

**Wright, Anthony Tannus**

*Traditional and modern constitutionalism: a study based on the thought of José Pedro Galvão de Sousa*

*Constitucionalismo tradicional y moderno: un estudio basado en el pensamiento de José Pedro Galvão de Sousa*

Prudentia Iuris N° 81, 2016

Este documento está disponible en la Biblioteca Digital de la Universidad Católica Argentina, repositorio institucional desarrollado por la Biblioteca Central "San Benito Abad". Su objetivo es difundir y preservar la producción intelectual de la Institución.

La Biblioteca posee la autorización del autor para su divulgación en línea.

Cómo citar el documento:

Wright, A. T. (2016). Traditional and modern constitutionalism : a study based on the thought of José Pedro Galvao de Sousa [en línea], *Prudentia Iuris*, 81. Disponible en: <http://bibliotecadigital.uca.edu.ar/repositorio/revistas/traditional-modern-constitutionalism-wright.pdf> [Fecha de consulta:.....]

**TRADITIONAL AND MODERN CONSTITUTIONALISM:  
A STUDY BASED ON THE THOUGHT  
OF JOSÉ PEDRO GALVÃO DE SOUSA**

*Constitucionalismo tradicional y moderno: un estudio  
basado en el pensamiento de José Pedro Galvão de Sousa*

Anthony Tannus Wright\*

Recibido: 1 de marzo de 2016.  
Aprobado: 14 de abril de 2016.

**Resumen:** El presente artículo posee la finalidad de difundir el constitucionalismo tradicional según el pensamiento de Pedro Galvão de Sousa (1912-1992), defensor de la ley natural, filósofo del Derecho, reconocido estudioso de Historia y Política, y también un hombre con fe consciente y sólida. De acuerdo con el tema propuesto, en este texto se analizan algunas diferencias históricas y filosóficas entre el constitucionalismo tradicional y el moderno, la constitución de la sociedad y el Estado, la importancia de los grupos intermedios, y lo que es necesario para tener una representación política genuina.

**Palabras clave:** Constitucionalismo tradicional - José Pedro Galvão de Sousa - Ley Natural.

**Abstract:** This article aims to disseminate the traditional constitutionalism based on the thought of José Pedro Galvão de Sousa (1912-1992), natural law enthusiast, philosopher of law, renowned scholar of history and politics, and also a man with solid and conscious faith. According to the proposed theme, this article analyzes some historical and philosophical differences between traditional and modern constitutionalism, the constitution of society and state, the importance of intermediary groups, and what is necessary in order to have a genuine political representation.

\* Abogado (Pontificia Universidad Católica de Paraná. PUCPR). Especialista en Derecho Constitucional Contemporáneo. Correo electrónico: st.eternity@gmail.com.

**Keywords:** Traditional Constitutionalism - José Pedro Galvão de Sousa - Natural Law.

## Introduction

What should a constitution be? While this question is essential to constitutional law, it is an all but forgotten issue among the various spheres of the political and legal world, particularly in Brazil. This article aims to answer this question through the study of traditional and modern constitutionalism within the thought of José Pedro Galvão de Sousa. In doing so, this work will not deeply analyze Brazil's Federal Constitution, past or present. Instead, it will investigate the principles and the true nature of what a constitution should be and how many different forms it could have.

Therefore, to investigate the principles and nature of what a constitution should be it will be necessary to explain how a society is formed and the importance of intermediate groups, which nowadays are virtually nonexistent. Furthermore, I will also highlight briefly the errors of present times as it will help explain the reasons behind the failure of Brazilian constitutionalism and its tragic consequences.

As the dreadful consequences of modern constitutionalism were prophesied by José Pedro Galvão in two of his books, *O Totalitarismo nas origens do Estado* (1972)<sup>1</sup> and *Estado Tecnocrático* (1973)<sup>2</sup>, I believe it is relevant to have a look at them focusing our attention to how a constitution rules modern democracies. As a result to better comprehend modern democracies it is relevant to give a historical outline on them.

Lastly, to elucidate the thought of José Pedro Galvão de Sousa and provide a just and appropriate recognition of him, this article will outline the history of this magnificent thinker. The intention behind this is not only due to the fact that José Pedro has left the world an outstanding intellectual heritage, nor only because he has written many books and has received numerous academic titles, but because he righteously lived his later years as a family man, lover of his fatherland and devout guardian of the Catholic Faith.

1 Galvão de Sousa, J. P. (1972). *Totalitarianism in Modern Origins of the State*.

2 Galvão de Sousa, J. P. (1973). *The Technocratic State*.

## 1. José Pedro Galvão De Sousa – A Brief Biography

*“[He] had a striking vital energy and an unusual inner strength, and he had a tireless laborious intellect”<sup>3</sup>.*

(Clovis Leme García)

José Pedro Galvão de Sousa was one of Brazil’s most eminent traditionalist intellectuals, as described by Francisco de Elías de Tejada, and later confirmed by Félix Adolfo Lamas, the president of Argentina’s Catholic University of Buenos Aires, in his Article *Tradicción, Tradiciones y Tradicionalismos*<sup>4</sup>. In Brazil’s legal and philosophical sphere, as noted by José J. Alberto Márques, José Pedro was known as the greatest advocate for natural law:

“[...] not only because of his extensive and profound work, but most fundamentally due to the multidisciplinary characteristic of his writings, which ranged from theory of state to philosophy of law, and from political law to constitutional law, always taking into account the disciplines of sociology, history of law and catholic apologetics”<sup>5</sup>.

Born on January 6, 1912, in the city of São Paulo, Brazil, and dying in the same city on the May 31, 1992, José Pedro Galvão de Sousa had the experience of living “fully the 20<sup>th</sup> century, in its problems and dilemmas, wars and crises, revolutions and counterrevolutions”<sup>6</sup>. In Brazil, he witnessed three republican regimes, the *Estado Novo*<sup>7</sup> (1937-1945) of Getúlio Vargas

3 “Ele ocultava uma energia vital impressionante e uma força interior incomum. Era de uma laboriosidade intelectual incansável”. Dip, R. H. Elogio ao Patrono José Pedro Galvão de Sousa. Available at <http://www.fundacioneliasdetejada.org/Documentacion/Anales/PDF%20ANALES%2001/ANA01-075-084.pdf>. (last visited: December 15, 2015).

