in force thereafter would be the 1886 law, except that it should be especially reformed to regulate the right of women to vote<sup>54</sup> and to repeal the 1939 Constitution as well as its 1944 reforms. Thus on December 28th 1945 the Constituent Assembly decreed that the Constitution was the same one of 1886 with the modifications given in November.

The weakness of Castaneda's government came to a head with the problem of succession. Presidential elections were to be held in March 1949. Castaneda Castro was convinced of the need to promote a new constitutional reform that would allow him to be re-elected.

With that purpose, on December 13th 1948 the Legislative Assembly decreed an "urgent" call for elections to the Constituent Assembly within a week.<sup>55</sup> Castaneda Castro had been re-elected president for a term of six years before the decree established for the new validity of the 1886 Constitution which set up that the deadline of the presidency was four years. The Constituent Assembly justified that it was necessary for Castaneda Castro to remain in office until 1951 on the grounds that it was necessary to clarify the text of the 1886 Constitution. At the news of the imminent prolongation of the President's power, the next day Castaneda Castro was deposed by the "Military Youth Movement". This was composed of three soldiers and two civilians. Further

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54 Constituent Decree N° 251 of November 29th 1945, published in Official Gazette N° 262, number 139 on November 30th 1945.

55 Legislative Decree N° 253 of December 13th 1945, published in Official Gazette N° 273 Volume N° 145 on 13 December 1948.

ahead this movement was known as the Revolutionary Governing Council. This Council took the power on a provisional basis *“to ensure respect for democratic principles including the freedom of suffrage”*.<sup>56</sup>

## **2.9 The 1950 Constitution**

Since such milestone, a process of legal and institutional reform had begun. This process resulted in the creation of a commission for the drafting of electoral laws and for the enactment of a new Constitution in particular.

Elections were held in March, 1950. Colonel Óscar Osorio won as member of the Revolutionary Governing Council (CGR, in Spanish). The Constitution entered into force on September 14th, 1950.

The Constitution in general represented the basis for the modification and creation of various institutions that, at least formally, guaranteed the social rights of Salvadoran people and promoted the industrialization of the State.

Regarding to citizenship, it is important to note that art. 22 determined that all Salvadorans over eighteen years old were considered citizens without distinction of gender. Thus, for the first time, the full equality of political rights for men and women was established.<sup>57</sup>

However it was not the only relevant modification regarding political rights, since art. 23 established as citizens' rights *“to associate in order to form political parties”* with the exception of ministers of any religious denomination who were not eligible for elected office (art. 24). The characteristics of the vote were recognized as *“direct, egalitarian and secret”* (Art. 28). At that time it was prohibited to hold simultaneous elections: parliamentary representatives and the President of the Republic (Art.31).

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56 Decree N° 1 of Revolutionary Government Council, december 16 of 1948, published in Official Gazette N° 276 tome N° 145, december 16 of 1948.

57 However four women were elected as deputies until the legislative period of 1956. For further information *Vid.* CAÑAS DINARTE, C.; CORTEZ, V. S. *“History of the Legislative Organ of the Republic of El Salvador 1824-2006” Op. cit.* p. 67 – 68.

One of the most relevant novelties was the creation of the Central Council of Elections (arts. 33 and 34) as a permanent body for the control of electoral processes and events. Prior to that date, these bodies were of a transitional nature which operated only during the period of elections.

The term of the President's of the Republic office was set for six years (art. 62) but it was regulated that whoever exercised "*in any capacity*" the Presidency could not be President, Vice President or Nominee of the Presidency during the following term of office of the President. Formally, this limitation guaranteed the non-reelection of the President, an action that was recurring in previous administrations. Regarding the growing importance of political parties, the Constitution also recognized their right to be monitored in the electoral process (art. 33).

### 2.10 The 1962 Constitution

The political event that caused the 1962 Constitution was the coup d'état against Colonel José María Lemus, led by professionals and military forces on October 26th 1960. From this coup d'état, a Civic - Military Council took over the power of the Republic.

