

The Hypothesis of the Misencounter

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Abstract

This article develops the following hypothesis: despite their differences, or better, precisely because of them, law and politics in Brazil comprise a system whose primary feature is its incapacity to form a totalization of the social world; that is, to formulate a public rule capable of including the diverse parts of society. Much the opposite: the characteristic of this system is the purposeful rupture, the strategic estrangement between the pole formed by law and the State (which is constructed against spontaneous forms of sociability) and the pole that includes politics and society (in which exchange modelled on the gift plays a central role). There is no higher plane capable of incorporating the two into a single unity, nor do they submit to a synthesis or to an encompassing value. The article argues that the relationship between law and politics is articulated as a dialogue conducted at a distance and through estrangement, such that one is constituted as the possible worlds of the other.

Keywords: The Brazilian dilemma, totalization of the social, gift, bargain, the state against society, disinterest as moral obligation.

A hipótese do desencontro

Resumo

O artigo procura perceber a relação entre a política congressal brasileira e o direito a partir da ideia de sistema (um é o outro do outro e somente assim ganha sentido). Todavia, a etnografia mostra que a política e o direito formam sistemas que não apenas não tem uma homologia estrutural, mas se constituem a partir do seu distanciamento e estranhamento recíprocos: o que caracteriza sua relação é o desencontro e não a reflexão em planos distintos da experiência social de um conjunto de valores e categorias elementares. Em outras palavras, não há uma síntese num plano superior, tampouco um valor englobante que pudesse integrá-los em uma totalidade que se realizaria no plano do imaginário. A alternativa é tomar a distância e o estranhamento como o fenômeno primeiro e retirar daí as consequências possíveis.

Palavras-chave: dilema Brasileiro, totalização do social, dádiva, barganha, o Estado contra a sociedade, desinteresse como uma obrigação moral.

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This article develops the following hypothesis: despite their differences, or better, precisely because of them, law and politics in Brazil comprise a system whose primary feature is its incapacity to form a totalization of the social world, that is, to formulate a public rule capable of including the diverse parts of society (the thesis advanced by Aragão, 2018: 112, which I adapt here to the relationship between the judiciary and the executive). This hypothesis is the outcome of a lengthy research trajectory that began in 1988 with the study of the politics of a small town in the hinterland of Bahia state, northeastern Brazil. From 1994, this research was transferred to politics in the country's National Congress and from 2002 onwards it turned to the study of law (for example, Abreu 2006a, 2013b). The questions have gradually accumulated over the years, some already known through the literature, but I ask the reader to allow me to spell out the most relevant for the reflection in this article in my own somewhat impressionistic way.

Like other social scientists of my generation, I went to the field imbued with the 'enlightened gaze' of the theoretical models of someone who saw politics from the viewpoint of middle-class social experience in metropolises like Rio, São Paulo and Brasília. However, my 'enlightened gaze' was incompatible with the experience of politics in the Bahian hinterland (an assertion that, I believe, still contains an element of truth). While, seen from the viewpoint of these state capitals, the politics of the Brazilian interior appeared to be the result of alienation and the domination of a backward and clientelist political elite, viewed from close up this politics was organically related to the local social reality; in other words, it reproduced spontaneous forms of sociability and was viscerally integrated into local culture. Furthermore, it did not simply present a rational reflection; it was also perfectly aware of the objective limits of its context and possessed an acute perception of social reality – to the point that I sometimes wondered whether it was not those of us living in the metropolis who were alienated. For the regional population, the exchange relations that adhered to the model of the gift – and about which so much had been said as, supposedly, one of Brazil's great afflictions – signified the agency not just of those who belonging to the local political elite but equally of those who had very little in material terms but who, nonetheless, were aware of their own capacity for action through exchange relations and thus their own relevance as agents. The juridical norm that we find not only in legal codes but also in its popular representation was something for other people: not only was it foreign and sometimes contradictory to local practices, it was also alien to the sense of community in the town where I conducted my research. Law (*lei*, the word they used instead of *norma*, norm) meant the 'command' of those in power. This meant the establishment of a moral order in which "everyone stopped thinking about their own interests and began to help others." Indeed, the idea of community was contrary and opposed to the idea of individual interest, to the point that self-interest was declared incompatible with good political practice: there, people always acted for others rather than for themselves – in discourse, obviously. Citizenship did not mean the rights and obligations (more the former than the latter) that we find in the classics of political thought (Marshall, 1992), which are the outcome of the conflicts and struggles for interests, crystallized in rights that individuals assert against power. Instead, the good citizen obeyed the law in the sense of the aforementioned moral order (Abreu, 1993).

In National Congress I did not come across any articulated system in which relations between ideas and values were systematically presented that could rival the coherence and articulation of the system I encountered in Corte de Pedra (the name of the small town). What I found was the overlapping of regional and ideological values was not subsumed within a dense and articulated justification in which everyone fitted. This functioned in parallel to an institutional discourse in which compliance with legal norms and the disinterest of

politicians prevailed as values. The discourse seemed to spin around in a vacuum: the narratives made no explicit reference to the universe of substantive differences and the interests at stake, but said either the same things or very similar things in a context of conflict, as though the discourse were no more than a studious theatre in which what people said was constrained by the requirements of an imagination incompatible with practice. In effect, the public discourse contrasted vividly with practice ‘behind the scenes’ (in the *bastidores*; the term is native) where the narratives travelled in the opposite direction. In these discourses, political practice did not envisage the legal norm as something that establishes and gives meaning but as something that limits – very often inappropriately – wishes and actions. Moreover, the ideal place of the norm was that of a detail resolved after politics has followed its course and, in the clash of forces, one had emerged victorious. Aragão’s words capture the paradox well. In the National Congress – he wrote – “alliances are made and unmade at the whim of ‘casuists’” and express “specific contextualizations of a broader and more generalized trend — which can be noted in all formal groups in Brazil” that reveal a “‘non-binding and reversible’ ideological positioning,” reflecting “a circumstantial practice rather than an ideological, formal and categorical elaboration.” In Brazil, he writes, “the categorical appears to be precisely what is produced in the process and not what ontologically generates, guides and regulates” (Aragão, 2018: 267). Behind the scenes, the discourse on practice was also opposed to public narratives: there, some actors thought and acted on the basis of the ontological recognition that the other is a being-with-interests. Paradoxically, however, the politicians perceive politics as exchange relations that adhere to the model of the gift (involving favours bestowed in an apparently disinterested manner). Put otherwise, although self-interest was imagined to motivate the other’s action, any agreement based on its explicit expression (as the exchange of support for money, for example) was considered to be a degradation of politics (Abreu, 1999).