4 Dip, R. H. (org) (2007). *Tradição, Revolução e Pós-Modernidade*. Campinas. Millennium, 7.

5 “[...] no solo por su extensión y profundidad, sino también, y fundamentalmente por ofrecer un marcado carácter pluridisciplinar, puesto que en ella se abordan problemas diversos que van de la teoría del Estado a la filosofía del Derecho, del Derecho Político al Derecho Constitucional, sin olvidar la sociología, la historia del Derecho, y su labor apologetica católica”. Márquez, J. J. (2010). *Hacia un Estado Corporativo de Justicia: Fundamentos del Derecho y el Estado en José Pedro Galvão de Sousa*. Barcelona. Atelier Libros Jurídicos, 23.

6 Lemos Alencar, F. *José Pedro Galvão de Sousa (1912-1992): A influência de Santo Tomás em seu pensamento*. Available at <http://www.aquinate.net/revista/caleidoscopio/atualidades/09/Personalidades/2-Galvao.pdf>. (last visited: December 15, 2015).

7 “Estado Novo (Portuguese: ‘New State’): dictatorial period (1937–45) in Brazil during the rule of President Getúlio Vargas, initiated by a new constitution issued in November 1937. Vargas himself wrote it with the assistance of his Minister of Justice, Francisco Campos. In the

(1882-1954), the military regime (1964-1985), and the return of democracy in 1985. Tied in with these events, he had the opportunity to follow closely the promulgation<sup>8</sup> of six constitutions<sup>9</sup>.

During the years of 1924 and 1929, José Pedro, together with his elder brother, João Batista de Sousa Filho, studied at the *Ginásio de São Bento*. There, he dedicated his time to learning French (commonly taught as a second language in those days) and English, as well as Portuguese and Brazilian literature. It was then that his great passion for reading began. Hobby that was mostly noticed after his death on account of his private library containing more than eight thousand titles in a variety of genres including history, politics, philosophy, psychology, and the literature works of José de Alencar and Machado de Assis<sup>10</sup>. In 1930, as the historian Flávio Alencar mentions, he began studying law at the *Faculdade de Direito da Universidade de São Paulo*, prestigiously known as *Academia de Direito São Francisco*, “due to the Franciscan monastery that was founded there years before”<sup>11</sup>.

In 1935, he received a bachelor’s degree in Philosophy at the *Faculdade de Filosofia e Letras de São Bento*, founded by the Benedictine monk Miguel Kruse. At that time, the university had a close connection to the famous Belgian University of Leuven<sup>12</sup>. On account of this, José Pedro become a disciple of many great thomists such as Leonardo Van Acker. Although he was a scholar, José Pedro Galvão did not limit his activities to investigation only.

election campaign of 1937 Vargas warned of a threatened Communist coup d’état and declared a 90-day state of emergency, issuing the Estado Novo. The fascist Integralities applauded this dictum, but they were outwitted by Vargas when he suddenly used his dictatorial powers to announce that he would succeed himself without election and proceeded to dissolve the Congress. He further declared that the constitution contained in his pronouncement would not be effective while the emergency lasted and would then be brought to a plebiscite, after which the people could elect a new congress. The plebiscite, however, was never conducted, and Vargas ruled for the next seven years by decree, pending a congressional election. Vargas and his appointees more or less dominated all aspects of national life; but the dictatorship, superficially suggestive of contemporary fascist states, was alleviated by its centrist orientation and paternalistic bent. Widespread disaffection with Vargas finally forced him out of power, in spite of a campaign by his supporters (the Queremistas) to have him stand for reelection in 1945 after he had bowed to pressure to permit elections”. Encyclopedia Britannica. Estado Novo. Available at <http://www.britannica.com/EBchecked/topic/193260/Estado-Novo> (last visited December 17, 2015).

8 Márquez, J. J. *Hacia un Estado Corporativo de Justicia...* Ob. cit., 23.

9 1. Imperial Constitution (1824); 2. Old Republic Constitution (1891); 3. Third Constitution; 4. “Estado Novo” Constitution (1937); 5. Fifth Constitution 6. Sixth Constitution (1967), Amendment 1969; 7. Citizen Constitution (1988- Present).

10 *Ibidem*, 25.

11 Lemos Alencar, F. *José Pedro Galvão de Sousa (1912-1992)...* Ob. cit.

12 Márquez, J. J. *Hacia un Estado Corporativo de Justicia...* Ob. cit., 26.

As a student, he founded and presided over the *Ação Universitária Católica* and the *Centro D. Miguel Kruze*.

Moreover, still at university José Pedro wrote for various media outlets, including the distinguished newspaper, *O Legionário*, published by the Marian Congregation of Santa Cecilia, congregation which would be later presided by Plínio Corrêia de Oliveria (1908-1995)<sup>13</sup>. As years passed, he continued to write articles on politics and natural law for the *Gazeta*, as well as the renowned newspapers *Estado de São Paulo* and *Globo*.

As José Pedro's contributions to write on law and philosophy grew, he was invited to be president of the journal *Hora Presente*. A few years later he became director and cofounder of the journal *Reconquista*. As if this was not enough, his writing and ideas would be published overseas as well. In Germany, by the *Jahrbuch des Oeffentlichen Rechts der Gegenwart*; in Spain by *Estudios Americanos*; in Portugal by *Scientia Iurídica*; and in Italy by *Rivista Internazionale di Filosofia del Diritto*<sup>14</sup>.

José Pedro Galvão de Sousa, began his historical and political career as professor, teaching sociology at the *Escola de Serviço Social*<sup>15</sup>. In 1936, he introduced the discipline of constitutional law and civil law to the syllabus. Alongside his teaching, he continued to study what he thought to be the most instigating topics of Brazilian political dilemma, the clash<sup>16</sup> between "Institutional Brazil" and "Real Brazil"<sup>17</sup>.

His career would also be highlighted by historic episodes. After being hired in 1938 as a faculty member of the *Faculdade de Filosofia, Ciências e Letras de São Bento*, José Pedro was named to take part in the organizing committee of the *Faculdade Paulista de Direito*, later be known as the *Pontifícia Universidad Católica de São Paulo* (PUCSP). There, he would be designated president of the Theory of State Department. José Pedro was also a professor in the *Pontifícia Universidade Católica de Campinas* and of the *Faculdade de São Bento*.

