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Liberated Africans With Rights?

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present in its own complexity rather than on the basis of European or American references. Overall, the book offers valuable insights to reflect upon the history of prisons in colonial environments. Konaté's view on prison architecture provides elements for changing the way in which we approach colonial legal systems, particularly for those scholars used to wearing Western lenses. In her book,

researchers working on the history of colonial prisons will find methodological guidelines to perceive prison architecture as a tool of imperial domination, whether in Africa or not, as well as to formulate comparative studies between different empires. ■

Bruno Lima

Liberated Africans With Rights?*

Africanos livres: a abolição do tráfico de escravos no Brasil is a contribution to the increasingly complex and diverse historiography on slavery. Resulting from more than twenty years of research and originally defended in 2002 as a doctoral thesis in history at the University of Waterloo (Canada), Beatriz Mamigonian's book is an unprecedented effort to understand the life and the ambiguous legal status of liberated Africans, i.e., those who could not be considered slaves due to the fact that they were imported after the official prohibition of the transatlantic slave trade in Brazil.

Basing her work on a rich and varied set of sources, Mamigonian narrates the history of the slave trade's abolition in Brazil through the lenses of distinct imperial powers – notably Portugal, England and the early Brazilian empire – and a wide range of historical actors: ministers, ambassadors, politicians, judges, public officials, slave owners, and, as the *history from below* claims, subaltern agents such as liberated Africans. Over ten chapters (and more than 600 pages), the book revolves around three different axes: (1) the British campaign for the prohibition of the Atlantic slave trade (carried out through diplomatic channels as well as military pressure); (2) the conflicts over the meaning and enforcement of the Brazilian Law of 1831 (the first national act against the slave trade); and

(3) the regulation of labor relations that involved liberated Africans (challenging the conventional limits between slave and free labor).

By choosing law as the guiding thread of her book and referring to multiple normativities to give her narrative chronological order and unity, Mamigonian provides the reader with an enormous legal framework to examine the different normative orders competing for jurisdiction in the South Atlantic. On one level, there are Portugal and England's bilateral treaties that determined the legality of enslaved Africans' importation (chapter 1) before Brazilian Independence in 1822. On another level, after 1822 historical actors faced the dilemmas of an emerging normative order. These actors had to deal with previous treaties and conventions but were unable to pass new legislation to prohibit the slave trade and punish smugglers (chapter 2). In this sense, the Law of 1831 comes from a long and intricate history of treaties and conventions between Portugal and England and it would be a misconception to isolate it as an exclusive product of the emerging Brazilian empire (chapters 3 and 4).

After an analysis of the foreign relations between England and Brazil regarding the legal status of liberated Africans, likely to be of great interest to scholars of international legal history (chapter 5),

* BEATRIZ MAMIGONIAN, *Africanos livres: a abolição do tráfico de escravos no Brasil*, São Paulo: Companhia das Letras 2017, 625 p., ISBN 978-85-359-2933-1

Mamigonian's book is structured along a sort of legal timeline in order to follow the interpretations and effects of the Law of 1831 until the end of Black slavery in Brazil in 1888. She discusses the legislative debates that resulted in the Law of 1850, which enforced the previous but ineffective prohibition of 1831 (chapters 6 and 7); the decree of 1853, which established objective conditions for definitive emancipation (chapter 8); the decree of 1864, which finally liberated Africans that were seized while being smuggled but deprived of their free status (chapter 9); and at the end of the book, Mamigonian explores the validity of procedural evidence in freedom claims and the Law of the Free Womb of 1871, a legal reform of great impact within Brazilian society (chapter 10).

Given the importance that the semantics of law and normative knowledge assume within the historiography of slavery, this book offers the opportunity to reflect on methodological questions and the current dialogue between social and legal history. Let us begin with the way Mamigonian understands law. She takes for granted that liberated Africans »had rights« (120), were »aware of their right to emancipation« (162), and demonstrated »awareness of their right to freedom justified by the illegal importation« (21). There are dozens of passages in which Mamigonian maintains that there was »the right of new Africans to freedom« (27). But, one may wonder, did the Brazilian Empire have any legal obligation to guarantee freedom to smuggled Africans? The question, of course, is not simple to answer, but one may argue that maybe it did not. Although Mamigonian presents the Treaty of 1826 and the Law of 1831, neither of them enforced or conferred rights to Africans seized in illegal trade. The normative content of both the Treaty and the Law referred strictly to the conditions, effects, and punishments related to the prohibition of the slave trade, and did not mention anything about granting rights to natural persons lacking legal personality and civil capacity. Therefore, the terms »African rights« (429) or »liberated African protection legislation« (232), used by Mamigonian, may have been used in the political rhetoric of the press, but

did certainly not appear in the multinormative cosmos of the Portuguese and Brazilian legal tradition, at least not until the end of the first half of the 19th century. In this regard, another definition proposed by Jake Richards seems more precise. He argues that liberated Africans had no rights but rather »unguaranteed entitlements to make claims about *status* [...] and about *possible futures*«. ¹ In short, Richards asks scholars not to conflate rights and the expectations of rights, or to treat the aspirational legal status as if it were a *de facto* legal status. In this sense, Mamigonian seems to reify the law and to commit a legal anachronism by projecting legal categories developed through doctrine or partially accepted by jurisprudence half a century later back to an earlier historical context.