Research on law, for its part, primarily revealed the resistance that its ‘operators’ (the term is their own) had to dialoguing with anyone who was not also a law graduate. However, this was merely the reflection in the researcher’s experience of a much more general attitude. For them, the distance and estrangement of everyone else was a value that performed a double function: on one hand, it assured the purity of the law and, on the other, it aimed to subordinate society: the operators repeated unequivocally and in the most diverse contexts that law made society possible: “without law there is no society,” they would assert. From this perspective, law was not born from Brazilian society, it was foreign to it: not the expression, in an artificial language, of what is most essential to a particular local tradition, but an outside tradition that claimed to be an heir in perfect continuity with the history of the west (beginning with the Hamurabi code, passing through the Greek polis and identifying itself, principally, with Roman law). In the encounter with society, law was degraded either because society influenced it in some way, or because what was encountered in social reality was not the prevalence of the norm as something that establishes the limits within which someone’s action unfolds, but rather its quotidian and sometimes obligatory violation, its bastardized application. Various times I heard variants of the following expression: “Brazil’s problem is not the law. Our laws are excellent. The problem is that people don’t comply with them.” If any outside influence degrades, the most devastating was the influence of politics (a central topic in how the higher courts were perceived, especially the Federal Supreme Court, and the unanswered question that expressed this perception: “is the FSC a legal court or a political one?”). All of this suggested the following aporia for anyone looking at the law from outside: on one hand, Brazilian law (in its hegemonic schools of thought) is understood in opposition to the society to which it belongs; on the other, it only makes sense as part of this same society and in relation to it (Abreu, 2016).

The misencounter is an ethnographic fact that comes to the fore of this research experience: the mutual incomprehension between the small town and the metropolis; the legal norm as something originating from outside and that does not represent us; the politics that in a mass society like Brazil’s is the instrument used to accommodate conflicting interests and that requires the negation of self-interest in order to build alliances;

a law that disdains the society to which it belongs; a State that is constituted in the language of law and constructed against spontaneous forms of sociability; politics and law as polar opposites. When I asked a lawyer who worked with the doyens of the PMDB how he would summarize the relationship between law and politics, based on his experience, the response was immediate: “who bosses whom.” The characteristic of this system is the purposeful rupture, the strategic estrangement between the pole formed by law and the State and the pole that includes politics and society. There is no higher plane capable of incorporating the two into a single unity. Put otherwise, the relationship between law and politics does not submit to a synthesis or to an encompassing value. I wish to suggest, therefore, that the relationship between them can be perceived as a dialogue conducted at a distance and through estrangement, such that one is constituted as the possible worlds of the other (an idea I take from Ricoeur, 1986).

Before advancing further, I should emphasize that the present study connects with a long tradition of research in anthropology, the best-known examples of which can be found in the works of Roberto Da Matta, Luís Roberto Cardoso de Oliveira and Roberto Kant de Lima. To these names I would add Luiz Tarlei de Aragão, whose works either remain unpublished or were previously difficult to access and have only recently been collected into a single volume. There exist, therefore, similarities – a certain ‘family resemblance’ – between what I call a misencounter and the opposition between the personal and individualist ethics and their corollaries that we find in Da Matta (1997), “the congenital separation between ownership (authority, law) and possession (immanence, practice)” in Aragão (2018: 112), the opposition between inquisitorial and accusatorial traditions and the particularities in the comprehension and application of Brazil’s juridical institutions described by Kant de Lima (1991, 1995), and the opposition between the conceptions of equality and the formulations concerning the public sphere developed by Cardoso de Oliveira (2013, 2011).

The article divides into two parts: the first examines the viewpoint of politics constructed against what, from the diffuse perspective of our Brazilian sociability, erodes relationships and makes good society impossible: self-interest and the market; the second, the viewpoint of law, structured around the idea that the State is constructed against society – that is, against the spontaneous forms of sociability for which exchange based on the model of the gift (even when used cynically and free of its obligations) plays a core role.

The bargain and the gift

As I remarked above, politics in the National Congress manifested as a paradox in my observations (Abreu 1996, 1999, 2006a). Allow me to recall this point through an ethnographic vignette. At the time of the election of Severino Cavalcanti (PP) to the presidency of the Chamber of Deputies (in February 2005, still in the government of President Luiz Inácio Lula da Silva, PT), one of my interlocutors told me two stories in the few minutes in which we were able to chat amid the tumult of the day. The first story was that one of the operators of what would later become known as the *mensalão* (the ‘big monthly payment’) visited parliamentarians with ‘bags of money’ (whether the expression was figurative or literal, I have no idea) to persuade them to vote for the government candidate for the presidency. “The chamber is amenable to this argument,” he told me. It is worth recalling that the denunciations made by Roberto Jefferson that set off the *mensalão* scandal would be published that same year, in June 2005, in an interview with the *Folha de São Paulo* newspaper (Abreu 2006b) – and also that the government candidate for the presidency of the Chamber of Deputies (Luiz Eduardo Greenhalgh, PT) lost the election. The second story was that “some parliamentarians voted because the other one brought them milk fudge,” he added. The passage offers a pungent formulation of the contradiction: is our politics fated to alternate between venality (reality) and banality (delirium)? Allow me to reformulate the dilemma in a less dramatic but sociologically more appropriate fashion. The ethnographic data point to a tension

operating within political practice: on one hand, parliamentarians understood eminently political interactions as exchange relations based on the model of the gift – that is, as favours made in an apparently ‘disinterested’ manner, even when this was no more than a socially constructed lie, although these favours did entail the obligation to retribute in kind (Mauss, 1968: 147); on the other hand, it was perceptible that everyone (politicians, journalists, aides and so on) interpreted the actions of others and related to each other as beings-with-interests. This tension was reflected in two distinct models of exchange: one based on the gift, which demands a temporal distance between prestation and counter-prestation, the other on the market, which, by contrast, demands no such interval: on one side, favours and debts imposed by the obligation to retribute; on the other, votes for other things that take place immediately. Or, taking these two models to their extreme: milky fudge and bags of money.

One possible solution to integrate the opposition between these two models of exchange is to examine it through the idea of a moral order that I encountered in the Bahian hinterland, particularly the relationship between the gift (as the legitimate form of a political relation) and the obligation for politicians to be disinterested (to act on behalf of others). The centrality of the gift in the politics of Corte de Pedra was expressed in the following contradiction: on one hand, the recognition that society is fundamentally a collective undertaking in which people *should* be more than instruments of another’s interest; on the other, the inescapable fact that, since we live in this world, individuals (or partial groups within the whole) have their own interests, agendas and choices and the purpose of politics is precisely to accommodate them. This contradiction, in turn, showed our incapacity as a society to symbolically reconcile the two aspects so that they could be seen not as incompatible but as complementary: self-interests can be perceived as compatible with the whole in so far as they represent the internal possibilities derived from it. Looking at Congress from the idea of a moral order is – I repeat – ‘one possible solution.’ In making this observation, I wish to emphasize that other research trajectories could suggest other hypotheses and that the idea of a moral order does not apply to all possible ways of looking at Brazilian politics. Despite its limitations, the hypothesis has the advantage of going beyond the plane of the phenomenon as the more or less informed collection of aspects previously left out or mentioned only tangentially, curiosities of a traditionalism slowly disintegrating, and showing their structuring potential.

