

THEME - 1: Psychoanalysis, Politics and State  
SUB-THEME - c: Psychoanalysis and social movements

## **CANONIC FATHER AND IDEALIZATION**

### **Family Law and Everyday Life in Brasil**

Gisálio Cerqueira Filho

#### **Summary**

This paper focuses the history of juridical ideas, linking power and discipline into the family in the transition to Modernity. We are interested in juridical ideology that have taken place in Portugal since the 18<sup>th</sup> century and in the context of Brazilian political emancipation (1822) when the Brazilian Empire intended to do both criminal and civil codes. We have considered the relations between Enlightenment ideas and the circulation process (Italy, France, Netherlands, Germany) of these ideas with the ideology of favor and slavery. We look for the influence of Saint Thomas thought at the present days in every day life of Brazilian society and the political effects of submission and obedience.

#### **Key-words**

*Potestas* (Father)   Idealization   Family Law   Obedience   Submission

After all, I wish to tell thanks to Gizlene Neder<sup>1</sup>. She is co-author of recent paper published with the title “The Sons of Law”.<sup>2</sup>

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<sup>1</sup> Gizlene Neder<sup>1</sup>, professor and senior researcher at Federal University of Niterói (Universidade Federal Fluminense- UFF), chief of “City and Power” Laboratory, who shares with me post-doctoral studies at national Library of Lisbon, Portugal.

<sup>2</sup> A Portuguese version with emphasis in socio-legal studies was published in Brazilian Journal of Social Sciences (Revista Brasileira de Ciências Sociais), v.16, n. 45 (113-127), São Paulo, fevereiro de 2001.

For us, legal studies may be seen from the perspective of social sciences: Antropology, Sociology, History, Political Science, and last but not least, Psichoanalysis. This article is a good example of obsolescence of tradicional disciplinary boundaries.

About methodology, we work reaching signs of Canonic Law and significant impressions; however, not immediately visible, of Catholic Church ideology. We name it tomism, from Saint Thomas thought, at the present days. We also want to look for present and the past with interest in concrete data and quantification but never establishing limits to qualitative analysis and interpretation.

Our text focuses the history of juridical ideas, linking power and discipline into the family in the transition to Modernity. We are interested in juridical ideology that have taken place in Portugal since the 18<sup>th</sup> century and in the context of Brazilian political emancipation (1822) when the Brazilian Empire intended to do both criminal and civil codes. We have considered the relations between Enlightenment ideas and the circulation process (Italy, France, Netherlands, Germany) of these ideas with the ideology of favor and slavery<sup>3</sup>.

In the civil code (Family Law), for instance, the civil marriage is very important, not only to Brazil, but also to Portugal, Spain and all new independent countries of Latin America. We are interested in the figure of father too; the father as a symbol in his place of *potestas (paterfamilis)*, according Pierre Legendre's approach<sup>4</sup>, in the sense of idealization of father figure, not

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<sup>3</sup> For an original discussing, Roberto Schwarz, "Ao vencedor, as batatas", Editora Duas Cidades, São Paulo, 1977 e "Um mestre na periferia do capitalismo: Machado de Assis", Editora Duas Cidades, São Paulo, 1990.

<sup>4</sup> Pierre Legendre, "L'Amour du Censeur: essai sur l'Ordre Dogmatique", Seuil, Paris, 1974.

only in the Civil Code but often in everyday life with reflections in all social relations.

Discussions and debates over the new Criminal Code (in spite the presence of slavery) and Civil Code (where marriage as a contract, in the sense of Napoleonic Code, was the main point) constituted the setting where Brazilian society confronted social changes; which after all, were not all that radical, regarding modernization, the formation of Republican State and the shifting and diversified senses of national identity in a period of economic and social change and cultural turbulence.

The delay in modifying the Civil Code in Brazil<sup>5</sup> was due to difficulties that reformers of juridical field encountered in articulating the restrictions that the modern views of the civil rights of person (in this way, individualism, John Locke thought and the influence of the French Civil Code from Napoleon, are considered references and symbols) imposed on *potestas*. By the way, in Brazil *potestas* continued to be grounded in a pre-modern conception, a conservative and clerical affective attitude towards authority in the family<sup>6</sup>. The main consequence was a total presence of *potestas* asking for hierarchy, submission and obedience in society<sup>7</sup>. This design of father, loved and hated, become over the reality in the sense of freudian idealization and in a narcissism path, often with much of suffering in the direction of no more than ... paradise.

