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The Crime of Illegal Enslavement and the Precariousness of Freedom in Nineteenth-Century Brazil

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In April 1849, in the southern Brazilian city of Porto Alegre, public prosecutor Antonio Pedro Francisco Pinho filed charges against Manoel Pereira Tavares de Mello e Albuquerque for the crime of reducing to slavery the *parda* Porfíria and her two sons, Lino and Leopoldino, aged eight and four respectively.[1] The case, in the form of a "*sumário crime*" (summary criminal procedure), was based on Article 179 of the Brazilian Criminal Code, which punished with three to nine years of imprisonment and a fine those found guilty of "reducing to slavery a free person who is in possession of his liberty."[2] Slavery in Brazil coexisted with a sizable free population of African descent, a result of historically high rates of manumission. After independence from Portugal in 1822, the constitution

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[1] "Pardo" was a racial classification that stood between "Branco" (White) and "Preto" (Black) in nineteenth-century Brazil, applying to people of mixed race, either enslaved or free. Public Archives of the State of Rio Grande do Sul (APERS), Acervo Judiciário, Comarca de Porto Alegre, Sub-Fundo 2a Vara Cível e Crime, Ano 1849, processo n. 3618, réu Manoel José Tavares de Mello e Albuquerque, vítimas Porfíria (parda), Lino e Leopoldino.

[2] Brazil. Law of December 16, 1830. Manda executar o Código Criminal do Império. *Coleção de Leis do Império do Brasil – 1830*, v. 1, p. 1, p. 142.

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deemed all free and freed people born in Brazil, regardless of color, Brazilian citizens.[3] Years later, lawmakers sought to protect free people from enslavement by targeting the practice in the Criminal Code of 1830. As the case of Porfíria and her two sons demonstrates, the enforcement of the measure evoked legal and political challenges.

In many ways, the case of Porfíria and her two sons can be seen as a manumission transaction gone wrong. Some time before the criminal case was filed, the three had been the objects of a transaction between Albuquerque and their former master, Joaquim Álvares de Oliveira. Oliveira had received two enslaved persons in exchange for Porfíria and her sons; Albuquerque apparently wanted to marry the woman to his brick foreman in order to keep him at his job. In her testimony, Porfíria alleged that Oliveira had given her a letter of manumission at the time of the exchange, and this was confirmed by one of the witnesses. The defendant Albuquerque, however, denied this allegation, presenting documents to show that Porfíria's manumission was conditional on the payment of a certain sum by her future husband. Witnesses for the case were questioned to clarify Porfíria's status and condition, and she conceded under questioning that she had all along been "under the dominion and captivity" of Albuquerque until she fled for fear of being sold.[4] In filing a criminal case, the judge deemed her free and a victim of illegal enslavement.

The case of Porfíria was by no means exceptional. In the catalog of nineteenth-century criminal cases related to slavery held in the Public Archives of Rio Grande do Sul, sixty-eight cases relate to accusations of "reducing a free person to slavery" based on Article 179 of the Criminal Code.[5] The uncertainty of Porfíria's status was not unique either, and a sizable number of the criminal proceedings as well as many civil actions involved disputes over the status of the person in question. Significant archival documentation exists on the enslavement of free people. And yet, although historians have recently drawn some attention to the subject, it nonetheless remains a neglected topic in the study of Brazilian criminal justice in the nineteenth century.[6]

[3] Even though basic civil rights were granted to all Brazilian citizens, there were many restrictions on freedpeople's political rights; they could not, for example, serve as candidates or participate in second-round elections. See K. Grinberg, *A Black Jurist in a Slave Society*, chapter 3.

[4] G. Sá, *O crime*. [5] B. Pessi and G. Souza e Silva, eds., *Documentos*.

[6] J. Freitas, "Slavery and Social Life"; S. Chalhoub, "The Precariousness of Freedom" and *A Força da escravidão*; K. Grinberg, "Re-enslavement, Rights and Justice"; G. Sá, *O crime*.