Disinterest as amoral obligation is also present in the ethnographic data on Brazil’s National Congress. It suffices to hear parliamentarians speak about themselves to an audience perceived as public. It is highly likely that their discourse employs tropes commonplace in this environment: they will say that they became a politician because of some force beyond them, a force imbued with the air of the sacred. Hence, they felt compelled to put themselves forward as a candidate, either persuaded by others or to defend some cause beyond themselves, or because they have a vocation to help the other. In all cases, the decision was taken in detriment to their own well-being or at the cost of great personal hardship. Disinterest as an obligation is also expressed on other planes registered by the literature. Schwartzman, for instance, already pointed out that the “notion that political groups should represent interests tends to be seen as improper by the Brazilian elite”; on the contrary, there prevails “the idea that parties and politicians should place themselves ‘above self-interests.’” Put otherwise, these should “always focus on the objectives of the nation as a whole” (Schwartzman, 1975: 15). Earlier still, Leff had been even more emphatic: “Brazilian political culture,” he said, “believes only in politics in the name of a ‘general interest’ of the nation considered as a whole” (Leff, 1968: 112). The value of disinterest is so central to how elected politicians justify themselves that it was explicitly extolled in the Code of Ethics of the Chamber of Deputies. The code stipulates that the parliamentarian has the duty to “examine all the proposals submitted for their consideration and vote on the basis of the public interest” (Article 3, item IV, drafted in 2002, Chamber of Deputies, 2011). In sum, at the centre of these phenomena – seen as a moral order or, at least, as its possibility – is disinterest as a duty, the requirement for the politician to leave aside his or

her being in the world (as, by definition, a subject with interests) in order to transform into a being-for-others, a transcription that, on another plane, is conceived as the result of a sacrifice: incorporating this being-for-others implies sacrificing one's own being-in-the-world.

All of this is reflected in words and in their use. In an environment in which everyone pays close attention to other people's words (and sometimes report them to someone else), making certain affirmations is dangerous: they may be perceived as violations, attacks or betrayals. Saying that someone else is acting on the basis of their own interests, in certain circumstances, is out of the question. Consequently, when words may be recorded or the interlocutor is distrusted (sometimes for good reason), the parliamentary aides usually deny that 'their' parliamentarians have any self-interests: they act on behalf of others or for what is beyond the immediate or the imminent. Aides may even highlight some interest but first ask for the audio recording to be switched off, as though they had some secret that would be dangerous to speak out loud (Bezerra, 1999). This, of course, is also a mechanism of socialization and manipulation: telling a secret (even one obvious to everyone) is a prestation that may later require a counter-prestation. It creates the possibility of acting on another in the future (an irrelevant consideration if the interlocutor is a researcher, but not if he or she is a journalist). When someone speaks of the other's self-interest (and people do so the whole time), generally they are making – in appearance, at least – an analysis of the political conjuncture; in this instance, what gives meaning to the other's action is the interest that motivates them, which can be inferred and revealed from what is not said, as such, but in some way expressed. But this is done by word of mouth and has various uses: to persuade someone else, suggest an alliance, spread a rumour and so on.

By contrast, the gift is not enunciated. But whenever I said that 'politics is exchange,' my interlocutors would immediately agree, as though I had said something that the person also knew but either had been unable to put into words or had forgotten. Sometimes, however, the gift – or more precisely the idea of a 'favour' – did find its way into the discourse of the agents. Reciprocity is used as an form of persuasion behind the scenes: "let me owe you this favour," people say, when other arguments are insufficient. The gift was also employed as a public argument to defend politicians accused of corruption in the legal sense. One minister, accused of earning money from the transfer of funds to municipalities, argued that "I did that as a favour for so-and-so because he told me it would be important for his municipality" or "I only did so because he argued that there were no interests on his part; he was doing it for the municipality" (Abreu, 1996). In another case, a deputy accused of participating in a schema on the Chamber Budget Committee declared: "I challenge anyone to say I went to their cabinet to ask for a personal favour," implying that any favours done were for others.¹ The last two examples were taken from formal occasions in which politicians were accused of misdeeds in which the gift (or more precisely disinterest) served as a category of defence. Both cases emphasize the different aspects of the gift: in the first, the point is to remind the interlocutor that the person who asks for something assumes a debt; the second enunciates disinterest as what motivates political action.

Why is the gift shrouded in silence but not self-interest? The more immediate answer is that, for a certain way of seeing politics, the gift should not be present in political institutions. Speaking out loud about the gift is to highlight something that should not be there, which has not been contained where it rightly belongs (private relations). From this perspective, mentioning it makes sense only as a criticism or condemnation. I think this answer is true in part but my hypothesis is that there are two other reasons that are not so obvious. The first can be exemplified by the role that the gift has in our sociability in a wider sense (DaMatta, 1997; Cardoso de Oliveira, 2004). In ordinary life, we – Brazilians – utilize the gift without turning it into an object of reflection. In these everyday contexts, the reason that the gift is not mentioned is not because it should not be there, since there is nothing wrong, we think, in maintaining cordial relations with neighbours, visiting friends, being

¹ Testimony to the Budget Parliamentary Committee of Inquiry, 3 November 1993 OF. SGM/P – 116/94, Tome II: 152, quoted in Teixeira, 1998: 60.

kind to the woman on the supermarket checkout, establishing relations with others. These and other attitudes are imagined by us as prestations and counter-prestations, free and obligatory simultaneously. It is as though the gift organized in our sociability a common substrate through which actions make sense and constitute, in many contexts, the basis of a good education and a morally correct attitude. Although there are certainly important differences between the more mundane domain of sociability and that of congressional politics, in both, I suggest, the gift serves to establish relations between apparently unconnected phenomena and gives them meaning. Hence, it has a grammatical nature. The rules of this grammar are not enunciated, however: they belong to that category of phenomena that are so evident they simply do not need to be mentioned. But again such an explanation is only partial. The second reason for the silence about the gift is the ontological character that it assumes. In Brazil, the being-for-politics is the being-for-exchange in its most fundamental sense: the experience of walking together in the same direction, gathering companions, implies being able to acquire commitments and assume debts whose guarantor is the person of the politician — as a self-contained totality. In politics, moreover, the alliance between some is always realized against others: the need for companions is the result of the inevitability of adversaries. In other words, the gift and conflict are indissociable: the meaning of one resides in its opposition, polarity and complementarity to the other. The politician as a being-for-exchange results from the need for alliance in the face of the inevitability of conflict. The second reason for the silence is somewhat similar to the first then: as an ontological condition, the gift is so obvious that it makes no sense to mention its existence, since speaking about it signifies distancing oneself, establishing a rupture with politics as a way of life (something that is perhaps fitting for the anthropologist but not the politician).

