

## Children between Judicialized Family Ties: A Psychoanalytical Reading on the Parental Alienation

Júlia Dias<sup>1,2</sup>  & Cristiane Oliveira<sup>1</sup> 

<sup>1</sup>Universidade Federal da Bahia, Salvador, BA, Brasil

<sup>2</sup>Tribunal de Justiça do Estado da Bahia, Salvador, BA, Brasil

**ABSTRACT** – This article analyses the dynamics and psychological processes underlying judicialized conflicts that are known as parental alienation, examining three case studies in the light of psychoanalysis. The litigation experienced by the child reflects their embarrassments with the Other in their search for answers to their enigmas and affections, amid guerrilla warfare between those who occupy parental roles. The study pinpoints the pathways required to understand parental alienation: in a socio-historical journey through how parental and marital ties are conceived and recreated; in a passage through the grief that the subjects suffer during family reconstitution; and through a rereading of the phenomenon focused on the uniqueness of the symptom. We are hopeful that it will support a more critical and skilled praxis for those who work in the judiciary.

**KEYWORDS:** judicialization, parental alienation, psychoanalysis, contemporary families

## Filhos entre Laços Familiares Judicializados: Uma Leitura Psicanalítica sobre a Alienação Parental

**RESUMO** – Este artigo analisa dinâmicas e processos psíquicos subjacentes aos conflitos judicializados sob a nomeação de alienação parental, através de três estudos de caso, à luz da psicanálise. O litígio vivenciado pela criança reflete seus embaraços com o Outro na busca por respostas aos seus enigmas e afetos, em meio à guerrilha daqueles que se ocupam das funções parentais. O estudo localiza travessias necessárias à compreensão da alienação parental: das formas sócio-históricas de se conceber e recriar os laços familiares; dos lutos no percurso da recomposição familiar; da releitura do fenômeno visando à singularidade do sintoma. Espera-se contribuir para uma práxis mais crítica e qualificada dos que atuam no Judiciário.

**PALAVRAS-CHAVE:** judicialização, alienação parental, psicanálise, famílias contemporâneas

The expression “parental alienation” (PA), widely used in the legal lexicon and the source of debates and reviews of its recognition as a disease by the World Health Organization (2020) and its exclusion from the ICD-11, arises from the concept of *parental alienation syndrome* (PAS) defined by Gardner (1985), in a North American context featuring a range of syndromes related to marital dispute, as a *childhood disorder*. It emerges in an environment of custody disputes, as the result of a campaign to disqualify one of the parents, who is the victim of instructions from another alienating parent

and from the contributions of the *alienated child* themselves. The advance of this diagnosis, in detriment to other ways of reading the situation, appears to converge with a tendency to classify the complex diversity of human behavior and suffering as pathology (Sousa & Bolognini, 2017).

At the heart of this movement, some works outline the psychological risks to child development and are engaged in the construction of psychometric diagnostic instruments to identify PAS and develop treatment proposals (Carvalho et al., 2017; Brandão & Baptista, 2016; Gomide et al., 2016).

Other approaches, however, question the classification of these behavior manifestations under the labels of PAS or PA and their associated repercussions, attempting to provide other keys to reading this phenomenon (Ramires, 2020; Sousa & Bolognini, 2017; Brandão, 2016).

In Brazil, since the enactment of Law No. 12318/2010, which addresses Parental Alienation, allegations of this kind have led to an increase in the number of disputed custody cases. According to the national legislation, if there are indications that PA has occurred, the judge may determine the need for psychological or bio-psychosocial expertise, also known as physiological or psychosocial study. Of the possible measures available, they may even, as a last resort, declare the suspension of parental authority (Lei n. 12.318, 2010).

In contrast, in 2022, the National Health Council (*Conselho Nacional de Saúde*) and the National Human Rights Council (*Conselho Nacional de Direitos Humanos*) recommended: “the adoption of measures that prohibit the use of terms not scientifically recognized, such as parental alienation syndrome” (Recommendation no. 3 2022; Recommendation no. 6, 2022). In support, the Federal Council of Psychology (*Conselho Federal da Psicologia*) outlined the technical impacts of this law on the work of professionals in the field and highlighted the need for a critical examination of the evaluative requirements involved in an allegation of parental alienation, taking account of the family and social context, as well as the effect the adversarial and punitive logic of legal institutions has on subjects’ lives (Recommendation no. 4, 2022).

In the context of marital disputes, securing the right to live with one’s children and grandchildren often occurs through

a claim of unilateral custody, attesting to one’s competence, with the expectation that proof of the other’s ineptitude is required, often “justified” under the insignia of pathologies, hypotheses, and psychiatric diagnoses. From this perspective, the way the concept of parenting has been adopted by “family specialists” in the psychiatric and psychological discourse has impacted how other, socio-legal and public, discourse has appropriated it to establish policies to support parenting (Teperman, 2014).

The frequent normative discourse observed in the Judicial System is founded, above all, on a psychiatric discourse of “disorders” which, in turn, may disqualify an individual’s parenting potential. This pathologizing bias, based on the diagnosis of syndromes, may have important consequences on judicial decisions, such as the reversal of custody, restricted contact, and the suspension of parental authority. Consequently, there is a growing number of legal cases in the Family Courts that require specialized psychological knowledge about the presence and impacts of “psychological disorders” on parenting.

This article is located within the context of changes to the tactics used to regulate individual and social life through, historically associated (Foucault, 1973/2013), judicialization and medicalization, and their implications for the processes of subjectification, the constitution of the social bond, and family dynamics. By returning the spotlight to the child’s words about their experiences, we aim to analyze the dynamics and psychological processes underlying the manifestations of parental conflict described in the judicial scene as parental alienation, as well as the impasses and resources applied to managing it.

## METHODOLOGICAL AND ETHICAL CONSIDERATIONS

This is a retrospective documentary study, analyzing cases managed by the Family Courts, applying a method of data treatment and discourse analyses supported by a Freudian-Lacanian perspective. We collected data from the institutional records that form part of the service assistance protocol: the psychological report and notations derived from consultations. Following the screening, we selected three cases that combined allegations of incompetent care and reports of parental alienation.