Not all his experiences as a scholar were surrounded by joy and success, though. In 1940, while competing for the post to become president of the Philosophy of Law Department at the University of São Paulo, José Pe-

13 Plinio Correia de Oliveria was founder of the Brazilian Tradition, Family and Property (TFP). Available at: <http://www.tfpstudentaction.org/about-us/who-we-are/TFP-founder.html> (last visited December 15, 2015).

14 Márquez, J. J. *Hacia un Estado Corporativo de Justicia...* Ob. cit., 29.

15 *Ibidem*, 27.

16 *Ibidem*, 30.

17 "Institutional Brazil" was the idealized nation that the government set out in the political institutes. And "Real Brazil" was the actual historical, cultural and sociological situation Brazilians found themselves in.

dro, received a phone call the night before that informed him that placement was already assigned to another candidate, Miguel Reale (1910-2006)<sup>18</sup>.

The late forties and the fifties were important years for Galvão de Sousa. His trips to Europe in 1948, gave him the opportunity to meet Francisco Elias de Tejada (1917-1978), who would be a brother to him. From this friendship, José Pedro had the chance to read the writings of the Antônio Sardinha (1887-1925), the main intellectual of the *Integralismo Lusitano*, and other traditional Iberian authors such as Juan Vázquez Mella, Guíjarro (1861-1928), Juan Donoso Cortés (1809-1853). On account of this solid friendship, Francisco Elías de Tejada visited Brazil, where he met with Plínio Correia de Oliveira and Alexandre Correia. Likewise, while he was in the Old World, Galvão de Sousa also participated in various seminars, along with his as friends Michel Villey (1914-1988) and Gonzague Reynold (1880-1970).

If Europe brought joy to José Pedro, Brazil caused him sorrows and disillusion. There were two reasons for this. Firstly, the military movement of 1964, which Galvão de Sousa expected to be able to influence the state towards a more conservative policy. As time passed, however, he realized that the militaries needed a much more solid intellectual and doctrinal formation in order to sustain the economic and political stability of the country. The failure of this traditionalist political outcome was also due to his disagreement with the *Ação Integralista Brasileira*<sup>19</sup>, known as the “green

18 “History repeats itself, also in the life of each of us! When still very young, six years after graduation, I registered myself to the contest for professor of Philosophy of Law, I heard from one of the examiners, Prof. Alexandre Correia, that the Department would not ratify the Boards statement. This was said to me a day before the last exam, the methodology test, and you may well imagine the effort and in what state of mind I went to give the lesson. Being all other competitors much weaker s, the dispute was between me and Miguel Reale. As the Board statement was not ratified, Reale, on the account of an administrative appeal, ended up being appointed by President Getúlio Vargas, who he later on came to serve, abandoning his mates of the Integralism (AIB), then persecuted by the same Vargas”. Translation of. “Como a história se repete, também na vida de cada um de nós! Quando, ainda bem jovem, e seis anos após a formatura, me apresentei ao concurso para catedrático de Filosofia do Direito, fiquei sabendo por um dos examinadores, o Prof. Alexandre Correia, que a Congregação não homologaria o parecer da banca. Isto me foi ltim exatamente na véspera da última prova, a prova didática, e bem podes imaginar com que esforço e em que estado de espírito fui dar a aula. Sendo os outros concorrentes bem mais fracos, a disputa estava entre eu e o Miguel Reale. Recusada a homologação, este ltimo, por um recurso administrativo, acabou sendo nomeado pelo Presidente Getúlio Vargas, a quem passou a servir, abandonando os seus companheiros do integralismo, então perseguidos pelo mesmo Vargas”. *Correspondência privada de José Pedro Galvão de Sousa, Fundación Francisco Elías de Tejada y Erasmo Percopo, Madrid. C/74/3/5, Márquez, J. J. Hacia un Estado Corporativo de Justicia...* Ob. cit., 31.

19 Ação Integralista Brasileira (AIB), was founded in 1932 by Plínio Salgado (1895-1975). Two distinct members of AIB were Gustavo Barroso (1888-1957) and Miguel Reale



shirts”, which would had a certain influence among the conservative members of the army<sup>20</sup>.

A second reason that surely caused him pain was the 1963 persecution within the very university he had helped to found, the Catholic University of São Paulo. At the time, inside Brazil’s Catholic Church, it was common to find a variety of unorthodox ideologies. The best known one was the *Teologia da Liberação* movement (Liberal Theology), which resulted in militants attaining in high levels of the same university<sup>21</sup>.

In 1968, as this intrigues and struggles inside and outside the university against heterodox militants continued, Galvão de Souza and a group of friends from São Paulo decided to set up a journal on Catholic culture called, *Hora Present*. The journal’s aim was to defend the honour of God in a secular society and to promote the true teachings of the Church in accordance with the Magisterium and Sacred Tradition. Additionally, the journal, was founded to combat the dissemination of Liberation Theology in seminaries, Catholic schools, and universities, and within the hierarchy of the Church in Brazil. Joséph Orsini was the president of the *Hora Present* until 1971, later Clovis García Lema, another lawyer, took over the position.

Ten years after the persecution began, the intrigue between the liberation theologians and the faculty of the Catholic University of São Paulo, including José Pedro Galvão de Souza, Clovis Garcia Leme, Adbi Casseb and José Fraga Teixeira reached its apogee. Consequently, they were all fired from the university because of their religious disagreement with the diocese of São Paulo. According to the official notification, they were all accused of having insulted the Archbishop – the Grand Chancellor of the university, to which they - seen as reactionaries by most - responded by saying that any faithful Catholic first owes obedience to the Pope and then to his bishop. This episode had repercussions in many secular and religious editorials. The ex-communist, Catholic author, Gustavo Corção, wrote one of the most famous accounts on this event. In his article, he stated that the ecclesiastical authorities of the Catholic Church in Brazil had established a “New Church”.

Despite these adversities, José Pedro continued – after a brief period teaching in Europe – to promote the doctrine of Natural Law. In 1977, in São Paulo, he launched the first Brazilian Seminar on Natural Law, *Jornada Brasileiras de Direito Natural*. Many prominent thinkers of the Hispanic world were present, including Miguel Ayuso, Monsignor Octavio

---

(1910-2006) available at: <http://www.integralismo.org.br/?cont=31>. (last visited December 15, 2015).

20 Márquez, J. J. *Hacia un Estado Corporativo de Justicia...* Ob. cit., 34.

21 *Ibidem*, 35.