This Council repealed the state of siege and amendment as well as the abuses of public power by the previous government, being overthrown later and replaced by a Military Civic Directory on January 25th 1961. This convened the Constituent Assembly on January 3rd 1961 and repealed the 1950 Constitution, being replaced by the new Constitution which entered into force on January 25th 1962.<sup>58</sup>

The truth is that this Constitution was very similar to that of 1950, with only a few changes regarding the Executive Power, in which it appeared: the change of the presidential term to five years (Art. 63), the beginning and end of each presidential term for July 1st instead of December 14th (Art.63) and finally

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58 Published in the Official Gazette on 8 January 1962.

the ban on vice-presidents and presidential nominees from being President of the Republic in the following was amended. So the drafting limited the re-election only to whoever was holding the office of President.

With regard to the political rights of the citizens' and the functions of political parties or the Central Electoral Council, there were no changes with respect to the 1950 Constitution, although with respect to the latter there were amendments to the Electoral Law, all for the purpose of preserving the political power of this historic period.

### III. The 1983 Constitution

#### 3.1 Original text of the Constitution

Some of the events that led to the coup d'état on October 15th 1979 against General Carlos Humberto Romero were the political and legal distrust of public institutions during the 60s and 70s, economic and social inequality and the frustration caused by the inability of citizens to make a political impact on decision-making through truly free and fair elections. After that, the first Revolutionary Government Council was established.

This one resigned in the early 80s and the second Revolutionary Government Council was formed. The latter called for elections to the Constituent Assembly due to the economic, social and political circumstances that El Salvador was facing. On December 18th 1981, the Transitional Electoral Law was decreed, which would be the electoral law governing the 1982 elections. When the Constituent Assembly was elected and installed, it decreed the Constitution on December 16th 1983 whose validity began on December 20th of that same year.

Regarding the rights of the citizen was very similar to the one contained in the Constitution of 1950 and 1962 as expressed in the single report<sup>59</sup> of the

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<sup>59</sup> *Vid.* Single report of the commission to study the draft constitution of 1883.

original text. However a characteristic of the vote was added and recognized for the first time, therefore: “the vote was free” (Art. 78) since the previous constitutions determined that the vote was direct, egalitarian and secret.

As an important novelty in electoral concerns, it must be highlighted the introduction of the “second round system” in the presidential elections, for when none of the candidates obtains the minimum number of votes required. It should be noted that before this system, when this happened, the Legislative Assembly decided who would be the president of the Republic. Additionally, through these dispositions, the system of proportional representation in the Legislative Assembly was elevated to Constitutional status; this system was already legally effective since the reform of the Electoral Law in 1963.<sup>60</sup> Besides, the function of electoral registry now delegated to the Central Council of Elections was elevated to constitutional status as well. Finally, in reference to the Organic part, the term “Power” was replaced by that of “Body” to designate the legislative, executive and judicial branches.

Nevertheless, other articles were drafted in order to govern the country during the armed conflict, which at that time was already in full development. The clearest example is found in article 85, which excluded any organization from the possibility of exercising power within the Government, except for political parties.<sup>61</sup>

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60 Legislative Decree N° 365 of August 14th 1963, published in the Official N° 154, Volume N° 200 of August 21st 1963. Before this new reform, in El Salvador the majority system operated for the formation of the Legislative Assembly, in other words, the political party that got the greatest number of votes obtained the real power in the Legislative Body.

61 According to the judgment of unconstitutionality 61-2009 regarding to the term “Government” the constituent body must be understood as referring to “Executive Body”, that is to say that no one can become President or Vice-President of the Republic if he is not registered in a political party, this intention of the constituent body, according to the judgment, was verified in at least two ways: 1) In the text of the Constitution, the membership of a political party is included in the requirements for being a president (Art.151). However this requirement was not requested for being a member of the Legislative Assembly (Art. 126), magistrates of the Supreme Court of Justice (Art. 176) or Member of the Municipal Council (Art. 202, paragraph 2°)2) The single report of the commission about the study of the constitution draft developed on the chapter concerning Art. 85 the following: “for the defense of the democratic system and **in accordance with national realities**, the Commission includes an additional concept of limitation: **Political parties are limited to a representative democratic pluralism expression, so that other kinds of institutions with different purposes are not allowed to claim popular representation and participation**