The subjects of this research (the child and whoever parented them) previously participated in the researcher’s psychological studies of parental alienation cases. These

studies involve interventional listening to the family aimed at giving the subjects a voice while, at the same time, calling on them to be the protagonists of their conflict resolution. The psychological report is, in this sense, merely one of the intervention products, aimed at a clear reading of the family situation for the plaintiffs and making the necessary referrals.

The Research Ethics Committee of the Institute of Psychology (*Comitê de Ética e Pesquisa do Instituto de Psicologia*: CEP- IPS) approved this research at the Federal University of Bahia (*Universidade Federal da Bahia*: UFBA) under opinion No. 2837750.

## (PARENTAL) ALIENATION AND SEPARATION: LISTENING TO THE OTHER CHILDHOOD SCENE

Psychoanalytic formulations show that the constitution of the subject always refers to a primal familial Other who leaves marks on their history. The effects of these marks will tell us how the subject positions themselves within the social

bond and their modes of *jouissance*. From a psychoanalytical point of view, the child’s position is therefore always the unique position of a subject of the unconscious and their myth (Lacan, 1952/2008, 1957-58/1999, 1969/2003).

It is therefore important to address the child's symptom, going beyond the behavioral code, approaching it at the level of language, of *jouissance*, separating the Other scene, the unconscious, from the judicial one. From here, conflicts may be reshaped beyond statements supported by judicial discourse (Brandão, 2016). This pathway allows us to delineate the

subjects' transmissions, repetitions, and inventions, which crisscross the montages and dynamics before and after the separation process, manufacturing what is, in the judicial scene, called "parental alienation". It further enables us to consider the position the child occupies in the parent's discourse and what they produce from it: their symptom as a singularity.

## ANA AND THE SEA, THE SEA AND ANA

Mariana, a six-year-old girl, had supervised contact with her father, who separated from her mother in her first year of life. In the judicial scene, this is a Custody Case, whose antecedent is an allegation of an episode of mistreatment. Until the separation, her father was engaged in parental care because of his partner's job – she was the main provider. However, he stated that from early on he felt inadequate in this role because, under the mother's guidance, supported by the medical and educational knowledge bestowed on her by motherhood, he felt that everything he did was wrong.

Following the separation, the mother resorted to the judiciary to regulate custody and paternal interaction, which, following an unexplained episode, started to be supervised. After a few years, Mariana's father appeared before the courts with the complaint that his ex-partner was exercising parental alienation. She defended herself, asserting that the father had problems assuming paternity, retreating when he needed to fulfill his commitments. To an extent, this left her feeling more comfortable and secure, since once, after going out with her father, her daughter came home with an injury and, from her point of view, he never provided a convincing explanation for this.

In turn, nothing convincing was told to Mariana about why her interactions with her father were restricted, explanations were simply given that sounded to her like "bedtime stories"! Her father, concerned about the repercussions of the judicialization on her life, revealed that he had made a deal with his daughter: faced with something she could not remember, she should never make up stories, but should reply honestly saying "*I don't know*." This was the "wildcard" she used in the face of various questions, which also led to a learning difficulty as she learned to read and write.

Armed with this, Mariana came to her first consultation and told the psychologist that she "*didn't know*" why she was there. When she was told that it was a place for family consultations, she said: "*I'm the daughter of separated parents*". On being asked to describe what it was like to be the daughter of separated parents, Mariana explained: "*It's when a daughter is separated from her father*."

Moreover, she said she had gained a little sister, the product of her mother's new relationship. When she talked a little more about her family romance, she drew a child, a sun, and a couple, identified herself as the child, and then fell silent. Encouraged to describe her drawing, she couldn't talk about the couple, except through make-believe, using

puppets available in the setting. From there, she told a story in which she, her mother, and her stepfather went to the beach. The two adults returned home to see her little sister and supervise her father, leaving her "*forgotten by the sea, near the big waves...*" Hesitantly, she added and then felt silent: "*And I almost ...*"

The hesitation that preceded the unnamed danger in Mariana's play narrative alluded to her anguish – could the other lose me? – indicating the emergence of the desiring subject. Dependent on an Other capable of lending signifiers and transposing their needs to the field of demand, through the love of *lalangue*, the subject arrives helpless in the world. Subjected and alienated by the looks and words of this other relative is how the being finds itself at birth (Freud, 1895/1996a; Lacan, 1949/1998, 1957-58/1999, 1972-73/2008).

In trying to give shape to this state of helplessness, precipitated by moving from alienation to separation, Mariana was faced with sharing the maternal desire and turned towards new family members. The presence and absence of the parental other, directed at other objects, indicates to the child that the other is not complete and that she is not complete either, because she does not fully satisfy the other (Lacan, 1957-58/1999, 1969/2003).

The gaps in language, renewed in the family romance, mean that each subject needs to construct their way out. In this fissure, in this significant interval, the subject may be able to symbolize what is lacking. Mariana, in this sense, allowed herself to be forgotten like an object on the beach and, without drowning, preserved her desiring condition and tried to find her way out, returning "*home, alone*."

Mariana also talked about her plans for when she would finally be able to go out with her father, everything they would do together, demonstrating, through play, the pathways she needed to invent, given the barriers she faced. On returning home alone, she "*almost*" had to go up onto the roof to see him; then they stayed in the garden "*looking at the moon and the stars in the sky*." But when night fell, her stepfather and mother called her into the house.

She concluded, saying about the couple she had drawn: "*It's like this drawing here, these are the others I drew*." The opacity of the paternal figure in her drawing is transmuted into her stepfather when, finally, Mariana named him: "*These others are my mother and my uncle, but at first this was my father*."

In this joint session with her father, the family romance, and the difference between the sexes of the puppets were the themes chosen by the child. Once again, she replaced him with her stepfather in the montage of her family configuration. Committed to trying to maintain the bond, her father invited her to go out, which seemed to serve the plans Mariana had nurtured so far, however, faced with this paternal gesture, she fell silent and, after a while replied: “*I don’t know.*”

She was divided in her desire to be with her father in the face of an unnamed prohibition, one transmitted, however, by parental discourse. Surprised, from then on, her father reflected on the fragility of his efforts and his presence, since up to then he had relied on the strength of the bond he had with his daughter, despite maternal restrictions, in occasional supervised visits, which he fulfilled beyond any court decision.