For example, Mamigonian misguidedly applies the Portuguese royal decree of 1818 to the situation in post-1822 Brazil despite the fact that, in newly independent Brazil, this law carried no jurisdiction. Even if the sources indicate interpretative disputes, shaped by political interests, a careful analysis of Brazilian law and constitutionalism shows that the Portuguese royal decree could have been completely outdated after 1822. Mamigonian interprets the decree's fourteen-year period of obligatory service as a kind of acquired right that the Africans rescued from the post-1822 slave trade ought to have used in order to plead for freedom. This is basically conferring a right from a provision that appeared in law only in 1853. It is also worth noting that through the eclectic combination of normative forces as if they were equivalent, Mamigonian reifies and essentializes 19th-century multinormativity. In saying that »Africans would be considered ›free‹ in 1834, and no longer ›liberated‹ as in 1818« (96), she erroneously equates the normative force of a ministerial warning (1834) to that of a royal decree (1818), even if the two belonged to different empires.

Last but not the least, it is important to highlight the role of former slave and Black lawyer Luiz Gama (1830–1882) in the book. As is well known, Gama played a leading role in instrumentalizing the Law of 1831 to emancipate smuggled Africans. Over time, Gama became the main lawyer of free-

1 JAKE RICHARDS, *Anti-Slave-Trade Law, ›Liberated Africans‹ and the State in the South Atlantic World, c. 1839–1852*, in: *Past & Present* 241,1 (2018) 179–219, 218.

dom suits throughout the 19th-century Brazilian empire, whether due to his unprecedented victories in the courts or to the original translation of a legal doctrine on manumissions that he gradually developed. Not only does Gama play a merely decorative role in Mamigonian's book, he is also described as a *rábula* (435), which in today's parlance would mean a kind of paralegal, a label that was applied to Gama only after his death, clearly with racist overtones. In Mamigonian's book, Gama is thus deprived of what made him a political actor of the utmost importance in the courts of the empire: his work as a lawyer (as he was always referred to during his professional life after 1869). Mamigonian's discussion of the case of the African Caetano may serve as an example to illustrate this distortion. According to Mamigonian, Gama was Caetano's guardian (435) and filed a freedom lawsuit on his behalf. However, it turns out that this

was not a freedom suit but a *habeas-corpus*, and, far from being his legal guardian, Gama was the imprisoned African's lawyer. Perhaps Mamigonian did not consult the original sources of the trial. She seems to have only superficially read the dense legal study that Gama wrote after losing the Caetano case in court, known as one of the most important legal theses about the abolition of the slave trade published in Brazilian history. The Caetano case would be a single careless slip if analogous misreadings of legal material – and sometimes even of the historiography – were not abundant in the book. Nevertheless, be it because of the extensive research offered or the problematic legal interpretation, *Africanos livres* is an important reference for those who want to grapple with Brazilian legal history of the 19th century. ■

Christoph Resch

Vertragsgeschichte mit Charles Dickens*

Mit dem Titel »Liberalizing Contracts« deutet Anat Rosenberg bereits den wissenschaftlichen Anspruch ihres Buches an. Sie nimmt sich vor, die englische Vertragsgeschichte des viktorianischen Zeitalters von deren (wissenschafts-)historischem Ballast zu befreien. Insbesondere will sie zeigen, dass der liberale Atomismus nicht, wie dies vielfach angenommen worden sei, breite kulturelle Resonanz erfahren habe. Prägend sei vielmehr ein relationaler Liberalismus gewesen, der – anders als sein atomistisches Pendant – nicht das Vertragsversprechen des Einzelnen und dessen Willen in den Vordergrund stelle, sondern von den sich daraus ergebenden, dauernden wechselseitigen Beziehungen ausgehe.

In der These, der atomistische Individualismus des Vertragsrechts sei auch ökonomisch, politisch und ideologisch stark rezipiert worden, sieht die Autorin ein Hauptnarrativ der Vertragsgeschichte der viktorianischen Zeit. Dieses Narrativ sei von Albert Venn Dicey begründet und durch die Geschichtsschreibung nie in Frage gestellt worden; und zwar selbst nicht von Autoren, die als Triebfedern der Vertragsgeschichte des 19. Jh. andere Faktoren auszumachen suchten als den Liberalismus jener Zeit (46 ff.). Ferner versucht sie darzulegen, dass im 19. Jh. Ständegesellschaft und Vertragsgesellschaft, bzw. deren gedankliche Grundlagen, nicht im Verhältnis des alternativen Entweder-Oder gestanden hätten, sondern in einem

* ANAT ROSENBERG, *Liberalizing Contracts. Nineteenth Century Promises Through Literature, Law and History*, London: Routledge 2018, 263 S., ISBN 978-1-138-92370-6