

THE POWER OF THE FATHER IN THE ANCIENT ROME*

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1.- As we know, the father-son relationship, which was always marked by conflict and tension, was strongly characterized in the ancient world by a complex of overpowering and violence: the father uses power over his son, and the son can either obey and submit to this superior authority, or resist and rebel. But, even when the son seems to endure the paternal command, he often, perhaps silently, suffers and becomes intolerant of this subjection.

The examples, in literary sources, from a wide variety of cultures, are countless. We recall, for its apparent abnormal character, the verse in Deuteronomy 21.18-21 that orders death for the "rebellious son" (*Ben Sorer huMorè*: stubborn and rebellious son) whose negative behavior would simply be the fact that he was "talking and drinking too much. Even this attitude, that we consider harmless today, at that time, would be considered a challenge to paternal authority, leading to extreme consequences.

In a famous essay, published in 1884, Friedrich Engels, illustrating the theories of the anthropologist Lewis Morgan, attempted to prove - although with political rather than scientific intentions - the theory that the patriarchal family was created simultaneously with private property. In fact, it was only at the moment when primitive humans first conceived of and claimed ownership and exclusive rights over certain possessions (land, tools, animals, slaves, house...) that they would also have felt the need for these possessions to remain, after death, in the use of their children.

But in order to make this possible, they created a special structure, the family, which was designed to ensure that the children would be attributed with certainty not only to a mother, but also to a specific father- and recognized as the children of their actual father- and from whom they would legitimately inherit his property.

2.- The family, therefore, would have been created exclusively as a suitable instrument for the inheritance of private property through generations. In that manner, fathers, children, spouses, and mothers, in their respective roles, would have been nothing more than links in a chain that enables such transmission of ownership. And the so-called 'state' would be constructed specifically to ensure- by punitive measures - the functioning of such a mechanism.

As we noted, despite the long passage of time, and despite the obvious propagandistic intent of Engels' text and the non-specialized training of its author (who, among other things, gives a rather distorted and forced representation of Morgan's studies, whose views are simplified and absolutised in an abstract and atemporal sense), it remains his great merit (as well as, of course, Morgan's) that he has dealt a serious blow to the established idea - of no biological and scientific foundation - of family.

Until that time, it was supposed to be a natural law institution with an eternal and meta-historical character. The famous 'natural family' founded on marriage, that was so much invoked and praised, as 'natural' does not exist and has never existed.

Only a social mechanism, exclusive to human communities, would have determined the establishment of the figure of the 'father' and his power over his children, as a form of 'property'. A fact confirmed by ethology, which shows that other mammals recognize the figure of the mother (but only until it is

necessary for the raising of the newborn), never that of the father. The family, therefore, would be nothing more than the appropriate framework for the recognition of this figure and the use of this power: monogamous or polygamous, it makes no difference from this point of view. If, like the “*mater*”, who “*semper certa est*,” the “*pater*” wants to have the same certainty, only the family (with one or a hundred wives) can give it to him. King Solomon had seven hundred wives and three hundred concubines (I Kings II.3), but each of these belonged (or should have belonged) only to him.

3.- The oppression practiced by the father on his son can be passively tolerated and accepted by the son as long as the father remains alive. But the son may also try to break the chain, releasing himself earlier from the domination. He can never, though, reverse the roles. A slave may also, after being emancipated, become in turn the master of his former master. A son, though, can never become his father's father. He may leave the paternal home and escape from this authority. Or, he may also end his subjection by killing his father-master.

The image of the son raising his hand against his father, that we know through Greek mythology, seems to recall an underground hostility that is present in the foundations of human society. It is enough to recall the myth of Oedipus, the son who blinds himself after realizing the horrendous truth that he had killed "the one he was not supposed to kill"; or the myth of Cronus who was devouring his own children. We consider, also, the verses of Iliad, in which Phoenix, the tutor of Achilles', tells his student that one day he had felt the impulse to stab his own father and that he was restrained only by the intervention of a god. This last episode takes us "back into the typical environment of a civilization of shame (not guilt)" and summarizes the ambiguity of the idea of patricide, its oscillation between the impulse of desire and the repulsion of shame.