During this, Marian demonstrated that she was trying to produce her family novel, on her own, not without difficulty,

based on her discovery of the difference between the sexes, of the absences, parental faults, and failures – which reflect the inconsistency and incompleteness of the Other of language to account for the great enigmas of life and separations. She tried to give her shape to something that wasn’t told to her very clearly, nor could it be, since the truth, from a psychoanalytic point of view, can never be fully accessed, “materially: words fail” (Lacan, 1974/1993, p. 11).

Analytical listening reveals that the *separation*, in this case, has distinct dimensions that are in dialogue when they emerge, in the light of psychoanalysis, in the judicial scene: the one objectified in the legal discourse under the name of parental alienation, which reflected the junction between maternal hypervigilance and paternal passivity, complicating parental interaction; and the symbolic, from the subjectivity of Mariana’s family romance, which pointed to the experience of helplessness that pervaded the emergence of the subject of desire, as it moved from alienation to separation.

## PEPE: SHOULD YOU HIT A CHILD?

Pedro Pepe was an almost twelve-year-old boy experiencing adolescence amid family conflicts and the separation of his parents, who came to the judiciary entangled in ties: disputes between his grandmother and parents; between his “older brother” who preceded him and his little brother. In the judicial scene, this constituted a paternal request for the modification of maternal custody, preceded by an allegation of maternal mistreatment. Faced with Pepe’s father’s application, his mother contested, claiming parental alienation.

In the initial interviews, the paternal grandmother’s significant presence in her grandson’s life was notable; she sometimes referred to him as “*son*.” Although the marital dissolution was permeated by conflict, it was noticeable from the outset that the impasse about parenting was not located between Pedro Pepe’s parents, but between his grandmother and his mother.

In weaving the dissonant family narratives, we located Pedro Pepe’s position in the desire of the Other who preceded him. In the birth scene, there were signs of “*post-partum depression*” experienced by his mother and translated by his grandmother into “*rejection*” of the child. Before Pedro Pepe’s birth, the grandmother experienced perinatal bereavement and, in his father’s interpretation, she “*put her grandson in this child’s place.*”

In this family drama, there was a meeting between two women embarrassed by the vicissitudes of maternity. On the one hand, a mother with an inhibition marked by her unconscious determinations, which, added to delicate puerperal conditions, made it hard for her to take her son as the object of her libidinal investment at the time; on the other, the paternal grandmother, trapped in mourning the rupture of a libidinally invested bond, laden with promises. At this point, Pedro Pepe appeared in the family novel as the denial of the perinatal loss of the baby that preceded him – a

frequently silenced and unrecognized mourning – and as a son rejected by his mother (Freud 1908/1996b).

As he grew up, conflicts about his upbringing between his mother and grandmother began to emerge, while his father appeared in a peripheral position. Efforts to set boundaries for her son dominated the mother’s discourse, although she signaled that these collided with the paternal grandmother’s permissiveness, who, with support from his father, constantly discredited her as a mother. These impasses resonated in the child’s words; to him, the maternal family was subjectively constituted as a vector of limits through punishment, while, for its part, the paternal family was a vector of affections, a place where his desires and whims were fulfilled.

Although his mother exercised a maternal role, providing care concerning his health and upbringing, for Pedro Pepe his paternal grandmother appeared more prominently to exercise the maternal role, symbolically adopting him as her “*son*”, imprinting on him affective marks that competed with the opacity of his mother’s care. The paternal role, for its part, faltered, as did the parental authority of both parents. In this case, the role stumbled not in the mother’s but the paternal grandmother’s desire. By occupying the maternal role, she covered up not only her own but also Pedro Pepe’s faults – he accumulated small transgressions and, when even minimally frustrated, threatened to hurt himself in front of his grandmother, who retreated, not knowing what to do.

What was prominent in Pedro Pepe’s narrative was the assertion that his mother habitually hit him: “*She’s hit me since I was a baby*”. “*Since you were a baby?*” – faced with this question, he talked of his misunderstandings with his mother, only exemplified on a more recent occasion when he was hurt, culminating in the filing of the complaint. The conflict that precipitated the case was described by his mother as an accident that happened after several attempts



to contain and set limits for her son who, in the end, in a “careless joke”, exposed his younger brother to risk.

For its part, Pedro Pepe’s version omitted the scene with his little brother, whose importance appeared to be diminished, in another part of his discourse he was dismissed as someone who “*doesn’t talk much*”. At the same time, contrary to his denials, we can see that his half-brother’s birth bothered him. In the case in point, the little brother appeared to share the maternal affection and attention, depriving him of an already fragile throne. Not by chance, without mediation, Pedro Pepe returned the “blow” in a joke, pushing him from this “throne” down the slope, which was when his mother’s punishment emerged, leading to the judicialization. Pedro Pepe’s small and daily contestations and transgressions appeared to increase as the case unfolded and were heard in the words of the family, his school, and the health professionals who accompanied him. Here was a child who, at the beginning of the dispute, faced with his suffering and the suffering of others, was unable to talk or cry.

He mocked and made fun of what, because it was different, seemed precarious, lopsided, laughable to him.

Regarding this transgressive indicator of Pedro Pepe’s identity, in addition to the family conflicts he participated in, the identification processes that permeated his adolescence are also noteworthy. Lacan (1961-62/2003) states that a proper name does not contain any meaning, although it has significance for those who receive it. In the case in question, “Pepe” alludes to the reign of a despotic character from a story about how his name was chosen, told to him by his father’s family, and which is, in turn, his father’s name.

Pedro Pepe embodied this character, accepted by his grandmother and exalted by his father’s family, one whose characteristics approximate both maternal rigor and paternal whims. Here, the mother’s complaints of paternal parental alienation may be rewritten in a psychoanalytic reading as an alienating identification that has permeated Pedro Pepe since his birth, the choice of his name, and the place he assumes in the family romance.

## FROM FEAR TO FATHER-GRANDFATHER?

Augusto was an eight-year-old boy who, following his parents’ separation, lived with his mother and had almost no contact with his father’s family. In the judicial scene, the members of his father’s family applied to regulate visits, alleging parental alienation by his mother, who prevented them from seeing the child.