### 3.2 Constitutional reforms within the framework of the Peace Accords

Following the events of November, 1989, the negotiation process for the definitive cessation of the armed conflict began, and this process culminated on January 16th, 1992, with the signing of the Peace Accords. The negotiation process and the agreements that were emerging at each stage are beyond the aim of this research, so we will briefly review those that exclusively have direct application in the context of our concerning subject.<sup>62</sup>

First, the Supreme Electoral Tribunal is created to replace the Central Electoral Council. The Supreme Electoral Tribunal has more powers than the previous collegiate body, such as ensuring that the exercise of suffrage is free, and monitor the non-violation of alternation in the presidency of the Republic, powers previously vested in the Armed Forces. Although it is not a constitutional reform, the FMLN was allowed to register as a political party, which allowed broad sectors of society a party option that represented their interests and that had not previously been guaranteed by the Salvadoran State.

Lastly, it is necessary to highlight the promulgation of the Electoral Code containing the reforms and new powers with regard to the Supreme Electoral Tribunal. Furthermore, the limitations imposed on the armed forces and transferred to institutions such as the Supreme Electoral Tribunal, the Supreme Court of Justice and the Office of the Procurator for the Defense of Human Rights helped to stabilize several of the tensions that gave rise to the armed conflict. The articles concerning political rights were not amended,

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*in the government.*" The bold and underlined passages are set up by the researcher to emphasize the situation of the armed conflict that existed in El Salvador at the time of the drafting of the Current Constitution, in which these provisions were placed to "delegitimize" any change in public power that would arise from the forces of the "insurgents" according to the judgment.

62 For more information check: MARTINEZ URIBE, A. Twenty years after the Peace Accords. An analysis about the fundamental reform: the armed institution. Collection of Studies CENICSH. First Edition. San Salvador, El Salvador. 2012. GUIDOS VÉJAR, R. *The Peace Agreements ¿Refoundation of the Republic?* in AA.VV. El Salvador: *Minimal History 1811- 2011. Secretary of Culture of the Presidency.* San Salvador, El Salvador, 2011. p. 97; *Agreements of El Salvador. On the way to Peace.* Published by Public Information Department of United Nations. San Salvador, El Salvador. 1993.

except for the parts that replaced “Central Council of Elections” with “Supreme Electoral Tribunal”; although the modification of some articles from other sections helped political rights to be exercised in a more plural form with progressive democratizing nuances.

### **3.3 The Salvadorans Political Rights’ in the 21st Century**

Since the Peace Accords, ten electoral events have been held in El Salvador, five to elect President and Vice-Presidents and five to elect members of the Legislative Assembly, the Central American Parliament and Municipal Councils. In two of these elections (1994 and 2009), all the officials were elected because of the arithmetic calculation of the election periods, five years for President and Vice-President and three years for members of the Legislative Assembly and Municipal Councils.

However, the Electoral Code has undergone a series of reforms since its promulgation in 1993, which even exceeded the number of reforms made to any other body of legislation in force in El Salvador. Several of these reforms were made to maintain political parties that did not reach the minimum number of votes required to continue functioning in that capacity.

Starting on 2010, and after a judicial-political conflict between the Legislative Assembly and the Constitutional Court within the Supreme Court of Justice, a series of electoral reforms begun based on the citizen’s bigger influence within the political decision-making by the exercise of suffrage; standing out among them:

Non-partisan candidacies: following the judgment of unconstitutionality 61-2009, the Constitution of the Republic was interpreted to mean that for elections of member of the Legislative Assembly, it is possible to register as candidates’ citizens who are not affiliated to a political party.



Preferential vote: in the elections for deputies, the citizens could mark their preference over one or more of the members of the list of candidates proposed by the same political party; it was possible to change the order of the list and depending on the number of votes cast by a candidate, the candidate could occupy the top of the list, being able to get a seat in the Legislative Assembly constituency even if his name was the last on the list and vice versa.