Dersi<sup>22</sup>, Clovis Lema, Ibáñez, Juan Vallet Goytisoló, Italo Galli, Gerardo Dantas Barreto, Tomás Barreiro, Ricardo Dip, Margarida Corbusier, Cláudio de Cicco and Francisco de Tejada.

As adequate it is to talk more about his career, I would like now to briefly draw attention to his personal life. It was in 1958, when José Pedro Galvão de Souza married Alexandra Chequer, a “lady of culture”<sup>23</sup>, with whom he shared all the successes and disappointments of life. The words “dearest and delicate wife”<sup>24</sup>, written by José Pedro, in one of his books echoes this union. Clovis Leme Garcia, one of José Pedro Galvão de Souza’s closest friends, was an eyewitness of the importance of Alexandra’s role in José Pedro’s intellectual life. She would help and stimulate him in his labour<sup>25</sup>. Galvão de Sousa had three sons José Pedro, Miguel Fernando and João Batista, none of whom followed in his footsteps as a proponent of Natural Law and Thomism.

To draw to an end the description of his life, it is pertinent to see that as like a great intellect before him, José Pedro had disciples: Ricardo Henry Dip, Clovis Leme Garcia, José Fraga de Teixeira de Carvalho, Manuel Octaviano Juqueira Filho, José Guarany Orsini and Luiz Marcelo. As stated by Ricardo Dip, various lawyers who took part in the Natural Law Study Center were influenced by José Pedro thoughts. We can recall Jaques Camargo Penteado, Vicente de Abreu Amadei, José Antonio Paula Santos, Luciano Camargo Penteado, and many others.

Concerning the vast amount of writings related to history, politics, philosophy and law written by José Pedro, it would be difficult to cite all of them. Some of the titles, however, as explained by Flávio Alencar, can give an idea of the topics covered: *O Positivismo Jurídico e o Direito Natural* (1940), *Conceito e Natureza da Sociedade Política* (1949), *Formação Brasileira e Comunidade Lusitana* (1954), *História do Direito Público Brasileiro* (1962), *Da Representação Política* (1971), *O Totalitarismo nas Origens da Moderna Teoria do Estado, Um Estudo sobre o “Defensor Pacis” de Marsílio de Pádua* (1972), *O Pensamento Político de São Tomás de Aquino* (1980) and *Dicionário de Política* (1998, posthumous)<sup>26</sup>.

22 Monsignor Octavio Dersi was born in 1907 and died in 2002. He was archbishop of Buenos Aires, Argentina, a neotomist, and founder of the Catholic University of Argentina, available at: <http://www.filosofia.org/ave/001/a080.htm> (last visited: December 15, 2015).

23 Márquez, J. J. *Hacia un Estado Corporativo de Justicia...* Ob. cit., 36.

24 *Ibidem*.

25 Clovis Leme Garcia: *Elogio do Patrono José Pedro Galvão de Sousa*: available at <http://www.fundacioneliasdetejada.org/Documentacion/Anales/PDF%20ANALES%2001/ANA01063-074.pdf> (last visited: December 15, 2015).

26 Lemos Alencar, F. *José Pedro Galvão de Sousa (1912-1992)...* Ob. cit.

Despite the quantity of, José Pedro Galvão de Sousa remains practically unknown in the legal and academic sphere, even within the university he founded, the Pontifical Catholic University of São Paulo. Interestingly enough, José Pedro's works were distributed more widely in Spanish-speaking countries than in his fatherland. For example, in Spain, Rafael Gamba and Miguel Ayuso, personal friends of José Pedro Galvão, published two books in his honor: "*José Pedro Galvão de Sousa, filósofo del Derecho y ius-publicista*", and "*La representación política en la obra de José Pedro Galvão de Sousa*"<sup>27</sup>.

After José Pedro Galvão de Sousa's death, *O Centro de Estudos de Direito Natural* (Natural Law Study Center), he founded still continues to run monthly lectures and has added the initials JPGS to its name in memory of José Pedro. After his death, Clovis Leme Garcia was named the new president of the Center.

Now that they are aware of the historic and cultural heritage bequeathed to them by José Pedro de Sousa Galvão, the readers will now be able to comprehend more thoroughly Galvão's ideas concerning Constitutional Law.

## **2. The Idea of a Constitution, or an Ideal Constitution**

*"A constitution is not everything, it cannot legislate on everything, and it is not done as a plan of national construction, neither it is a meticulous ordinance of social life, and it surely should not be a conglomeration of precepts that embracing all branches of private and public law"*<sup>28</sup>.

(José Pedro Galvão de Sousa)

Our understanding of the Constitution as the fundamental law of the state arose from two major events: the French Revolution of 1789 and the formation of the United States of America. Up until then, "fundamental laws" did not always indicate the structure of a state. A constitution can be a written law, Brazil, as it is in Brazil, or a gathering of rules established predominately by custom, such as, in the United Kingdom. The first constitution drafted in that vein was the 1787 North American Constitution, which was written and systematized in mind of the 1215 British *Magna*

27 Márquez, J. J. *Hacia un Estado Corporativo de Justicia...* Ob. cit., 41.

28 "Uma constituição não é tudo, não pode dispor a respeito de tudo, não é um projeto de construção nacional, muito menos uma regulamentação minuciosa da vida social, e tampouco deve ser um conglomerado de preceitos abrangendo todos os ramos de direito público e do direito privado". Galvão de Sousa, J. P. (1987). *O que deve ser uma Constituição*. São Paulo. Edições Pátria, 3.

*Carta*. The *Magna Carta* dealt with the guarantee of rights and limitations of power, proper characteristics of a constitutional regime. Some historians point to this as the first attempt to create a modern political constitution. As a result, it is necessary to look back at history of constitutionalism. In medieval times, constitutionalism derived from two sources: Natural Law and Historic Law. Of Natural Law, José Pedro writes:

“The law is essentially the just, that is, it is the object of justice. From the outset, therefore, the idea of law implies the recognition of a natural law. This is because *the just* is not created by man but derives from an objective order of justice, an order to be respected by all and unchangeable to the whims of any”<sup>29</sup>.