Members of the father’s family suggested the mother was somewhat isolated and introspective and had some kind of psychiatric disorder which created barriers to family life. They also emphasized the symbolic link between the mother and Augusto, finding it strange that “*since birth, she hasn’t let anybody get close*”. For her part, Augusto’s mother was resentful of the fact that she never felt fully accepted by her ex-husband’s family, who, in her narrative, devalued her condition as a woman. The breakdown in the marital relationship, permeated by many conflicts, became manifest with their departure from the father’s home when he moved away from the city. With this departure, the mother had to leave the house they lived in; added to the separation were financial differences and the “walls” around the child rose.

The mother’s initial words, at the beginning of the study, conveyed her denial of a desire to reveal anything about her childhood to the psychologist, stated thus: her mother, when she separated, left the home, leaving her and her siblings in the negligent care of their father who mistreated them. Recently, she had started receiving psychiatric and psychological support, since, for a time, she believed her ex-husband would make an attempt on her life and take her son away.

At the time, however, she viewed that initial feeling of dread with detachment, although she still felt “*fear*”. She

explained she could not fulfill the judicial agreement, which she regretted because she didn’t trust anybody but herself. Listening to the mother revealed an imaginary apprehension about the signifier “father” who, in any context, always appeared as a threatening figure.

The maternal grandmother noted that her daughter was very attached to Augusto, who was “*everything to her*,” emphasizing that this was how she brought up her children: with a lot of care and “*always keeping an eye on them*.” She remembered that Augusto suffered during his parents’ separation – he cried, shouted, calling for his father. A cry that, as an act, alluded to the suffering experienced in the rupture of the paternal relationship and constituted an appeal for a third person, able to mediate the *jouissance* of the mother-child relationship and perform the role of being “everything” to the mother.

During the consultations, Augusto was inhibited, not very communicative, and did not show any interest in the play resources. He said he couldn’t recall living with his father and expressed the same dread seen in his mother’s discourse, that his father would take him away; he only agreed to stay with him if his mother was there too. He verbalized little, repeated certain signifiers, such as “*bad*” and “*fear*” and conveyed similar complaints to his mother.

He drew himself and his mother with similar features and his other family members with unsophisticated ones, including, lastly, his father. In another drawing, he wrote a series of attributes to describe his mother below her picture; below his father, he wrote the signifiers, “*black eyes, brown skin*.” When encouraged to talk more and questioned about what his father did, Augusto replied that he didn’t know. “*You*

*don't know?!*" was the psychologist's interjection of surprise, followed by the question: "*Aren't you curious to know?!*," to which he replied that no one had ever asked him about it.

Based on the child's signifiers, the intervention, whose effects could occur *a posteriori*, operated in the opening of a field in which a third person could be included in the relationship between Augusto and his mother. Why his grandfather, a representative of his father in the judicial scene, is not present and willing to perform this role? The child agreed to participate in joint sessions with his paternal grandfather, however, on the agreed dates, his mother always turned up alone, saying that her son did not want to attend. And, to his mother, Augusto did not know how to say anything different.

In a joint session between his father and paternal grandfather, they were able to talk about the conflicts that occurred during the marital separation and were encouraged to construct a solution so that family ties with the child

could be maintained. In the end, they agreed to try out a visit assisted by a mediator known to both, resuming what had initially been ratified in a court agreement. In the end, both reported that the meeting between Augusto and his grandfather had taken place and that the child liked it, although the mother did not trust the father. The case was closed at this point after recommendations were made for psychological follow-up for the family. For his part, the grandfather signaled that, if the visits could be regular, he would drop the court case.

In this case, based on the observation that the child appeared to be entangled in the maternal symptom, we note the importance of differentiating between what is called parental alienation, arising from the need for separation in the judicial scene, and the significant alienation addressed in the analytical space, although it is possible for the intervention of the law to be therapeutic, by functioning as a third interdictor, mediating the mother-child *jouissance*

## CONJUGALITY AND PARENTING UNDER JUDICIALIZATION

The experience and practice of parenting, changes that occur in the dynamic during family separation and reconstitution, the judicialization process, and the place of children within judicialized family ties are chapters that constitute the family romance, scripted in procedural records, and formulated in the discourse of subjects, known as parental alienation.

In the judicial scene, this phenomenon characterizes as something delineated in the context of a litigious separation, in which subjects frequently claim they are unaware of the new outfit the ex-partner is wearing, underlining their surprise at a double betrayal: marital and parental. Others verbalize that they realize that, in the painful process of separation, the other was always like this and what they experienced was nothing more than a

temporary decoy from which they are now attempting to free themselves.

In both cases, what is found in the scene's discourse no longer replaces the power of love (Lacan, 1972-73/2008) with the Reality of the sexual relationship, but rather the deception of the other, in their marital and parental features, which are almost always superimposed. In the judicial scene, parents rarely question themselves or put themselves on the agenda. However, we note that when the litigants have a voice, a montage, and a family dynamic exist which is, sometimes more, sometimes less, explicit, and which precedes the separation, in which each contributes their share of *jouissance* and alienation. This is what emerges during the judicialization process which, in turn, helps to embody what is known on the agenda of medical and legal discourse as parental alienation.

## WHAT EXISTS BEFORE SEPARATION?

Filiation concerns everyone and is a condition that questions the subject's place in the world. Because of its complexity, the answers constructed over a lifetime sometimes only emerge during the parenting experience, which includes paradoxes and many challenges. The way each family experiences the birth of each baby, the assumption of parenting functions and roles, added to the marital ones, and the place the child and the spouse occupy in the desire of the Other, demonstrate how the conflicts that permeate a custody dispute gestate, little by little, sometimes over generations, until the birth of the phenomenon is baptized in the judicial scene as "parental alienation". In this sense, Dunker (2017) asserts that it is "rare for a child to encounter new difficulties

during a separation"; it is commonly "an amplification of already present dispositions and conflicts" (p. 136).

Parenting therefore appears to repeat something from each family myth, a little of which is transmitted through generations. What it symbolically inscribed permeates both the transmission of the social management of parental care, on the imaginary plane, and the transmission of a lack, in the real record. In brief, a reference always remains from the parents who preceded, to be either followed or rejected, which one cannot escape totally. Repeating, however, does not mean repeating the same thing; there is something of the nature of an invention based on this "almost nothing" that is known.

