The Criminal Code of the Brazilian Empire in 1830 and its vaunted originality

After its independence in 1822, the newly created Brazilian Empire launched into building its legal framework. The Constitutional Charter, granted by Emperor D. Pedro I in 1824, promised to soon, the enactment of two codes, one civil and one criminal. The first took nearly a century to come to light. The second, the Criminal Code of the Empire, came into force in 1830, and was considered by many to be the prototype of criminal law in Latin America.

Among the reasons that the authors highlight for speed, in terms of Brazilian history, with the new code was promulgated, may highlight the need to replace, on the treadmill and requirement of the ideas of Beccaria and Bentham, the anachronistic criminal law, embodied in Book V of Philippines Ordinances.

The studies for the preparation of a project to be discussed by the National Assembly began in the first days of the legislative session of 1826. This year, the judge and MP (Deputy) José Clemente Pereira offered to the Chamber of Deputies a ‘basis’ for the design of a code, whose actual text would be presented by him in 1827, just days after the proposal sent by the magistrate and also MP (Deputy) Bernardo Pereira de Vasconcelos. The mentioned projects were submitted for analysis of a Committee constituted by the Chamber of Deputies, which left the text that came to be finally enacted in 1830.

To what extent the Criminal Code is trainbearer Project Bernardo Pereira de Vasconcelos, as it is often claimed, or to what extent it results from a groundbreaking work of the mentioned Committee, are issues faced in this work. More important, though, is whether that points the Code of 1830 is truly innovative, as stated Ladislaus Thót¹, or if it is merely applying the ideas of the French Code of 1810. Finally, it is relevant to examine whether and to what extent, served as a model for the Spanish Code of 1848, which is considered, in turn, the array of Latin American criminal law².

For the achievement of this study will be analyzed both primary sources, in particular the aforementioned legislative texts (projects José Clemente Pereira and Bernardo Pereira de Vasconcelos; Criminal Code of 1830; French Criminal Code of 1810, among others), as secondary, with emphasis for the Brazilians, Portuguese and Latin American authors.

¹ "The Brazilian Criminal Code of 1830", in Archivo Judiciario, vol. XV, Rio de Janeiro, 1930. Thót was a professor at the Universidad Nacional de La Plata, Argentina.