Natural law cancels out a subjective standard of justice, giving a legal system an ethical and metaphysical foundation. Cicero, in his work, *De Legibus*, already proved Natural Law to be a force innate to human beings and not the result of opinion. Thus, the word *natural*, when referred to in Natural Law, means something intrinsic and essential, not something accidental and contingent. These *sindretic* principles were present in Aristotle and would later be developed by St. Thomas Aquinas. From these, the first principles of Natural Law are: first, the *sinderese* that provides the universal principles; second, a rational understanding and drawing of conclusions; and third, a consciousness of natural law, known by reason, and applied to a particular situation. The corresponding examples are: first, the *sinderetic* principle: avoid evil; second, an affirmation of reason: adultery is evil since it is a dishonest and unjust action; third, a conscience judges and concludes that adultery should be avoided<sup>30</sup>.

Natural Law by itself, however, is insufficient as a rule of life, it ought to be complemented by positive law, be it consuetudinary or legal<sup>31</sup>. The competent authority must enforce the principles of Natural Law, “to apply the general maxims to the particularities of social life”<sup>32</sup>. This lays the foundation for the so-called *historical law*, which considers the circumstances of time and place. In the words of José Pedro,

29 “O direito é essencialmente o justo, quer dizer, o objeto da justiça. Desde logo, pois, a idéia de direito implica o reconhecimento do direito natural. Isto porque o justo não é criação do homem, mas decorre de uma ordem objetiva de justiça, a ser respeitada por todos e inalterável aos caprichos de cada um”. Galvão de Sousa, J. P.; Leme Garcia, C.; Fraga Teixeira, J. (1998). *Dicionário de Política*. São Paulo. T. A. Queiroz Editor, 179.

30 *Ibidem*.

31 *Ibidem*.

32 *Ibidem*, 180.

“With the realistic, rational and historical approach of the existing society, the legislator promulgates the norm (in this case, the constituent legislator and the constitutional norm). A written constitution is a constitution of the legislator, which must be properly adapted to the environmental data, the time and the historical and cultural background of the people”<sup>33</sup>.

Many of the criticisms of a classical understanding of Natural Law are misleading. Those who claim Natural Law is a “utopian law”, for example, mistake the universality of Natural Law for uniformity in law and identical political regimes within different societies.

The legal-formal constitution of the state should be in accordance with the social and historical formation of the nation, which is itself composed of families and other groups, whose legitimate freedom must be respected by the State. The natural constitution of the family, which always comes before the state itself, does not give grounds for bureaucracy or state agencies to asphyxiate its duties and the rights of those or of the social associations duly constituted.

### 3. The Constitution of Society and State

*“The most fundamental and most essential constitutional laws of a nation cannot be written”*<sup>34</sup>.

(Joseph de Maistre, 1753- 1821)

Society is a “*moral and stable union of men who seek a common purpose under one authority*”<sup>35</sup>, as stated Galvão de Sousa. Only human beings, by the power of reason are able to constitute a society as they alone among living things are gifted with conscience and the freedom to judge and formalize their moral union. Stability is also necessary for a society to be duly constituted insofar as a mere union of men at a sports event or other such gathering does not form a society. At the same time, from this union rises

33 “Ante os dados reais, históricos, racionais e ideais de sociedades em que vive, o legislador elabora a norma (no caso, o legislador constituinte e a norma constitucional). A constituição escrita é uma construção do legislador, que deve ser devidamente adequada aos dados do meio ambiente, da época e da formação histórica e cultural do povo”. Galvão de Sousa, J. P. *O que deve ser uma Constituição*. Ob. cit., 8.

34 “O que há precisamente de mais fundamental e de mais essencial constitucional nas leis de uma Nação não pode ser escrito”. Galvão de Sousa, J. J. *O que deve ser uma Constituição*. Ob. cit., 5.

35 Galvão De Sousa, J. P. (1976). *Iniciação à teoria do Estado*. São Paulo. Revista dos Tribunais, 1.

the aim of a common good for all, as man alone cannot achieve everything he needs. As unpleasant as it might sound, the existence of authority is absolutely indispensable. In every group there are divergent opinions of what ought to be done. Without authority to guide men's labours towards the benefit of all, nothing will ever be determined or accomplished<sup>36</sup>.

The constitution of society is something intrinsic to itself, as Joseph de Maistre remind us, and no constitution results from a deliberation<sup>37</sup>. From this derived the most literal meaning of the word "constituting", *the action of the constituted*, that is, "the action of forming something, a term also used to express the set of elements that form a being"<sup>38</sup>. To speak in sociological terminology rather than legal, the term "constitution" is used more broadly. It is not a univocal or equivocal term but an analogous one, which has several meanings related to each other.

It is indispensable to begin a study of the constitution of a society before planning out a legal-formal constitution. The particularities of society should be seen as those of a living organism, constituting a nation with its social *praxis*, custom, religion, geography, political affinities, poverty, wealth, virtues, and vices.

This preliminary knowledge of the constitution of a society is essential to understanding what factors are to be properly contained in the written constitution which should not appear as mere abstraction. The legal constitution of the state must conform to the historical constitution of society without forgetting the metaphysical basis of Natural Law. Forgetting or simply ignoring fundamental elements like the family, the stem cell of society, leads to the failure of the written constitution.

#### 4. Supraconstitution and Counter Constitution

*"These deformations (deformities) and the consequences at the political level are due to constitutions that originated from abstract ideological backgrounds and not from a pragmatic and effective political method that has experienced power and liberty"*<sup>39</sup>.

(José Pedro Galvão de Sousa)

<sup>36</sup> *Ibidem*, 2.

<sup>37</sup> Galvão de Sousa, J. P. *O que deve ser uma Constituição*. Ob. cit., 5.

<sup>38</sup> *Ibidem*, 6.

<sup>39</sup> "A essas deformações – e a tais conseqüências no plano político – se prestam as constituições como cartas ideológicas abstratas e não como instrumentos pragmáticos eficazes de uma técnica do poder uma técnica de liberdade". Galvão De Sousa, J. P. *Iniciação à teoria do Estado*. Ob. cit., 54.

Georges Daskalakis classifies as “supraconstituion” and “counterconstituion” two possible phenomena that occur when a constitution in practice does not match the written constitution, i.e., when there is disharmony between the legal organization of the state and real organization of the state. The first case, “supraconstitution”, is when the formal constitution remains in force but is modified in its application by other written rules, by customs, and by interpretation for constitutional purposes. We can see, as example, the Brazilian Supreme Court’s decision to recognize homosexual stable unions as family entities, despite the Brazilian Federal Constitution’s (article 226)<sup>40</sup> rule that only unions between a man and a woman can be settled by the laws pertaining to family rights. The second case, “counter constitution”, concerns the situation in which the constitution, according to Karl Loewenstei, is turned into *chiffon de papier*, and the political praxis deny the prime intentions while the the government in power contradicts the formally established constitutional regimes. This type of situation can be easily be verified in many constitutions formulated after the Second World War. These constitutions were created according to the constitutional thought of Emmanuel Joseph Sieyès (1748-1836). Sieyès theory erroneously grants the government full sovereignty, meaning that the constituent power has license to anything and is not subservient to any law. Thus, such a nation will exercise power according to Rousseau’s idea of general will.