Plural Municipal Councils: These basically were a proportional representation in the Municipal Councils, so that there was representation of all the parties that competed in the election, which in theory, generated greater representation of citizens who voted for a party that was not elected.

Residential Vote: the citizens could vote in the voting center geographically closest to their place of residence. This is the result of a process that began in 2006 and was implemented at the national level for the 2014 presidential elections.

The vote from abroad: for the first time, the right to vote has been recognized for Salvadorans who, without having renounced their nationality, reside in another State through the postal vote, which was implemented in the 2014 presidential elections. Such reform has been the subject of legal, political and sociological studies,<sup>63</sup> reaching the conclusion that the constitutions in El Salvador had never defined the exercise of the right to vote of Salvadorans residing abroad. In addition, the Constitution has regulated in other articles the obligation of the State to guarantee the exercise of this fundamental right.<sup>64</sup>

In May 2014, the Constitutional Chamber admitted a unconstitutional complaint against an article of the Electoral Code (195) and two of the Police

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63 **INTERINSTITUTIONAL COMMISSION FOR THE IMPLEMENTATION OF THE VOTE FROM ABROAD.** Technical feasibility study for the implementation of voting from abroad by Salvadorans residing abroad for the presidential elections. 2014. San Salvador, El Salvador. 2012.

64 **SOCIAL INITIATIVE FOR DEMOCRACY (ISD).** Baseline of the Salvadoran electoral system. San Salvador El Salvador, november, 2011. pp. 48 - 51

Career Law (86 and 87). These articles infringed the right to vote of officers of the National Civil Police and students of the National Public Security Academy, since there was no permanent regulation on how these citizens could vote while performing their duties of security of the polling centers<sup>65</sup> in places other than those determined by the electoral roll.

If a judgment declaring unconstitutionality were passed, this case would be the most recent case about empowerment of Salvadoran citizens' political rights.

These and other reforms have been manifested through various legislative bodies, such as the promulgation of the new Electoral Code in August 2013, the provisions for the nomination of non-partisan candidates in legislative elections, the Special Law for the Exercise of Foreign Vote in Presidential Elections and the Law on Political Parties.

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65 In the presidential elections of February and March 2014, National Civil Police officers and students of the National Public Security Academy were able to cast their ballots with the authorization of a transitional decree.

## Conclusions

The historical, legal, constitutional and political research about the rights of citizens in El Salvador has the following conclusions:

- a) *The concept of citizenship is key in republican States. In addition, it is also one of the hallmarks of monarchist states, since at least in theory, it is through the acquisition of this status that a person can exercise part of their sovereign power. This status allows not only to decide the rulers of the state through the electoral process, but also to actively participate in politics with the possibility of being a candidate for elected office and may also form or register political parties.*
- b) *From 1824 to the present, the acquisition of the status of citizen and the rights given in the thirteen constitutions enforced in El Salvador, has been subject to limitations in the economic, academic and labor area, age, gender, family status and residence in the territory. These limitations have gradually disappeared. This has made less rigorous the legislation in the requirements, and it has been reinforced by the recognition of other fundamental rights for the democratization of the State, such as equality, freedom of expression, the right of assembly, association, insurrection in specific cases, and the right to form political parties with ideological plurality. Therefore the rights and guarantees of a modern Constitutional State based on the rule of law has been strengthened.*
- c) *To acquire the rights of the citizen has been the result of various struggles throughout Salvadoran history. The well-known limitations for citizenship were the legal, religious, academic, gender equality and the impossibility of applying for elected office for electoral fraud. When these limitations have been declared, by antithesis as well, the movements and initiatives that have influenced the demand of these rights have been manifested by becoming the factual framework of constitutional and legal reform.*

d) *The relationship between political rights and the electoral system is notorious, since according to Salvadoran political history, it is the electoral system in force that guarantees the full material exercise of the rights of the citizen or contributes to violating them. This is the reason why it is important to implement a greater research and academic reflection both historical and current of our system, process and Electoral Law to contribute, from the Legal Sciences, the strengthening of the democratization processes of the Salvadoran State.*