In the case of the Brazilian parliament, the gift as an unmediated foundational experience is consolidated in a double function: as the interpretation of the other in relation to the self and, simultaneously, as a project imposed by the self on the other. Or put another way, as a language and a possibility of action. In parliamentary politics, something only moves forward with the support of others. In this context, the other is someone needed by the self to achieve something but also someone who limits the self's desire: asking another for something gives this other the right to ask for a counter-prestation. In other words, achieving something requires committing oneself to the future desire of the other as the future limit of one's own actions (the self's possibilities for action are limited by the debts acquired to reach the present point). Hence the other is someone with whom I need to exchange but also someone with whom I have the least interest in exchanging. Politics in Brazil transforms the war of all against all into the exchange of all against all.

To develop my argument further, a comparative perspective will be useful. I shall introduce this dimension with a question: why not adopt the bargain rather than the gift? This question derives from a certain way of seeing politics for which there are two legitimate forms of political action: the reasoned argument and the bargain. The bargain, for its part, contains both a threat and a promise (Elster, 2000; Habermas, 1996; Schelling, 1980). In this model, value resides in the rational and impersonal argument, not the bargain. Here it suffices to note that the agreement resulting from a bargain is frequently posed as an impersonal argument, what Elster calls "the civilizing force of hypocrisy" (Elster, 2000: 349). The bargain is nonetheless necessary. In cases in which the "force of the best argument" is insufficient, ineffective or impossible (when conflict results from mutually incommensurable and contradictory values, for example), the bargain is a means to construct solutions in which each of the parties agrees to grant benefits to the other side in order to ensure itself other gains. My suggestion is that this model is reasonable for a certain type of society since it expresses values inherent to its form of sociability. Obviously, much can be said on this topic. To save time, though, I shall turn to MacIntyre's description of liberalism as a tradition. Using the work of a philosopher is a trade-off: what is lost in empirical density is gained in clarity and in the synthesis of the exposition. In any event, I shall take it as an expression of a societal ideal. The excerpt that interests us here is as follows: in a society in the liberal tradition –MacIntyre (1988) argues – there is a structural homology (the terminology is mine) between

the political domain and the market. In the market, desires, needs and goods acquire a voice as an expression of individual preferences. The same occurs in politics (see, for example, Druckman and Lupia 2000). In both domains, the preferences of others have a value for the self, insofar as the satisfaction of the former leads to the satisfaction of the preferences of the latter. Consequently, the bargain is configured as the model par excellence of sociability and politics: “Only those who have something to give get” (MacIntyre, 1988: 336). A curious turn of phrase for sure: it presents the bargain as something that for us Brazilians would be perceived as a form of exchange.

The above comparison allows us to introduce the hypothesis that we are faced with at least three types of society: on one side, societies with an individualist ideology; on the other, other societies of a holistic type: in the former, modern political theory represents a way of being that permeates its sociability; in the latter, what prevails is hierarchy, that is, the relation between the parts and the whole (Dumont, 1985, 1966). Between them are the third type, societies, as Aragão has pointed out, “that have passed, or are passing, from holism to individualism, subject to the culture shock of westernization.” In these, the author continues, “the holism/individualism dichotomy is far from accounting for all the complexity of the present ideological reality” (Aragão, 2018: 172). My aim here is to advance further with Aragão’s proposal, making the following suggestion: native theories of the first kinds are only partially consistent with the social reality of the latter kind. Although polemical, the hypothesis allows us to venture the following idea: in the absence of the typical social and ideological conditions of the two former types (the combination of individualism, liberalism and the market economy on one side, and hierarchy, the creation of differences to establish relations and the social emphasis on belonging based on a shared value on the other), it is necessary to make use of other societal arrangements that manage to perform a similar role.

The above typology suggests, then, that theories deriving from societies in which an individualist ideology predominates find it difficult to accept the role of the gift in political relations since their ideology exhorts an absolute distinction between the rule of the institution, on one hand, and the personalness demanded by the gift, on the other. The political theories of individualist societies, in turn and in hypothesis, reflect a certain type of social arrangement that permeates its sociability (as an example of the latter, see Dworkin, 1984, 1989; Rawls, 2005; Walzer, 1983). For these theories, the gift in politics is a residual element that defies explanation. The solution is to encompass the phenomenon through a classification that expresses the values of these societies: thus, Heidenheimer (1989) – who I cite here as emblematic of a certain way of perceiving the phenomenon – claimed that, from the perspective of the ‘western elite’ (his terminology), all forms of corruption are equivalent to forms of exchange. Something similar occurs in Brazilian social thought where exchange in politics is subsumed under other concepts such as clientelism or patronage — which, as we all know, have a negative value. The mechanisms involved in the encompassment and invisibilization of the gift do not just express the hopes for modernity and our path towards a more democratic society in which the gift is swept once and for all from Brazil’s public life (here the dilemma and the ethnographic data travel in opposite directions: see Kuschnir, 2007). But can political activity in Brazil not be conceived through the idea of interests and bargaining? Yes, of course. The problem, once more, is that perceiving the phenomenon from this perspective treats something found at the centre of the action of the agents concerned as an insoluble matter, which is then set aside as a kind of deviation, as we saw above.

To explain this ‘residue,’ I suggest therefore that we adopt the opposite procedure and, rather than translate our system using theories adapted to another kind of society, we take the opposite path and translate these theories for them to make sense within the system we are actually describing. The starting point is the observation that, for our society, the gift does not fulfil the same role, nor does it have the same sense acquired in individualist-type societies. The same applies to the bargain, which, unlike in other societies, is not a word much used by Brazilians in everyday life, still less in politics. My hypothesis is that in Brazilian politics we

encounter two different types of exchange: (i) exchanges modelled on the gift (favours that are given or solicited, in native terms) that are characterized by long, open-ended cycles of prestations and counter-prestations that can contain other cycles of immediate or deferred reciprocity; and (ii) short and closed cycles modelled on the market or, if we prefer, the 'bargain' – more appropriate perhaps than 'business' (see, for example, the use of the latter in Woortmann, 1988). This does not mean that exchanges that adhere to the market model are exchanges of official acts (like votes) for money; rather they are exchanges that foreground self-interest and the equivalence of the things exchanged and, once what was agreed has passed from one side to the other, the exchange is complete. This is a valuative opposition in which value is placed in the long-cycle exchanges rather than those with a short cycle.