In the case of Pedro Pepe, the parents experienced parenting in the turmoil of youthful love conflicts. When the baby was born, the whole family had to assume new positions, however, the transition which transforms genitors into parents does not take place at the birth of the child. In this way, we can observe that Pedro Pepe was born when his parents still largely needed the support of the grandparents to sustain their parenting. This arrangement, in which the grandparents have attributed the confusing task of caring for their grandchildren without destroying the parents, often leads to some exchange and rivalry between roles and functions, which, in turn, often leads to the judicialization known as parental alienation (Cardoso & Brito, 2014).

In this case, there is a *grandmother*, who is caught up in her maternal grief, libidinally invested in this baby, and questions her daughter-in-law: *what kind of mother* would appear to reject her child? There is a *mother*, scarred by a childhood of strict parental discourse, embarrassed to be summoned by her maternal desire and questioning her mother-in-law: *what kind of woman* would publicly insist on dismissing me as a mother? There is a *father*, marked by a compassionate upbringing who, after fatherhood, seems to appear both as a man and the brother of his son, ceding desire and care to his mother, and asking his partner: *what kind of woman* would not desire me anymore?

In Augusto's case, before his birth, there is the loss of a pregnancy desired by his mother, but not by his father. There is a *mother*, who fully dedicates herself to her baby, for whom he is *everything*. In her psychological conflict, she appears as a daughter abandoned by her mother to the care of a negligent father. There is a *maternal grandmother* who, despite appearing in the mother's discourse as someone who abandoned her, requires her daughter to repeat her own, overprotective, mode of parenting. There is a *father*, described through conflicts marked by aggression, who provides consistency to his mother's ghost father who, for his part, finds it difficult to symbolically establish himself as the father of her child. There is therefore a *woman*, who is reduced and devalued by this condition, frightened by the ghost of her father and her husband, who appear in her narrative as abusers.

In this case, on the mother's side, the questions were: *what kind of man* would not desire the fruit of our love; *what kind of father* would now say he loves his son, although he abandoned his family and stopped helping to support the home? On the father's side, the questions were: *what kind of woman* would take their son for the sole object of their desire; *what kind of mother* would dismiss a father; why should a father only compete for the role of supporter, where are the rights of cohabitation? After suspending the alimony payment, exempting himself from supporting the child, justified as reprimanding the mother, the maternal rejoinder is like the fulfillment of a prophecy: See, I was right from the beginning – *what kind of father* would abandon his son?

In Mariana's case, there is a *father* who feels inadequate in this role, since he doesn't have the medical and educational knowledge reserved for maternal discourse: *what kind of father am I*, who can't care for his daughter and can't support the home? There is a mother who, for her part, by supporting the home, cultivates a feeling of guilt that questions her competence; *what kind of mother am I*, who has absented herself from maternal care? In this case, the questions aimed at the other were asked differently: what kind of man would not make me desire him, would not provide for the home, and would force me to go out, leaving my baby? And from the other side: *what kind of woman* would not desire me, would be absent from the home yet instruct me on the best way to look after it?

The three cases explore the marital and parental embarrassments of the subjects themselves, between the lines of a narrative which, when spoken, devalues the place of the other as someone who does not permit the realization of the idealized marital family and parental dream. In keeping with the contemporary way of dealing with suffering, the failures that possible motherhood and fatherhood entail are barely tolerated: the disqualification of parenthood appears at the center of the conflict, gathering all the weight of a secular form of subjectification sustained by the patriarchal nuclear family and the gender division of labor, and carrying the burden of the fracturing of love and the metonymic sliding of desire, more commonly seen in contemporary social ties.

## WHAT CHANGES DOES THE SEPARATION BRING ABOUT?

Following divorce, the newly configured family produces, simultaneously, a segregation from it and the incorporation of new members into the group who reconstitute it, while it is redrawn, and new roles emerge. The so-called reconstituted family is, therefore, a mixture of biological and socio-affective ties, and, as a rule, this has an effect. The first feature to be considered is that being a father and being a mother within a marriage, living in the same home is not the same as being a father or a mother outside it. When living under the same roof, the child's care routines are generally organized tacitly, through a

frequently not egalitarian, but tolerated, division of tasks. Time is required to re-accommodate the roles that were performed, which require greater willingness and patience from both parties during the adjustment period.

Suffering is part of the daily experience of parenting, of which communication resources and co-responsibility are essential parts. What we find during judicialization, however, is that pre-existing inabilities and failures take on a form they did not previously have, in a gradual process to dismiss the position of the other parent, who does not tolerate the difficulties encountered on this journey.

A second point, connected to the first, is introduced by the arrival of new partners and new children: new parenting dynamics that begin to coexist, adding new points of view about the child's upbringing, often in conflict with previously cultivated habits, feeding the rivalry between fathers and stepfathers, mothers and step-mothers. Added to this are the babies from these new unions, who begin to demand parental attention, dethroning the child from the pre-existing relationship. In listening to families in dispute, these others emerge as third parties who corroborate the castration, reviving the losses of separation, and diminishing the possibility of reconciliation that has often been maintained.

Listening to these families reveals that the child's acceptance relates to how these new partners are introduced by their parents, agreed to, or not, by the other parenting pair. Often, still grieving for the end of one relationship, they do not admit that the ex-partner has carried on with their life and linked their desire to somebody else's. The suffering arising from this, silent or noisy, but almost always noisy to the child, is assimilated and, in the worst case, imposed on the child, who adds it to their parental jealousy or jealousy of a marriage undone but not ended. This demonstrates that it is often not only parenting but also frustrated marriage which is at play in cases known as parental alienation.

If, on the one hand, there are parents who try to preserve the specifics of their places and functions, on the other, some parents are embarrassed by their suffering, which does not

allow for the presence of a third party in the life of their ex-partner and child, however careful and inoffensive they may be. Some endorse a confusion of roles, presenting the new partner as a parental substitute. None of these positions or intentions, however, guarantee that the child will meet parental expectations, since the bond sustained by desire and affection is, above all, contingent and arbitrary. This is why there are children who identify with their parent or in the position of their object, sticking to the parental discourse; and others who, in the position of the subject, despite what their parents feel, are already able to assert their own, also ambivalent, desire and affect.