As a result, all constitutions formulated on the basis of Sieyès’ political theory are bound to fail because their constructions will be founded on the ideological theory in the legislator’s mind. It is not uncommon to see that constitutions forthcoming from the French Revolution simply transfer supreme power from the monarch to the people, creating an *ex nihilo* constitution.

The Brazilian Constitution still suffers the evil consequences of Sieyès’ thought, as described by José Pedro:

“[...] it is a successions of constitutions, ‘supra constitutions’ and ‘counter constitutions’ proving the myth of constitutional stability. This is partly due to a utopian idealism of marginal elites, ignorant of our social realities and political history”<sup>41</sup>.

40 “Article 226. The family, which is the foundation of society, shall enjoy special protection from the state. [...] Paragraph 3. For purposes of protection by the state, the stable union between a man and a woman is recognized as a family entity, and the law shall facilitate the conversion of such entity into marriage”, Constitution of the Federate Republic of Brazil, available at [http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte\\_en\\_us/anexo/constituicao\\_ingles\\_3ed2010.pdf](http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf). (last visited: November 5, 2015).

41 “[...] é um suceder de constituições, paraconstituições e contraconstituições, reduzindo a nada o mito de estabilidade constitucional. Deve-se isso em grande parte ao ‘idealismo utó-

Identical observations were made by the historian Oliveria Vianna (1883- 1951) in his work *Idealismo na Evolução Política do Império e da República*, in which he argues that constitutions abstractly made are the ideal setting for corrupt statesman and adventurous demagogues to earn prestigious positions in the government. Due to such a malformed constitutional system Brazil has had eight official constitutions since 1824 (1824, 1891, 1934, 1937, 1946, 1967/69, and 1988), not to mention a multiplicity of constitutional amendments.

Because this modern political ideology is present in almost all abstract constitutions the dangerous of “supra constitutionalism” and a “counter constitutionalism” can be seen in the increasing totalitarian power of the State via a democratically representative political system as designed by Antonio Gramsci (1891-1937) and predicted by two great political theorists, Donoso Cortes (1809-1853) and Alexis de Tocqueville (1805-1859)<sup>42</sup>.

## 5. The Intermediate Groups

*“The individualistic regime, the free disorderly concurrency, and the unjust State laws will all coexist when the intermediate groups die out. In this case, the strongest crushes the weaker”<sup>43</sup>.*

(José Pedro Galvão de Sousa)

With the outbreak of modern constitutions, which lack historical values and are developed as vehicles of impractical political ideas, comes the imminent risk of democratic regimes becoming entirely dependent on a centralized power. This trend, is clearly verifiable, in many South American countries such as Venezuela, Bolivia, and Ecuador. In all these countries, their presidents, without approval from parliaments or congresses, have promulgated constitutional amendments under the pretense of safeguarding democracy. The same pattern can be found in centralized military governments and in succeeding twentieth and twenty-first century models of governments. Ironically, after The Second World War, governments based on modern democratic constitutional principles, instead of protecting individual liberty, have increased the extent and centralization of state power.

---

pico’ das elites marginais, alheias às realidades sociais e à nossa formação histórica”. Galvão de Sousa, J. P. *O que deve ser uma Constituição*. Ob. cit., 11.

<sup>42</sup> *Ibidem*, 7.

<sup>43</sup> “Os grupos intermediários respaldam a liberdade dos homens, exposta a sucumbir no regime individualista e na livre concorrência desordenada, em que os mais fortes esmagam os mais fracos, ou ainda na concorrência regulamentada exclusivamente pelo Estado”. Galvão De Sousa, J. P. *Iniciação à teoria do Estado*. Ob. cit., 52.



Given this political reality, it is important to remember that the state must have its due share of power, but at the same time it must not limit individual freedom or the autonomy of intermediate groups. Having defended it in 1920's and 1930's, the former president of Argentina, Hipolito Iriogoyen (1852-1933) has said:

“The constitution of family is a grand matter, so vital for the good functioning of our Constitutional system that on such a matter the deputies cannot deliberate invoking the power bestowed”<sup>44</sup>.

It was evident to Hipolito that the state has the obligation to safeguard and not suffocate the family, as it is the primary and natural constitution of society. Troubles begin when this truth is neglected or supplanted by the Enlightenment ideology that clamored for individualism, the germ of the modern state.

On this matter, José Pedro Galvão de Sousa concern and criticism was targeted at the emergent ideologies that saw the state as the only body that could regulate the social life of man. To avoid this, he believed the existence of intermediate groups, professional associations, sports federations, and cultural institutes, without being entirely submitted to the state, to be necessary.

Furthermore, José Pedro also demonstrated his concerns of what would happen if the intermediate groups were eliminated:

“The debilitation or disappearance of the intermediate group leaves an open field for the exorbitant interferences of State power in the private sphere. As a result, the important and far-reaching principle of subsidiarity according to which the State should not call for itself the tasks that the family and social groups are able to complete. In these cases the State should only supply families and other associations with subsidiary help so they can complete their duties”<sup>45</sup>.

A state that endows itself economical and educational powers, suppressing the free market or prohibiting the family from educating its offspring is unjustifiable. The state, should worry less about matters of individual liberty and work harder on subjects that are exclusively on its level of competence such as national security and elementary health care. The outcomes of not having intermediates groups are bureaucracy and poorly administrated political institutions.

44 Galvão de Sousa, J. P. *O que deve ser uma Constituição*. Ob. cit., 14.

45 *Ibidem*, 16.

A constitutional power that does not consider the vital role performed by intermediate groups inside the State is careless about the culture and identity of the nation. In these situations, even the constitutional dispositions that regulate the separation of powers are useless there, because the elements that creates a barrier between “the invasions of State power over individual liberty”<sup>46</sup>, which are the organically developed groups within the community, are missing.