Unlike short-cycle exchanges, the central functional aspect of those with a long-cycle is the temporal distance between the prestation and the counter-prestition. It is in the time of reciprocity that the strategies typical to the construction of majorities in the Brazilian parliament develop, including the creation of asymmetries (the government and its allies always have more to give) that is consubstantiated as a system of domination (party leaders and bigwigs, ministers and so on) in which the rituals linked to the gift (spoken agreements, confidence in receiving the counter-prestition, apparent disinterest) are the instruments through which the game is played, known to everyone, although they may feign ignorance (Bourdieu, 1980). Every system is made to (i) increase the capacity to influence the other through (ii) the multiplication of obligations and, therefore, (iii) the networks of dependencies (Abreu, 2006b; Elias, 1983). However, this system possesses an important difference compared to other systems of agonistic exchanges: the counter-prestition of the same value does not necessarily eliminate a prior debt, but can balance the relation with an equivalent debt in the opposite direction.² There are two reasons for this. The first and most important is that the emphasis of the system is on increasing the capacity to influence the other and, therefore, it makes sense not to lessen debts but to multiply them. The second is that the political context changes: both the relative values of the prestation and counter-prestition and the capacity to provide favours alter over time. The change may result from the reorganization of the relative strengths of the groups in dispute or from the occupation of State posts. A parliamentarian who is not re-elected cannot distribute relevant favours within parliament, although – depending on the situation – he or she may be able to influence other parliamentarians. As a consequence, the capacity to provide future favours alters the value of the favours of the past. As a regulatory idea (which applies to most cases but not all), temporal distance diminishes the value of what was done (a kind of progressive forgetting that gradually makes the favour bestowed less important).³ Again, since the value of what was done is subject to alterations, it makes sense to emphasize the debt because it sustains the possibility of acting on the other.

Unfortunately, a description of the mechanisms through which the gift operates in the construction of parliamentary majorities would go far beyond the purposes of this text.⁴ But it is possible to summarize them in the following propositions: (i) The two models of exchange enable the Brazilian legislature to organize two different ways of constructing majorities for the approval or rejection of proposals submitted to votes. (ii) Both models are transitive (one can substitute for the other) insofar as they serve the same function. (iii) Each of the models incorporates supposedly opposite and mutually incompatible elements and, as a result of the latter, the models have distinct consequences for the equilibrium of the system of social practices and positions. As the short-cycle exchanges leave no obligations, the actors have more freedom in terms of their future actions; the long-cycle exchanges, on the other hand, bind the parliamentarians within a network of

2 The equilibrium between debts can be seen as inherent to non-agonistic total systems of prestations rather than the agonistic kind (Godelier, 1996).

3 Unlike in other systems of agonistic prestations like Kula (Weiner, 1992). The problem is that it is not an object that circulates and gradually acquires more value; rather these are dyadic relations that sustain one another. Thus the party leader negotiates the interests of those he or she leads in a bloc with the government, but the federal deputy owes the favour not to the government but to the leader who achieved the deal.

4 This is the topic of a forthcoming text, "A crônica do nosso mau destino."

debts and rights that shrink everyone's field of action. From this perspective, trading milk fudge for votes is rational insofar as it forms part of a cycle within a large cycle or implies the opening of a long cycle: allowing oneself to be influenced in this context is equivalent to securing the possibility of influencing the other in the future. Or put another way, it keeps open the flow of exchanges (Simião, 2017). (iv) Any political context is the combination of both models of exchange; they can be found running in parallel (it is possible to encounter both operating simultaneously) or even overlapping (the same actors may be involved in both systems). But it is also possible that one of them is, for a moment of time, dominant at least among particular groups. (v) The dominance of one model over the other is central to the relationship between the executive and the legislature.

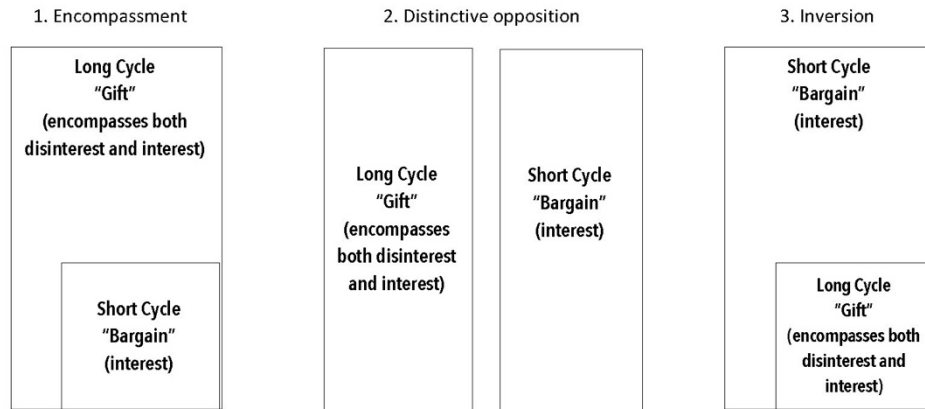
Allow me to return to the opposition between interest and disinterest in the long-cycle exchanges. Some of the difficulty in thinking about the gift resides in the attempt to reduce the phenomenon to the sum of interest and disinterest. Seen from this viewpoint, as Derrida astutely observed, the gift represents an aporia: interest contaminates and degrades disinterest, transforming it into a façade, a lie or an excuse, the only solution for which would be ingratitude (which, we all may concur, is no solution) (Derrida, 1991). Bourdieu suggests that the point is other: it is not a question of a logical relationship but of a system of domination (Bourdieu, 1980). Nonetheless, seeing the gift either as an aporia or as a subterfuge that conceals and dissembles domination has very similar consequences. In both models, the result is to empty the gift: its meanings and strength are not its own but arise from the irrationality intrinsic to it or from the interests that sustain it and are located in the field of the unsaid (Caillé, 1981). Perceiving the gift in this form, however, does not explain all our data. Something is left over that this approach is unable to explain. Stating that the gift conceals interest, for example, does not explain our historical incompetence when it comes to substituting it for something else, nor explain how it has continued to exist in a context in which self-interests are prevalent. It may well be, therefore, that its persistence can only derive from the truth it contains – as something, in other words, that, deriving from tradition, encounters meaning (use) in the present moment. Something that survives the ruin of time (Gadamer, 2004: 305 ff).