A third aspect is the fact that castration can also be re-edited by half-brothers, the products of these new unions. In this sense, the birth of a younger brother, who shares the attentions of the parental other is frequently the vector of separation, articulates the enigma of the desire of the Other, precipitating questions upon which the family fiction will be built. This therefore opens a breach in maternal desire and announces to the child that there are others besides this child, who is not everything to the mother.

This new configuration, in which the roles do not remain noticeably clear, often results in childish rejections and a narcissistic dispute between the adults, who feel disturbed or expropriated from their parental and marital place and who seek out the judiciary armed with a complaint of parental alienation.

## WHAT DOES JUDICIALIZATION INTRODUCE?

The family romance is each subject's unique fictional montage (Freud, 1909/1996c; Lacan, 1952/2008). Its narrative, therefore, belongs to an Other scene, one of the unconscious, which has specific characteristics that distinguish it from a historical narrative: it obeys not chronological, but logical time; it is not specified by a reality of facts, but by a psychological reality, which, metaphorically and metonymically, interprets, reorganizes and reconstitutes the events in a single language structure.

For its part, the judicial scene contains a pretension of objectivity aimed at a chronology and description of facts about the family dynamic. However, judicialization does not escape the fictional, in that it establishes a new discourse: the script of proceedings produces a new scene with various versions of the family novel, in which the subjects, as spectators, often do not recognize themselves within the version the other describes, which to them is fictitious.

In addition to the de-subjectification of the conflict, judicialization produces a new way of relating, one in which words are replaced by the test of truth. Words, exhausted by countless attempts to address the family conflict, become rarefied and eventually absent. Dialogue then happens through notifications, subpoenas, and other rites of procedural communication.

In the dynamic of a legal case, in which proof takes precedence over the word, certain points merit attention: the creation of new conflicts as a means of proof; and the outsourcing of the word to institutions and family members, of whom we should mention the children, in the role of proof-producing messengers and agents. Through this logic, when the word slowly returns to the scene, to address the child's daily issues, it is always a recorded word which, if it doesn't serve its initial purpose, should serve as proof to be attached to the case. The other is, frequently, tested and provoked to demonstrate their incompetence, their imbalance.

Further, for greater legitimacy in the judicial scene, there is a recommendation for proof to be recognized and validated by the institutions and specialists that are part of it: child protection officers, police officers, doctors, psychologists, social workers, etc. A police report, a protective measure, and a medical report are all elements that often refer exclusively to the adults' conflicts but are used to endorse the justification for the separation between the child and the parent since the child becomes an extension of parental disagreement.

In this way, parental alienation as a phenomenon gains shape and proportion with each new conflict that occurs, to prove the other's failures. In this sense, the phenomenon of parental alienation is, in some cases, fed by the social devices



that receive and protect children, which often reproduce a moralizing and a prohibitory protective discourse.

The notion of an alienated child suggests that their discourse is a mere reproduction of the word of the other influencer. Their words are therefore the expression of a misleading version suggested to them. The word of an alienated child is, in principle, a worthless word, since their symptom is the conveyor of a lie, a distorted perception of reality. The function of the professionals called on to help this child is, therefore, to examine their word, to identify the untruths in their discourse that attest or do not, to parental alienation. Their passage through several institutions, as in the Pedro Pepe and Augusto cases, to testify to the facts, puts them in the position of repeating a conflicted narrative that is not exactly theirs, one which causes them to testify against a family member who gradually becomes, in their romance, an antagonist.

Furthermore, the decline in dialogue between adults naturally invites a third party capable of mediating practical questions about schools, medication, etc., which can neither be solved alone nor indefinitely through lawyers, who take on this function circumstantially. The absent word, then, summons the outsourced word, which may either placate or exacerbate conflict. When conducting a psychosocial study, it is common, for example, for the litigants to try to position the professional in the role of substitute, a messenger, asking them to arrange things with the other family member, such as how the child will get to the sessions or to communicate with the other about weekend plans, holidays, etc. Faced with this request, it is best not to respond to such demands, which attempt to introduce them to yet another person in the family conflict. Discomfort needs to arise, and the daily problem needs to emerge so that the family can demonstrate what resources they have or could construct, to take account of what is most intimate in their relationships.

In addition to the institutions and their agents, children frequently take on the role of a parent's messenger, which,

at first, occurs through a demand from the adult who puts them in this position, until they incorporate this role and add their independent contributions, in the form of intentions, interpretations, defenses and accusations. We see children such as Pedro Pepe, therefore, who begin to negotiate issues about their routines and advocate for one of their parents, based on their fragile understanding about what is right/wrong, fair/unfair in a marital and family relationship. This position becomes manifest in pseudo-sophisticated, childish vocabulary, as they begin to incorporate their expressions and assertions into the judicial scene.

The child's appropriation of the conflict as a reflection of strained parental communication is, in many cases, interpreted as parental alienation. Involving children who take on the impossible task of sewing up the mistakes of language, pacifying disputatious words, and circumventing their parents' unsuccessful encounters, frequently leads to symptomatic manifestations. It is common for children to be exposed, through what their parents do and don't say, to the job of interpreting their reasons for separation, suffering on the battlefield, from which their anguish, related to their fear of the dissolution of the affective bond, emerges. Thus, they attempt to locate themselves amid the contradiction of their feelings and the dispute between their parents (Dunker, 2017).

Children on this battlefield produce symptoms not limited to the judicial scene in which they are circumstantially included, but which concern what the scene re-edits through a meeting with the faulty Other; the consequence of this is malaise. Re-reading parental alienation, then, invites us to go beyond a phenomenon and turn our attention to the child's subjective constitution, which is drawn in the Other scene, in judicialized family ties. This is a commitment to the power of listening to what is unique in the expression of discontent, which can support an understanding and de-pathologize what is often called, in a generalized and insufficient way, parental alienation.

## WHO ARE THE LITIGANTS, AFTER ALL?

To answer this question, we need to transpose the judicial scene and return, once again, to the *Other scene*. In the three cases, the core of the judicialized conflict refers to another place, in which the person with whom the dispute is litigated in the judicial scene is not necessarily the same Other with whom the subject is in conflict. Beyond a simple embarrassment in the exercise of parental roles regarding care, the cases of Mariana, Pedro Pepe, and Augusto reveal the unique thread of each subject's desire, which is stitched into the family drama at the time of the marital union and the arrival of these children into the world, with all the dreams and promises that these events involve.