## 6. Political Representation

*“The representation of political law is completely different from the representation of private law”<sup>47</sup>.*

(Carl Schmitt, 1888-1985)

José Pedro Galvão de Sousa many times addressed the fact that “*the most important problem in elaborating a constitution is the political representation*”. He was so convinced of this that, in 1971, he wrote a book exclusively devoted to this topic.

In his book, José Pedro explains that the history of political representation can be divided into two parts. The first references the medieval ideal of political representation known as *classical representation* while the second originates in the theory of a *Modern State* that came after the 1789 French Revolution. To better elucidate the differences between the classic and modern representation, Heraldó Barbury, in one of his articles writes:

“The problem of knowing how a society ought to be, is reduced by answering the question of how the society is. Thus, for this question, there are only three possible answers: that the society is a hierarchy of groups; that it is the sum of individuals, or finally that it is composed of a formless mass”<sup>48</sup>.

Barbury’s explanation is illuminating, because in the classical system of political representation, society was ordained in conformity with an established hierarchy and an ordained set of natural institutions. This can be

46 Galvão de Sousa, J. P. *O que deve ser uma Constituição*. Ob. cit., 16.

47 “A representação em direito político é completamente distinta da representação em direito privado”. Galvão de Sousa, J. P. (1971). *Da Representação Política*. São Paulo. Editora Saraiva, 37.

48 “O problema de se saber como a sociedade deve ser se reduz ao de saber como a sociedade é. Ora, para esta pergunta só há três respostas possíveis: 1º ou a sociedade é uma hierarquia de grupos; 2º ou a sociedade é uma soma de indivíduos; 3º ou a sociedade é massa informe”. *Ibidem*, 86.

seen while analyzing the French feudal system, where the family played a key role, because as many families constituted a natural agglomeration of mini-states in which the baron would exercise his inherent sovereign power such as military action, taxation and justice. Still, historians recall that the baron's powers were not absolute since the clergy, nobility and peasant families shared a portion of authority. A similar classical political representation was seen in other countries, but with distinct names in each. In France, it was called "The General States", in England, "Parlament", and in Portugal, "Fuero"<sup>49</sup>.

It is worthy of note that in those days, there was no social authority claiming to represent the third class, the people; with only the clergy and the nobility this type of representative privilege was kept. Only many years later, in Portugal, would there be a change in the representative system that granted certain representative rights to some of the people. The sovereign would still have the legislative power in his hands, however, a law-making council would also be present to assist him. Nevertheless, representative bodies (parliaments and courts) would eventually fill in the gap between society and power.

After the French Revolution, this kind of representative system was questioned, and later replaced by the idealistic political theory put forward by Jean-Jacques Rousseau (1712-1778) in his work, *Social Contract*, in which he denies man's natural sociability, defending the human "state of nature"<sup>50</sup>. By the state of nature, Rousseau meant the condition in which man lives most happily on account of total freedom, until he freely decides to establish a social contract with other individuals, abdicating all his freedom to live in a society. For the French thinker, authority does not naturally exist if all individuals do not surrender part of their freedom for the sake of the state. Thus, the social contract, which builds up the state, is nothing other than a result of individual choice. As every man by nature is equal and free, no one would really be found suitable to exercise sovereign power, as authority is a result of man's choice to cede his or her freedom to a union.

As a result of the theory above, the concept that the people are sovereign and that power emanates from the people gradually eliminated the need for intermediate groups. Now, there would be a direct link between the individual and the State. From this derives the fundamentals of a democracy as a representative political system. At the same time, aware that a direct democratic system is unfeasible, except in small villages, a new method of democracy was implemented: the indirect democracy. For José Pedro, this

49 Galvão de Sousa, J. P. *Da Representação Política*. Ob. cit., 85.

50 *Ibidem*, 87.

new political theory, supposedly rooted in liberty and sovereignty of all, would slowly lead society into catastrophic political regimes. For him, Rousseau's theory combined with the new method of political propaganda would completely destroy the natural, organic development of society and political representation, creating a bureaucratic social state unfit for human beings.

“With modern methods of propaganda, accompanied with the new life style of the cities, the sum of individuals becomes an amorphous mass, plucked by oligarchy parties or by demagogues, organized by the State through the bureaucracy of the ministries, departments and institutes, all allied with the modern political communication [...]. This load of the state machinery increasingly withdraws the existence of political representation, which has ceased to be an authentic representation, because only in fiction could it be said that deputies truly represent the will of the people”<sup>51</sup>.

In sum, from the observations drawn from both types of political representation, the classical and the modern, it is important to understand that, in the classical representative form, political claims would go through the many social groups which would express their aspirations to authority. The crowd, therefore, would be able to control the abuse of power with the intermediate groups, as there was a genuine contact with authority, as in the binding mandate.

Another element to be noted is that in the classical representative form, the promulgations of laws followed a distinct procedure. Today legislative assemblies are constituted of uneducated lay people, unprepared for assuming a political carrier. In those years, there was a true concern for the proper formation of the members of the government. The ruler besides, being educated in governing, had at his disposal a body of jurists to counsel him<sup>52</sup>. However, in the modern representative system, it does not matter what level of qualification the political members of the assembly have, neither does their competence nor the lack thereof regarding politics. Also, it does not matter if there are huge discrepancies between the interest of

51 “Com os métodos modernos de propaganda, acompanhado à urbanização da vida, a *soma dos indivíduos* se transforma na *massa amorfa*, tangida pelas oligarquias partidárias ou pelos demagogos, e organizada compulsoriamente pelo Estado, mediante a burocracia dos ministérios, departamentos e institutos, a uns e outros servindo os modernos meios de comunicação de massa como veículos de propaganda [...]. Este peso da máquina estatal tira cada vez mais o sentido da representação política, que já deixara de ser uma autêntica representação, pois só por uma ficção se poderia dizer que os deputados representam a vontade do povo”. Galvão de Sousa, J. P. *Da Representação Política*. Ob. cit., 89.

52 Galvão de Sousa, J. P. *Da Representação Política*. Ob. cit., 92.

those being represented and those who represent them. The latter normally work for their own interest to prevail as the people cannot really exercise any over them.

Only a regime that has an authentic political representation will have solid and rewarding constitutional stability. For example, England, which, though it never possessed a written constitution like Brazil's, preserved a solid political system since it preserved its intermediate groups<sup>53</sup>. The British constitutional system also preserved its historical identity of common law and natural rights differently than most countries that followed the French Post-Revolutionary political ideology.