This idea is often present in Hellenic culture and is even central in the civilization of Rome. It is well known that the relationship between father and son, in Roman civilization, had quite a unique characteristic, caused by the peculiarity of *patria potestas*. The very ancient and tremendous authority exercised by the *pater familias* over his descendants was, as we know, an exclusive invention of Roman law. The jurist Gaius, in his *Commentarii*, emphasizes proudly its originality. Therefore, that particular power was conceived only in Rome. Dionysius defined it as harsh and tyrannical, stronger than even the power of the master towards his slave, and which had its symbol in the *ius vitae ac necis*, the right to give death to one's subordinates.

4.- Many pages of ancient literature testify about the mistreatment and murders carried out by fathers to their own children. But the oppression did not consist in generic paternal severity or toughness, rather in a precise legal command that prohibited the *filius familias* from having his own wealth and exercising his trading and entrepreneurial ability. The son was in a permanent condition of dependence on his father: this condition was to be felt as an unbearable and frustrating violence, especially in the commercial and mercantile expansion phase of Rome. The *patres familias*, on the other hand, would have a feeling of fear towards their descendants, whose desire for independence would have been seen as potentially dangerous.

But the legal violence of the father is answered by the necessarily illegal violence of the son. The idea that a son could kill his own father was always regarded as something absurd and monstrous. This is derived from Plutarch's testimony, according to which Romulus established no punishment for parricides, and called all murders *parricidium*, on the basis of the belief that the killing of one's *pater* was impossible to the point of not requiring a word suitable to indicate it. The hugeness of the crime, to which the kings of Rome did not even give a name, is always present in later culture.

We can observe this in the special adjectives dedicated to it in Cicero's oration, the Pro *Roscio Amerino* (*immane, atroce, scelestum, nefarium, acerbum*). According to Cicero, this crime is against '*omnia divina atque humana iura*', and those who commit it should be unable to rest in peace and even to breathe without fear. The blood of the father, as well as the blood of the mother, has a mysterious force ("*vis*," "*necessitas*," "*religio*"): if even a small drop is spilled, the stain cannot be washed away but it will haunt the son's soul into *dementia*. The guilty man cannot escape; he is crushed by guilt, terror, and regret.

The possibility of a son killing his father, for Cicero, Seneca, Quintilian, is something incredible. Incredible enough that the murderer is constantly linked to the idea of madness, ("*summus furor atque amentia*"), the parricide loses his mind, is pursued by the Furies, and takes his own life. (It is no coincidence that Publicio Malleolo, who was probably the first to suffer the *poena cullei*, in 191 or 101 B.C., was a *furiosus*: considered as mad, maybe, "simply because he committed *parricidium*".

It is important to remember that the *pater familias* used his power not only over his children, but (in addition to his wife, slaves, and freemen *in mancipio*) also over his grandchildren and great-grandchildren (and their wives). The subordinated people to his *potestas* could also have no biological connection to him, having entered his family only through a legal transaction, such as *adrogatio* or *adoptio*.

This fact gives the father-son conflict, in Roman society, quite peculiar characteristics, since the *filius familias* can himself be the father of his children and grandchildren. However, these will be subordinated to the *patria potestas* not of their father, but of, their grandfather or great-grandfather. The existence of *patria potestas* does not cancel the biological father-child relationship. A biological son, if emancipated, can be *pater familias*, just as a biological father can be *filius familias*. And these are certainly not exceptions, but entirely normal situations.

5.- What kind of power does a father *filius familias* exercise, over his own son? In this regard, the provisions of the *Lex Iulia de adulteriis coercendis* are very interesting. This is the famous law issued in 17-16 B.C., by which Octavian ordered the introduction of a new permanent criminal court (the *quaestio perpetua de adulteriis*), with the task of prosecuting and punishing many behaviors that were considered offensive to family morality.

The law would have allowed the father who discovered his daughter in flagrant adultery to kill her instantly, together with her lover. Instead, the betrayed husband could only kill the adulterous wife's lover, and only if that one was of a low social status. The jurist Paul, in his *Sententiae*, recalls that even a *filius familias* father can exercise this *ius occidendi*, although the words of the law suggest otherwise.