Marriage and the love contract are one way of trying to circumvent the reality of the love bond and making the

sexual relationship exist, reconciling demands, apportioning them, and making them speak the same language, even if they belong to different continents (Dunker, 2017). For their part, the child resulting from this (mis)encounter, also carries the promise of circumventing the reality of the bond, of meeting each partner's demands of love, as a promise to make the One exist. However, the advent of pregnancy, even if planned, does not represent concordant desire, nor does it reconcile the dissonant demands of the married couple.

In a fractured, but still current, imagination, for the man, a child is commonly a signifier of a phallic power that links him to the woman; for the woman, they are a signifier that she can produce for the man. In our society, a child carries the entire burden of the couple's union. They are a sign of

the attempt to make the sexual relationship exist, that is, to produce the supposed-possible complementarity between the sexes: the fruit of the two that would become a ONE (Miranda, 2010). Thus, in the legal case involving Mariana, it is the parents who litigate; in the *Other Scene*, each of them litigates with the weakness of love in their attempt to make a One exist through the sexual relationship. In Augusto's case, in the judicial scene, the father's family litigates with the mother, but in the *Other Scene*, the mother litigates the attempt, through parental love, to make the One exist; while the grandfather attempts to advocate for a *r(s)eparation*, resisting maternal *jouissance*. In Pedro Pepe's case, the parents litigate in the judicial scene; in the *Other Scene*, the mother and the paternal grandmother litigate each other and themselves, and even the vicissitudes of womanhood, with the shared desire to be a mother and a woman; while the father litigates the weakness of love and the inexistence of the sexual relationship promised by the marital union. For its part, the litigation the children experience demonstrates that the conflict they suffer reflects their embarrassment with the Other embodied by their family, in their search for answers to their enigmas and affections, during guerrilla warfare between those who occupy parental roles.

All the destinations marked by the encounter with language, with the faulty core of the bond, and,

consequently, with the disappointment of the once dreamed ideal of a family, collide with the final condition that there is only One alone. The effects of this desirable, though regretted, castration, can be seen in the parental roles. Each subject deals with and accounts for the lack of their mode, trying to recover something that gets lost in each (*mis*)encounter with the other, through a singular mode of *jouissance*.

Thus, what repeats in the scene of a love dispute also repeats the symptom, the position of *jouissance*, of each subject faced with life. The dispute over the custody of the child in the courts does not fail, therefore, to reveal the narcissistic face of love, in which children are often conceived and taken as the object of *jouissance*, which, in one parent's fantasy about completeness, reveals that the fault only lies on the incompetent side of the parental other.

The difficulties of shared custody often reflect the difficulty of sharing errors. Consenting to the failures and imperfections of the other, tolerating them and sharing them, tears at a wound, sometimes already opened up by the end of the relationship, in the narcissism itself, since this act requires me to recognize that I am also faulty. The experience and practice of parenting, therefore, always expire in the face of ideals and are related to what each subject can build from their affective family inheritance.

## WHAT IS THE POSITION OF THE CHILD CAUGHT BETWEEN JUDICIALIZED TIES?

A child is discussed before their birth, signified and signifier for those who exercise the parental roles; they are, in the end, socially and legally represented by those who exercise family power. The child has a place founded on parental discourse – this much is already clear. This place, in Mariana's case for example, is marked by many maternal and paternal signifiers that affectionately qualify her within the dissonant desire of her parents but is also permeated by much that is *not said*. Pedro's place is investigated in family statements such as *rejected child*, while, at the same, he fills the void of a dead child. Augusto emerges in a place that was not *desired by his father* but is *everything to his mother*.

There is nothing, however, to prevent this place, from which they name and desire, being re-signified. A necessary grieving always takes place between what was idealized and what materializes in a baby's presence, so that, after birth, the child usually assumes a different place in the family (Iaconelli, 2019). Furthermore, how desire is transmitted and, particularly, captured, leaves its mark. The child's symptom, in this sense, is a unique response to what precedes them, which is repeated and transmitted within the family, and to which their presence adds as an invention since they actively participate in this construction (Lacan, 1957-58/ 1999). How, then, does the child take possession, benefit from,

enjoy, and conquer what is transmitted as an inheritance from their family?

There is a solitary journey that the child subject undertakes in their drive to know, in their realization that there is a faulty Other, and in their development of a way to address the anguish this causes. In this sense, Freudian-Lacanian theory underlines every subject's structural malaise in the face of knowledge, the result of their embarrassment about the weakness of language, which is not sufficient to account for what cannot be symbolized. How the fault is transmitted, captured, and developed in the theories the child sets out to construct, therefore, influences their symptomatic formations, which are an attempt to deal with Reality, to modulate *jouissance* (Freud, 1908/1996b; Lacan, 1969/2003).

What affects the child's subjective constitution refers more to the nature of desire and language than to the presence or absence of parental figures or the disagreements between them. However, the aspects that surround them are not without effect, since, in judicialized family ties, the children tend to be treated mainly as objects. Throughout life, but particularly in childhood and adolescence, the subject is called to the arduous task of separating themselves, of accessing their desire, of constructing their speech amidst the parent's desires and speech. If the judicial scene asks

for an explanation of childish fear, its lack of determination first demands an intervention capable of supporting the journey from alienation to separation. Judicial intervention can certainly have structural effects on the regulation of *jouissance* for which symbolic mediation seems inefficient; however, it may also segregate, silence, and deteriorate. We should, therefore, assume the perspective that, while the child's symptoms are polymorphous and transitory, the discourse mediated by judicialization often favors fixtures and crystallizations that hinder the re-signification of subjective conflicts (Brandão, 2016).

Despite all the imaginary glue that imprisons them in the field of the Other, the analyst's intervention, which encourages the child to talk and play, opens up a space for the family novel to be constructed as a myth, a fantasy, based on their childhood enigmas and studies since the discourse that alienates the Other should not be enough for them. The child needs to stand out from the position they occupy in the parents' desire and discourse, which ties them to the truth of

the parental couple, to be able to find themselves, to build their fiction. From then on, they psychologically reconstitute their families, and invent more or less prestigious parents, unlike their own, who can deal more leniently with fractures than the adults themselves (Cottet, 2007).