In what sense might the gift not only be logically but grammatically consistent from the viewpoint of a reflection on institutions? (As I argued above, it already is grammatical for agents.) My starting point is the following proposition of Lévi-Strauss: the gift is – he writes – the “most immediate form” capable of integrating “the opposition between the self and others” (Lévi-Strauss, 1967: 98; Beauvoir, 1949). There are various ways of interpreting this phrase. One way is to understand the gift as the logically anterior phenomenon from which the others derive (giving meaning to other experiences that are ‘simple’ in the sense used by Moore 1903: 9): it would be reducible to neither interest nor disinterest. Put otherwise, rather than seeing it as the convergence between discrete operations and what forms part of the flux of our everyday life, it takes the whole as anterior to the parts.⁵ In other words, a difference in level exists between the gift and the disinterest-interest pair (the gift encompasses both interest and disinterest). Again, the ethnographic suggestion here is that theories originating from societies with an individualist ideology find it difficult to conceptualise the gift because they cannot cope with hierarchical relations – that is, with the idea of value as an encompassment of the contrary, the difference between levels (no contradiction exists because the higher level is the encompassment and the other two possibilities derive from it) and the possibility of hierarchical inversion (at lower levels value can be inverted). The reductive modern mentality only manages to perceive distinctive opposition and, therefore, is insufficient when it comes to comprehending the phenomenon.⁶

⁵ This equates with the methodological principle according to which the sum of the parts is not equal to the whole. Such is Lévi-Strauss's critique of Mauss (Lévi-Strauss, 1968). Lévi-Strauss, however, applied the argument only to the relation between the gift and the three obligations (to give, receive and retribute), asserting that it was the gift that was constituted as the logically anterior element. As I have argued elsewhere, though, Lévi-Strauss repeats the same ‘mistake’ on another level (Abreu, 1997).

⁶ As Dumont argued (1966: 396 ff., “Vers une théorie de la hiérarchie”). For a commentary on a value-based anthropology, I refer the reader to Parkin (2002) and Tcherkézoff (1994); for more direct developments of Dumont's ideas, see Barnes et al. (1985).

In the Brazilian case, long and short cycles of exchange acquire meaning in relation to each other, their possibilities expressed in oppositions: gift :: bargain; long cycle :: short cycle; disinterest :: interest. These are organized in three variations: encompassment, distinctive opposition, and inversion, as shown in the figure below. The reader should note that the three possibilities do not correspond to all logical possibilities, only to those ethnographically relevant (specifically, those derived from my own data).



From this perspective, the issue is not the contradiction between two opposite and mutually exclusive categories, but the idea that the gift contains the possibility of disinterest and interest alike. Hence, long-cycle exchanges represent an open set or a field of possibilities in which disinterest can be transmuted into interest, alliance into conflict, travel in the same direction into opposition, the exchange of things into the exchange of offences, agreement into disagreement, and vice-versa.⁷ I do not intend any of this to be generalizable to other societies, nor to make historical assertions. Rather I perceive them as relations that organise meaning – as a grammar, perhaps. In this text we have already seen the examples corresponding to each case. Encompassment, for example, is compatible with the idea that politics is contained in the type of relation presumed in long-cycle exchanges, while short-cycle exchanges, as a degradation of the gift, are also a degradation of politics itself (since the gift contains interest, extracting it means losing the unity that is situated on a higher level, resulting, therefore, in a decrease in value). Meanwhile, distinctive opposition is present in the critique made of politics when it expresses self-interest without other mediations – a critique found in the kind of common remarks that we all frequently hear, claiming that Brazil’s problem is that “politicians just care about their own, not others.” The inversion, for its part, corresponds to the need, evident in the ethnographic data, even in the case of an explicit negotiation between conflicting interests, not to dispense completely with the rituals inherent to gift-based relations. This appears most clearly in exchanges of money. In these cases, although nobody is deluded about what is at stake and the interests involved, it is still necessary to use the categories and actions of this other type of relation: in parallel with their transactions, corrupt agents may establish prestations and counter-prestations of a gift type, or at least a simulation of them, in what sometimes appears like a bad joke. Data about the latter case is difficult to obtain given that the secrecy surrounding them is an important part of their functioning. But sometimes it is possible to glimpse these practices when, for some reason, the rule of the secret fails. Alberto Youssef, the money launderer responsible for distributing the funds embezzled from Petrobras to the Progressive Party (PP) and whose phone calls were being monitored

⁷ The possibility of the gift containing its opposite can already be found in the literature on the topic, though based on the idea of inversion not encompassment. See, for instance, Mauss (1969) and Sahlins (1974).

by the Federal Police (PF), suffered a heart attack. As he was lying in a hospital bed, he received calls from interlocutors who, after hurriedly wishing him well out of a sense of obligation, asked about the money they were due to receive (Netto, 2016: 33).

The distinction between short-cycle and long-cycle exchanges is not sufficient, however. It resolves just part of the problem since it does not allow us to distinguish, within the short-cycle exchanges, between the 'bargain' as a legitimate activity and exchange for money, which everyone agrees would be illegitimate. The solution is to introduce additional distinctions. I shall take these from the Brazilian penal code, which has the advantage of having to dialogue with the practices of public administration in general and politics in particular. The various behaviours that we could call 'corrupt' or inappropriate are spread through the chapters of "Crimes against the Public Administration." In relation to exchange, the relevant articles are 317 and 333, passive and active corruption respectively. Passive corruption is specific to civil servants and the core offence (the description of the kind of criminal act involved) is to request or receive the promise of an 'improper advantage' (the expression is taken from the law) to do, delay or omit to do something. Active corruption, on the other hand, is specific to external agents and the core offence is to offer or promise an 'improper advantage' to do, delay or omit an official act. The legal discussion is extensive and does not interest us at the moment save for the following aspect: both are formal crimes; that is, they involve a solicitation, promise or acceptance. Note that the term 'exchange' is absent from both articles, although it would fit their wording perfectly. But what exactly is an 'improper advantage'? This appears to reside at the heart of the problem. My hypothesis is that the law presumes (or opens up the possibility of) two distinct types of exchange circuits: one of institutional values considered appropriate by the agents themselves (that which does not need to be hidden) and the other in which institutional 'values' are exchanged for other things that would be deemed inappropriate (Abreu, 1996). In my understanding, the former is internal to the institution or the political sphere and the latter is external to them.

But can the 'improper' or 'external' be distinguished? Here I wish to introduce the idea of inalienable goods, which I take from Thomas (2002). According to the author, Roman law drew a distinction between two types of goods: on one side, inalienable goods that belonged to divine law and public law; on the other, alienable goods specific to private law. Obviously not all goods, whether of the temple or the city, were inalienable: procedures existed to treat some of these goods as property in the strict sense (capable of being disposed of by an act of will, that is, alienable). Inalienable goods were above all those that, in the temples, concerned the moment of their consecration and, in the city, those freely accessible to all citizens and thus pertaining to everyone, using the 'paradoxical' (for us) formula of "owned things belonging to no one (*res nullius in bonis*)" (Thomas, 2002: 1432).⁸ What distinguishes these two types of goods is the impossibility of inalienable goods being transformed into an economic quantity (which, under Roman law, meant the lack of an appropriate procedure to measure their monetary value). Ultimately, for Roman law, the sacred and the public were opposed to the private. My hypothesis is that the things circulating in Brazilian congressional politics considered appropriate or 'proper' (votes, posts, words, institutional movements, demonstrations of esteem, conviviality and so on) ideally and partially assume a sacredness (which in some instances replaces or overlaps their public dimension) but degrade when measured – in other words, when the ambiguity and variation of their value are transformed and fixed as an economic quantity.