Coll. IV. 2. *Filius familias pater si filiam in adulterio deprehenderit, verbis quidem legis prope est, ut non possit occidere: permittitur tamen etiam ei, ut occidat.*

The husband may only kill an adulterer of low social status, such as *infames*, gladiators, slaves or freedmen. He may never, however, kill his wife:

Coll. IV. 3. *Maritus in adulterio deprehensus non alios quam infames et eos qui corpore quaestum faciunt, servos etiam et libertos excepta uxore, quam prohibetur, occidere potest (etc.).*

If, however, the husband, having caught his wife in the act of adultery, killed both lovers, he should be punished, but "*lenius*" in a lighter way (it is not specified how), since he would have acted motivated by the anger of an "*iustus dolor*," a justified pain:

Coll. IV. 4. *Maritum, qui uxorem deprehensam cum adultero occidit, quia hoc inpatientia iusti doloris admisit, lenius puniri placuit.*

After killing the lover, however, the husband has an obligation to immediately repudiate the unfaithful wife:

Coll. IV. 5. *Occiso adultero dimittere statim maritus debet uxorem (etc.).*

Killing is permitted, however, only if the act was consummated and discovered in the husband's domus:

Coll. IV. 6. *Inventa in adulterio uxore maritus ita demum adulterum occidere potest, si eum domi suae deprehendat.*

If the husband does not respect the obligation to immediately repudiate his cheating wife, he will be considered guilty of *lenocinium* (exploitation of prostitution):

Coll. IV. 7. *Eum, qui in adulterio deprehensam uxorem non statim dimiserit, reum lenocinii postulari placuit.*

The husband's and wife's slaves - in the eventual trial concerning the responsibility for *crimen adulterii* -, may be tortured to verify the truth, and may not be released to ensure their impunity:

Coll. IV. 8. *Servi vero tam mariti quam uxoris in causa adulterii torqueri possunt, nec his libertas sub specie impunitatis data valebit.*

The passage implies that both spouses are considered *sui iuris* (because they own slaves), but maybe that expression was referring to servants belonging to both *familiae*. However, we don't know why the adulterer's slaves are not mentioned.

Therefore, in relation to *occidendi potestas*, it belongs to the woman's husband and her *pater familias*. However, the right is also extended to the mere biological father, even if *filius familias*. Therefore, it is not the parent's *status familiae* but his natural status as a father that is important. This license to kill, however, seems limited, for both in a different way: the husband can never kill his own wife, but only

her lover and only if he is someone of low social status. The father, on the other hand, must necessarily kill both. If he punishes only the lover and not the daughter, he will be guilty of murder (unless the daughter has, by chance, escaped punishment).

6.- The first thing that should be noted is that *occidendi potestas*, although it appears connected to the traditional *ius vitae ac necis* of the *pater familias*, or to the *manus maritalis* of the husband, it is different in the two cases. The *ius vitae ac necis* belongs to the *pater familias* and to the husband *cum manu* and only to them. But in the case of adultery, it is attributed to subjects who may also be *alieni iuris*.

The *occidendi potestas* represents, in fact, a clear restriction of *patria potestas*: the subordinate of *patria potestas* can in fact kill legally, without having to report to his or her *pater familias*, and, even more importantly, can kill those who are subordinated to another's *potestas*. Therefore, he defies the authority of the victim's *pater familias*.

According to Paul's *Sententiae*, the slayer could be a *filius*, father of the adulteress who kills his own married daughter *in manu* and her lover. The lover may also be a *filius familias*: in that case the revenge would pass over the will of as many as three holders of *patria potestas* or *manus maritalis*. But would it ever have been conceivable, that a *pater filius familias* could kill his own son, as if the *ius vitae ac necis* of the *pater familias* also extended to him? Or that he could kill a slave belonging to the *familia* without seeking permission from the *pater familias*? Obviously not. However, this turns out to be permitted in the case of the betraying daughter, not by virtue of *patria potestas*, but against it.

The *correctio morum*, the need to protect the honor of the family and of the entire Roman society, comes in the new Augustan ideological era and takes over the ancient sphere of autonomy and power of *patria potestas* and *manus maritalis*. Fathers and husbands, even if they are *filius familias*, can give vent to their desire for revenge, acting, in a sense, as the *longa manus* of the 'moralizing' emperor who does not tolerate the family's integrity being violated.

The power of the father and that of the *pater familias*, therefore, not only do not coincide but also seem to conflict, in an underlying ambiguity that marks long centuries of Roman history.

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