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<sup>5</sup> Finally it was established in 1916; however the Criminal Code in from 1830. The last one was written by Paschoal de Mello Freire.

<sup>6</sup> Gilberto Freyre, “Casa Grande e Senzala”, José Olimpio Editor, Rio de Janeiro, 1969 edition.

<sup>7</sup> Gizlene Neder, “Iluminismo Jurídico-Penal Luso-Brasileiro: obediência e submissão”, Freitas Bastos Editor, Rio de Janeiro, 2000.

The real presence of father itself was absent of course and the consequence was a symbolic ignorance of Law (in both juridical and *lacanian* psicoanalytical way).

The Brazilian Civil Code was written at first by Augusto Teixeira de Freitas<sup>8</sup>, a very important romanist. He has written about 5,000 pages for the Emperor Pedro II and before this draft, Clovis Bevilacqua concluded with many observations of Rui Barbosa. Teixeira de Freitas shows the influence of Von Savigny and his book *Traité du Droit Romain*. For him Roman Law is all about occidental Law and Von Savigny was, probably, the most romanist and occidental thinker of law. He was born in a part of Renania which had much influence from France, he was read in French in Brazil, and he had a French approach of German Law. Roman Law, Canon Law, German Civil Law and French Napoleonic Law, are all together in a way of convergence of human rights, Enlightenment, civil marriage (as a contract) *versus* the conception of marriage as a sacrament according to Canonism. Because of that, there are no differences, in Freitas' approach, between nationals and foreigners, like in Roman Law, and against the decisions of Vienna Congress. To establish differences between nationals and foreigners would be open a door for divorce and the conception of marriage like a contract; far from the point of view of the Catholic Church. Because of that and not only because the project revised the Emperor charged the Portuguese Luis Antonio Seabra to do, Teixeira de Freitas left the Brazilian Civil Code Project in another hands with the paper "Pedro (Peter) wants to be Augusto (August)" against the emperor Pedro II.

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<sup>8</sup> Gisálio Cerqueira, "Augusto Teixeira de Freitas referido por Joaquim Nabuco in *Um estadista do Império*", annual regional meeting of National History Association (Associação Nacional de História –

According Pierangelo Catalano, from “*La Sapienza*”, *Università di Roma*, romanism was always present since independence days in Latin America. The beginners were Andrés Bello (Venezuela), for “codification of Pacific” and Augusto Teixeira de Freitas (Brazil) for “codification of South Atlantic”. In the same way, Velez Sarsfield for Argentina, specially with his notes about Romanic Law. Clovis Bevilacqua goes on this direction. Andrés Bello would like to say nowadays: “all who look at Romanic law as a foreign law, are foreigners themselves in our law”. This is a kind of exclusion of the contribution itself of the ideas from French revolution and liberal radicalism against the influences of tomism as a ideology carrying hierarchy, favour, submission, and dependence to *potestas (paterfamilis)*.

Sons (plural) of Law, these are all countries from iberian influence; Son (singular) of Law, each one which looks for Canonic Law and preserves the Church influence of Saint Thomas thought.

Emotion in motion in a conservative way and authoritarian perspective became strong and it takes shape of a sweet melody in the sense of high and so long “song of Law”. In this case it is appropriate to listen the music *OFFICIUM DEFUNCTORUM*, from Estevão de Brito<sup>9</sup>. All glory is dedicated to death in a real atmosphere of the “perinde ac cadaver”, the slogan of Inacio de Loyola, S.J.

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ANPUH), Niterói, 2000. Silvio Meira, “Teixeira de Freitas, o jurisconsulto do Império: vida e obra”, José Olympio Editor, Brasília, 1983.

<sup>9</sup> Estevão de Brito (1575-1641). He was born in Serpa, Portugal, and he has studied music with Filipe de Magalhães. He is considered of the third generation of Évora School of Music. He was Master of Badajoz Chapel from 1597 to 1613, when he was elected Master, among very important musicians of this time, for the Chapel of Málaga Cathedral. However he had been invited to be Master in Royal Chapel, in Madrid, he has remained in Málaga. The *OFFICIUM DEFUNCTORUM* still has a *PRO DEFUNCTIS MISSA*, from Cristobal de Morales.

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