## 7. Conclusions

A constitution must not have the ordering of every single sphere of the social life as a goal. Neither should it regulate all the branches of public and private law. Being the fundamental law of the State, the constitution ought to consider the Natural Law, which derives neither from a particular desire (a will of the monarch), nor from the mere will of the majority (universal suffrage), but from an objective order of justice. A constitution that does not acknowledge the order intrinsic to human nature is bound to failure.

Nonetheless, for a constitution to be effective, the recognition of Natural Law is not sufficient. Positive law, officially promulgated by a legislative body or based on customs (consuetudinary laws) must be present. For a successful and stable constitution, the government ought to apply the principles of Natural Law to the particularities of social life, taking into consideration the time, place and circumstances (historic law).

Yet, it has been mentioned that the historic law relies on the premise that a society is the moral and stable union of men united under an authority striving for a common end. Thus, before elaborating and approving a constitutional text, it is indispensable to recognize the family as the stem cell of any society and its particular characteristics: custom, music, traditions, deformities, qualities, etc.

Next, this article dealt with two possible consequences of constitutions that are elaborated in dissonance with Natural Law and the historic law, "supra-constitutions" and "counter-constitutions". Here it was seen that most modern constitutions, especially those promulgated after the Second World War, ignore Natural Law or have an erroneous idea of what natural law is. In the first instance, constitutions are promulgated by a body of leg-

53 *Ibidem*, 93.

islatives who believe that the original power of the state is unlimited and, as a result, they are officially bound to no particular law. Second, concerning modern constitutions, many are ideologically orientated and could be seen as political charters.

From the observations made, it could be stated that the intermediate groups had a fundamental role inside the classical representative system. Without those subsidiary groups, individual liberty is always under potential threat from the state. The intermediate groups, as the name implies, fill in the political gap between families and government. For this reason, without the intermediate groups, the government looks at man as an isolated individual and not as part of a family. Consequently, it believes itself to have the right to regulate every aspect of the individual social life, becoming a totalitarian state. The existence of these subsidiary groups is thus vital, as they represent the people's real interest and guarantee their political freedom.

For the sake of better comprehending the importance of intermediary groups, it was necessary to explain the two different types of political representation. The traditional one which held back the organic development of political bodies and the one born from the French Revolution which has influenced most modern states and is the one to be blamed for many constitutional fiascos in America, with exception of the United States and Canada, which were both mostly influenced by the British Enlightenment and not the French.

To conclude, and answer: what should be a constitution? A constitution must always respect the Natural Law and apply it bearing in mind the historic law and observing the particular of each society. For this to be accomplished properly the existence of intermediate groups is necessary to give a genuine political representation and a realistic picture of what the characteristics are in a society. This will help the government to exercise its authority in the correct way; as the constitution will be the fruit of organic political development and not a fabricated, abstract guideline that has nothing to do with society.

## Bibliography

- Clovis Leme Garcia. *Elogio do Patrono José Pedro Galvão de Sousa*: available at <http://www.fundacioneliasdetejada.org/Documentacion/Anales/PDF%20ANALES%2001/ANA01-063-074.pdf>. (last visited: December 15, 2015).
- Flávio Lemos Alencar. *José Pedro Galvão de Sousa (1912-1992): A influência de Santo Tomás em seu pensamento*. available at <http://www.aquinate.net/revista/caleidoscopio/atualidades/atualidades-9-edicao/Personalidades/atualidades-personalidades-Galvao.html>. (last visited: December 15, 2015).

- Frente Integralista Brasileira *Introdução in:* <http://www.integralismo.org.br/?cont=31>. Access date: March 8, 2014.
- Gustavo. Corção *A Descoberta do Outro*. available at [http://pensadoresbrasileiros.home.comcast.net/pensadoresbrasileiros/GustavoCorcao/a\\_descoberta\\_da\\_outra.htm](http://pensadoresbrasileiros.home.comcast.net/pensadoresbrasileiros/GustavoCorcao/a_descoberta_da_outra.htm). (last visited: December 15, 2015).
- José Pedro Galvão de Sousa. *O Positivismo Jurídico e o Direito Natural*. São Paulo: Revista do Tribunais, 1940.
- \_\_\_\_\_. *Da Representação Política*. São Paulo: Editora Saraiva, 1971.
- \_\_\_\_\_. *A Historicidade do Direito e a Elaboração Legislativa*. São Paulo: Editora Saraiva, 1970.
- \_\_\_\_\_. *Dicionário de Política*. São Paulo: T.A Queiroz, 1998.
- \_\_\_\_\_. *O Estado Tecnocrático* São Paulo. Editora Saraiva, 1973.
- \_\_\_\_\_. *História do Direito Político Brasileiro*. São Paulo, Editora Saraiva, 1962.
- \_\_\_\_\_. *Raízes Históricas da Crise Política Brasileira*. São Paulo: Editora Vozes, Petrópolis, 1965.
- \_\_\_\_\_. *O que deve ser uma Constituição*. São Paulo: Edições Pátria, 1987.
- \_\_\_\_\_. *Conceito e Natureza de Sociedade Política*. São Paulo: Saraiva, 1949.
- \_\_\_\_\_. *Iniciação à Teoria do Estado*:São Paulo: Revista dos Tribunais, 1976.
- \_\_\_\_\_. *O Crescimento do Estado e o Enfraquecimento da Sociedade*. São Paulo: Revista Pensamento Brasileiro, 1981.
- \_\_\_\_\_. *A Importância Capital dos Grupos Intermediários*. São Paulo: Jornal *O Estado de São Paulo*, 20 de janeiro de 1988.
- José J. Albert Márquez. *Hacia un Estado Corporativo de Justicia: Fundamentos del Derecho y el Estado en José Pedro Galvão de Sousa*. Barcelona: Atelier Libros Jurídicos, 2010.
- Ricardo Henry Dip (org). *Tradição, Revolução e Pós-Modernidade*. Campinas: Millennium, 2006.
- Rogério Machado Mello Filho. *A Aplicação do Direito sob a Ótica das Escolas de Interpretação das Normas Jurídicas*. available at [http://www.planalto.gov.br/ccivil\\_03/revista/rev\\_50/artigos/art\\_rogerio.htm#IV.III](http://www.planalto.gov.br/ccivil_03/revista/rev_50/artigos/art_rogerio.htm#IV.III) (last visited: December 15, 2015).