In the judicial scene, much is said in the name of defending the child's interests, interpreted by the parental other. Placing them in the position of an interpreter, however, seems to be essential to understanding the embarrassments and unique exits they must address in judicialized family ties, and also provides the parental agents with the possibility of renewing conflicts, not guided by the compass of martial disagreements, but focusing the decision effectively in (and with) the child. In this sense, in the analyzed cases, the narratives of Mariana, Pepe, and Augusto demonstrate that their symptoms are responses which, to some extent, repeat their family's inheritance and symptoms, but also produce the new, in the (*dis*)connections they are called on to make during family conflict.

## FINAL CONSIDERATIONS

The proposed rereading of judicialized family conflicts we present here locates the dimension of "required pathways" that redefine our understanding of parental alienation: in a socio-historical journey through how parental and marital ties are conceived and recreated; in a passage through the

grief the subjects suffer in the course of family reconstitution; from the universality of the phenomenon to the uniqueness of each subject's symptom; through the reinvention of practices for the psychosocial team and for psychologists at the Family Courts.

## REFERENCES

- Brandão, E. P. (2016). Psicanálise e as questões da perícia em meio às disputas familiares. In E. P. Brandão (Org.), *Atualidades em psicologia jurídica* (pp. 140-151). Nau. Brandão, E. M. & Baptista, M. N. (2016). Alienação parental: revisão interativa e construção de um instrumento de rastreamento. *Psicologia Argumento*, 34(84), 65-75. <https://doi.org/10.7213/psicol.argum.34.084.AO06>
- Cardoso, A. R. & Brito, L. M. T. (2014). Ser avó na família contemporânea: que jeito é esse? *Psico-USF*, 19(3), 433-441. <https://doi.org/10.1590/1413-82712014019003006>
- Carvalho, T. A., Medeiros, E. D., Coutinho, M. P. L., Brasileiro, T. C., & Fonsêca, P. N. (2017). Alienação Parental: Elaboração de uma medida para mães. *Estudos de Psicologia*, 34(3), 367-378. <https://doi.org/10.1590/1982-02752017000300005>
- Conselho Federal de Psicologia. (2022). Nota Técnica Nº 04, de 01 de setembro de 2022.
- Conselho Nacional de Saúde. (2022). Recomendação Nº 003, de 11 de fevereiro de 2022.
- Conselho Nacional dos Direitos Humanos. (2022). Recomendação Nº 06, de 18 de março de 2022.
- Cottet, S. (2007). O avesso das famílias: o romance familiar parental. *Revista eletrônica do Núcleo Sephora*, 2(4), 12-17.
- Dunker, C. (2017). *Reinvenção da Intimidade*. Ubu Editora.
- Foucault, M. (2013). *A verdade e as formas jurídicas*. Nau. (Trabalho original publicado em 1973)
- Freud, S. (1996a). Projeto para uma psicologia científica. In S. Freud, Edição Standard das Obras Psicológicas Completas de Sigmund Freud. Imago. (Trabalho original publicado em 1895)
- Freud, S. (1996b). Sobre as teorias sexuais da criança. In S. Freud, Edição Standard das Obras Psicológicas Completas de Sigmund Freud. Imago. (Trabalho original publicado em 1908)
- Freud, S. (1996c). *Romances Familiares*. In S. Freud, Edição Standard das Obras Psicológicas Completas de Sigmund Freud. Imago. (Trabalho original publicado em 1909)
- Gardner, R. (1985). Recent trends in divorce and custody litigation. *The Academy Forum*, 29(2): 3-7.
- Gomide, P. I. C., Camargo, E. B. & Fernandes, M. G. (2016). Analysis of the Psychometric Properties of a Parental Alienation Scale. *Paidéia*, 26(65), 291-298. <https://doi.org/10.1590/1982-43272665201602>
- Iaconelli, V. (2019). Criar filhos no século XXI. Contexto.
- Lacan, J. (1998). O estágio do espelho como formador da função do eu. In J. Lacan, *Escritos*. Jorge Zahar. (Trabalho original publicado em 1949)
- Lacan, J. (2008). O Mito Individual do Neurótico. Assírio & Alvim. (Trabalho original publicado em 1952)
- Lacan, J. (1999). O seminário – livro 5: as formações do inconsciente. Jorge Zahar. (Trabalho original publicado em 1957-58)
- Lacan, J. (2003). *O seminário – livro 9: a identificação*. Jorge Zahar. (Trabalho original publicado em 1961-62)
- Lacan, J. (2003). Nota sobre a criança. In J. Lacan, *Outros escritos*. Jorge Zahar. (Trabalho original publicado em 1969)
- Lacan, J. (2008). *O seminário 20: Mais, ainda*. Jorge Zahar. (Trabalho original publicado em 1972-73)
- Lacan, J. (1993). *Televisão*. Jorge Zahar. (Trabalho original publicado em 1974)

- Lei nº 12.318, de 26 de agosto de 2010. (2010, 26 agosto). Dispõe sobre a alienação parental e altera o art. 236 da Lei nº 8.069, de 13 de julho de 1990. Brasília, DF.
- Miranda, H. (2010). *Um psicólogo no Tribunal de Família: a prática na interface Direito e Psicanálise*. Artesã.
- Organização Mundial de Saúde. (2020). Alienação Parental. Retirado de: <https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation>
- Ramires, V. R. R. (2020). Avaliação psicológica de crianças que resistem ao contato parental. In C. S. Hutz et al. (Org.), *Avaliação Psicológica em Contexto Forense* (pp. 229-246). Artmed.
- Sousa, A. & Bolognini, A. (2017). Pedidos de avaliação de alienação parental no contexto das disputas de guarda de filhos. In M Therense, C. Oliveira, A. Neves & M. Levi (Orgs.), *Psicologia Jurídica e Direito de Família: Para além da perícia psicológica*. (pp. 229-246). UEA Edições.
- Teperman, D. (2014). *Família, parentalidade e época: um estudo psicanalítico*. Escuta.

**Data availability statement**

The author does not authorize the disclosure of research data.

**Submitted on**

04/04/2022

**Responsible editor**

Mônica Medeiros Kother Macedo

**Accepted on**

24/05/2023

**Corresponding author**

Júlia Dias

Email: [julia.tdias@gmail.com](mailto:julia.tdias@gmail.com)