However, the gift's centrality in Brazilian politics leads to another problem: the long-cycle exchanges are incapable of a 'totalization of the social' (to recall the expression of Aragão, 2018: 112). This would require an ideological construct capable of encompassing all the rest: representation and immanence, norm and society, the categorical and the conjunctural, the global and individual interest. Such a construct would

8 In the French original: "choses relevant d'un patrimoine qui n'appartient à personne (*res nullius in bonis*)."

be exterior to the gift and would necessarily contain it or – thinking about the solution of societies of an individualist type – would dislocate it to various derivative or subordinate domains of the social world. In the absence of any such construct, the gift manages to produce in limited fashion this strange alchemy between disinterest, the impartiality of the argument (action does not benefit the self and is made in the name of a generalizable principle), personalness (acting on behalf of someone else’s needs), self-interest and the possibility of transforming the other into an instrument of my own interest. In other words, the centrality of exchange indicates and results from the structuring nature of the misencounter, no longer expressed between observations taken from places of speech very different from each other (an interior town, Congress, courts), but as a structure that shapes the relations between these aspects. In my understanding, it is precisely at the outer limits of long-cycle exchanges that we find the importance of examining the law vis-à-vis this complex set of relations. This is what I intend to do now.

A grand narrative

In contrast to the silence that shrouds the gift in politics, the law enunciates its relation to exchange in a grand narrative centred on the idea that the State is constructed against society (Abreu 2016). I found the first systematic formulation of this idea in the *Ensaio sobre o direito administrativo* (Essay on administrative law) by the Viscount of Uruguai, originally published in 1862 (Soares de Souza, 2002). There may be earlier enunciations of which I am unaware. For the Viscount, though, our political institutions were “a very imperfect and lame imitation of the institutions of the United States” (Soares de Souza, 2002: 497). This, he explained, was due to the lack of the appropriate customs and circumstances to make them work. The Viscount was a practical man. He referred to the autonomy of the provincial assemblies to nominate the occupants of public posts. Rather than autonomy ensuring that opportunities were generalized (among men of the same value, of course), it served as an instrument for one of the “factions [*parcialidades*] into which our provinces were divided” (Soares de Souza, 2002: 465), oppressing the opposite faction or factions. Hence, one faction would appoint ‘its own men’ to provincial offices, the national guard, justices of the peace, municipal councils and so forth, and “thus an impregnable castle was built, not only for the oppressed side but even for the central government too” (Soares de Souza, 2002: 465). Against this, the Viscount proposed two changes in how the State was organised. The first of these was the introduction of administrative hierarchy. This was “an indispensable corrective, especially in those countries where education, the habits of order and legality, respect for rights, obedience to duty and the practical business sense have still not generally penetrated the diverse social classes” (Soares de Souza, 2002: 495). Such a hierarchy would include subordination, tutelage and different degrees of jurisdiction. The second change was to transfer the right to appoint occupants of public posts from the provinces to the central government. If the occupation of posts was an instrument that favoured oppression, it would be better for responsibility for their nomination to be transferred to the “hands of a more distant, more impartial power, less closely involved and interested in personal and local struggles and passions” (Soares de Souza, 2002: 464).

Beyond the obvious questions of institutional engineering, the Viscount’s narrative contains a relationship between ideas that goes beyond those problems he explicitly addresses. I elaborate this relationship through the following points: (A) there is a difference between our social reality and the reality of the countries from which we adopt the State model. What is interesting is that this does not lead us to question the State model and seek another that would represent the more foundational values of our sociability (hospitality, reciprocity, adaptability and so on). On the contrary, it is society, generally speaking, that is expected to adjust to values we have taken from elsewhere. At the same time, the translation into our institutions inverts the meaning of these other values. In individualist European societies values like equality and liberty are predicates and the individual is their subject – in other words, they comprise rights whose main objective is to safeguard

individuals, whether it be from other individuals, or corporations, or ideas, or the State itself. In Brazil, by contrast, values assume the role of subjects in the name of which, very often individuals are sacrificed (Aragão, 2018: 206). (B) it is imagined that society left to its own devices is incapable of regulating itself reasonably; hence, the State needs to intervene to modify its nature or, at the very least, limit the possibility of any harm it may cause itself. At another level, this reflects the social and symbolic distance between parts of Brazil: described somewhat schematically, we have one part, historically linked to the coast, which became a centre radiating culture and social and economic development, serving as a model for the rest of the country that – for a good portion of our history – was left to its own fate. Likewise, the rules of our law need to be constituted in opposition to significant and central portions of our sociability; this means that the law partly assumes the role of a ‘cultural critic’ – a critic, of course, that expresses, deep down, the highly conservative values of just one of the parts of our country. (C) The State model needs to be adapted to our social reality. Such adaptation largely results from a process of trial and error, a negotiation with circumstance. At a symbolic level, this echoes the lack of commitment to the universal application of the rule and, by opposition, the predominance of the contingent and the circumstantial. The outcome is a combination of ideas and practices that, from the perspective of other civilizations, would be mutually incompatible or contradictory (for example, it is the tutelage of the central power over the localities that ensures freedom among the latter). (D) Only at a distance would it be possible for the State to exercise its civilizing role. This, in turn, acquires different meanings according to circumstances and the historical moment. The relations between ideas already formulated in the work of the Viscount would later pervade, not without vicissitudes, the thinking of authoritarian authors like Oliveira Vianna (1883-1951: see Vianna, 1999) and Azevedo Amaral (1881-1942: see Amaral, 2002). They are also present in some form in Victor Nunes Leal (1948), as we shall see shortly.

There is another point not explicitly present but, based on the most recent literature, perceptible that results from the relationship with the above ideas. I refer to the role of hierarchy. Equality and liberty do not serve to organise society for the simple reason that Brazilian society is not only profoundly unequal, it also attributes no central value to the individual. On the other hand – and here, in a certain sense, lies the problem – it also lacks any hierarchical alternative. We can recall that hierarchy is fundamentally an order of precedence, which creates differences in order to construct relations (Dumont, 1966). Hierarchy can even exist within each of the factions (or *parcialidades* to use the Viscount’s language) that control the states or the family. However, society is thereby unable to construct a rule that by itself organises its whole. Hierarchy, therefore, in its modern sense, has to be imposed as an exercise of power.

The discourse of contemporary jurists seems to break with this series of ideas. The more recent narratives begin thus: the law we have today is heir to the Romano-Germanic tradition – a millenary tradition. The meaning of legal instruments is found in the history of this tradition. Along a trajectory passing through the major historical epochs (essentially: primitive society, Greece, Rome, the Middle Ages, the industrial revolution, the modern age) the essence of this legacy gradually emerges and takes shape. What our law affirms through this narrative is that it does not, in fact, pertain to Brazilian society. It is no accident that the history practiced today by the overwhelming majority of our jurists ultimately entails the rejection of history itself (rupture, transformation, incommensurability). Nonetheless, the change does not alter its most structuring aspect: the opposition between State and society. This remains present, transformed by the new circumstances. The work of Leal (1948) acquires a prominent place from this perspective, comprising the midway point between the Viscount’s account and contemporary narratives. Leal describes an electoral practice in which relations between locality, state and central government revolve around a system of reciprocity (or, as I have called it, a system of long-cycle exchanges). In Leal, the nomination of posts by the central government that, in the Viscount’s view, served to mitigate and contain factionalism and the local mode of doing politics, becomes a mechanism of alliance between the federal government and state-level administrations, and between the

latter and the municipalities – what Leal calls the *compromisso coronelista*, the coronelist pact: on the part of the municipality, unconditional support to the candidates from officialdom; on the part of the states, *carte blanche* for the local bosses. Put otherwise, the factionalism of the province during the imperial era found its path to the capital through the electoral politics of the republic. Indeed, what would be more likely: the State modifying society, imposing customs, habits and ideas alien to it, or society resisting, reinterpreting to its own benefit what the State wishes to impose on it?

Two consequences need to be made explicit. First, the geographic distance between Rio de Janeiro and the provinces was, in the Viscount's account, an objective condition: the remoteness of vague news from a few days ago. At the symbolic level, however, it was above all a metaphor for something else: distancing as estrangement. Spatial distance today is no longer enough; it cannot perform its structuring role. In other words, contemporary legal narratives stem from the collapse of space as a metaphor for estrangement. Other distances, more modern estrangements, need to be found. While the State and the law once opposed what was faraway, now law needs to invent a new means of constituting itself as other to what is close by. If it is politics that brings society back to the centre of the State, then the opposition between State and society unfolds on another plane: in the opposition between law and politics within the state itself.

The lucubrations of Brazilian law and its appropriation of foreign legal doctrine and jurisprudence partly relate to the need to construct itself as other to its social context. Nevertheless, since the law needs to be pertinent to the social reality of which it forms part, mechanisms are needed to adapt between a foreign discourse and a local reality. Consequently, it is not easy to understand what it means to say. The relations composing the symbolic system acquire a diffuse character: they are no longer made explicit in the law's narratives. Rather, they are immersed in a diffuse set of texts, discourses, practices, rules and institutions whose relations are only recuperated through the movement of the whole, in the use of esoteric legal instruments. As Riles (2005: 975) argues, "the technicalities of law are precisely where the questions that interest us actually are played out." Neither has contemporary Brazilian law lost adaptability as one of its values. It has simply moved place. It no longer forms part of the explicit argument justifying the norm, but has withdrawn into the unsaid. This phenomenon has already been widely observed in the literature: in the adaptation of the jury court and the truth in trials (Kant de Lima 1991, 1993); in the opposition between the importance that legal doctrine gives to the principle of orality and its application (Baptista, 2008); in the influence on court decisions of moral categories contrary to the rights of defendants (Schritzmeyer, 2020; Nuñez, 2020); in the use of the idea of equality as a means to legitimize inequality (Mendes, 2005; Abreu, 2013a); in the importance of the principle of the judge's freedom to decide and the opposition between real and formal truth (Mendes, 2012), to cite just some examples. In other words, law does the opposite to what it says it does. It dialogues all the time with the society to which it belongs. But this is a dialogue that denies its own condition as a dialogue and constructs itself at a distance, through estrangement and, principally, in silence. An entirely paradoxical conclusion that, nonetheless, fits the data.

Summarizing the differences, we arrive at the following:

In the Viscount's narrative	In contemporary narratives
Our reality is different to the social reality comprising the original home of the model.	The denial of belonging to Brazilian reality through the claim to belong to a tradition that is not its own.
The model needs to be adapted by negotiation with circumstance and contingency. Ad hoc solutions are the result.	The model is not contaminated by our social context since it is the result of a long legal tradition that thinks of itself as continuity not rupture. The outcome is a history that denies history.
Left to its own devices, society is organised locally by one group's oppression of the others.	Law pacifies society and makes it possible.
Combination of contradictory ideas in the narrative that justifies the norm.	Contradiction is perceived in the combination of the diverse planes; that is, in law in movement.
Distance is constructed by geography as a metaphor of estrangement.	Estrangement is constructed by the denial of belonging to a local tradition.
Hierarchy limits and constrains local factionalism.	Law is opposed to exchange in politics.

A system through and from a distance

The above description showed that law can no longer be imagined as a reflection of the ideas present in spontaneous forms of sociability, or as the expression of the most essential aspects of politics. On the contrary, law sees politics as a contamination, a degradation of itself, and a huge effort is made at discursive level for estrangement and distance to be realized as narrative and identity. In the practicalities of judicial decisions, though, law is always looking to politics and society for its decisions to be possible and make sense – an inglorious and not always successful task. Conversely, politics aims for the legal norm to form part of its cycles of exchange (“for friends everything, for enemies the law” as the old political saying goes): from this perspective, the norm belongs to the set of things that circulate. This formula is imprecise, however, since what circulates, strictly speaking, is the interpretation and application (or not) of the norm. Moreover, similarly to what happens with the law, the conclusion is only partly true. All congressional politics turns on posts, possibilities and gains created by the diverse legal instruments. In the Brazilian case, however, these do not acquire a sense of sacredness vis-à-vis politics and thus cannot structure exchange.⁹ Furthermore, it is common for politics to use the law to create political facts based on Federal Supreme Court decisions. At this level, the hypothesis of the misencounter means the following: there is no higher-level synthesis of law and politics containing both or an encompassing value capable of ranking them in relation to each other, nor does there seem to exist a deeper structural homology between them that could suggest an organising principle common to the two dimensions of social experience. This is the ethnographic fact, I hypothesise, that needs to be considered in the relation between law and politics: at a discursive level, one negates the existence, substance and legitimacy of the other; at a practical level, one regards the other to understand its own possibilities. They thus dialogue in silence. Consequently, there is no fixed point from which the two can be integrated into a unity from which they derive; instead, there exist two incompatible and incommensurable viewpoints from which their synthesis is no more than an elusive and unattainable impression.

⁹ A system of total prestations – agonistic or otherwise – would contain two types of objects: those that circulate between humans and those that circulate between humans and the gods. The objects belonging to the latter form part of another circuit of exchanges, a circuit that logically precedes the former and gives it meaning (see Abreu 1997).

Received: April 27, 2022

Accepted: February 20, 2023

Translated by David Rodgers

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