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Some of the most innovative works in the field of Atlantic slavery in recent years focus on the frontiers of enslavement. First, attention was given to geographic frontiers. Since colonial times, even before abolition appeared on the horizon, individuals who sought freedom made use of frontiers; they served native Indians as well as enslaved Africans and their descendants. The benefits of entering foreign territory could compensate for the risky journey, because it was a way to put oneself far from the reach and grip of masters and local authorities. The transit of people through frontiers not only gave rise to a transnational runaway movement but also created, from at least the early eighteenth century forward, an array of diplomatic incidents, given that requests for repatriation were exchanged and limits had to be negotiated.[7] During the Independence Wars and the movement for slave emancipation in the Americas, however, the transit of slaves through frontiers gained a new status: state formation meant the creation of elaborate legal and diplomatic protocols to guarantee free soil and slave soil. The Brazilian Empire was one of the most powerful American states forged in part to defend slavery.[8]

Besides geographic frontiers, historians have lately turned their attention to the conceptual frontiers of enslavement – that is, to the changes in what was considered legal and legitimate bondage. Studies of legal cases have made it clear that, in different places and in varying circumstances, the illegal enslavement of certain groups was questioned long before the nineteenth-century movement for the abolition of the slave trade and slavery in the Americas.[9] A closer analysis of freedom lawsuits in Brazil has allowed historians to identify the circumstances that favored or allowed (re)enslavement and to consider the relationship of enslavement to the physical and social vulnerability of its victims, as well as the institutional response to particular cases.

Working within this historiographical framework, with the intention of furthering the discussion about the precariousness of freedom in nineteenth-century Brazil, we will consider here how cases that involved the enslavement of free people were criminalized and brought to court in

[7] F. Gomes, "A 'Safe Haven'"; F. Gomes and R. Acevedo Marin, "Reconfigurações coloniais"; M. Almeida and S. Ortelli, "Atravesando fronteras"; J. Landers, "Spanish Sanctuary"; A. Ferrer, "Haiti, Free Soil, and Antislavery"; R. Scott and J. Hébrard, *Freedom Papers*.

[8] K. Grinberg, "Fronteiras, escravidão e Liberdade."

[9] S. Peabody and K. Grinberg, *Free Soil*; S. Lara, "O espírito"; F. Pinheiro, "Em defesa da liberdade"; M. Candido, *An African Slaving Port*.

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Brazil throughout the nineteenth century. The cases give an overview of the patterns of enslavement and the varying applications of Article 179 of the Criminal Code. We have divided the cases into three groups, according to the circumstances of enslavement: Africans who were brought illegally after the 1831 ban on the Atlantic trade (along with their descendants); freedpersons who lived in vulnerable conditions; and, lastly, free people of African descent or freedpersons who were kidnapped and/or sold as slaves. Although the number of potential victims of enslavement from illegal trafficking or from ploys of re-enslavement was much greater than the number of people subjected to abductions, these latter cases were brought to justice more often. The most notorious of these were cases involving free people who were physically abducted on the border with Uruguay and sold as slaves in Rio Grande do Sul. Our hypothesis is that the distorted relationship among the number of occurrences, the number of cases filed, and their outcomes points to political choices that influenced the application of Article 179 of the Criminal Code and the law of November 7, 1831, that prohibited the Atlantic slave trade.

THE CRIMINAL CODE OF 1830 AND THE CRIME OF REDUCING A FREE PERSON TO SLAVERY

The Brazilian Criminal Code of 1830 was seen at the time as an important step toward the modernization of criminal law. Codification was a crucial initiative for a newly independent country that aspired to position itself within the so-called civilized nations. The deputies and senators responsible for drafting the Code took into consideration two bills prepared by José Clemente Pereira and Bernardo Pereira de Vasconcelos, elements of civil codes and statutes from other countries, and debates held in Parliament in 1830.[10]

The bill presented by Deputy Bernardo Pereira de Vasconcelos included an article against the enslavement of the "free man, who is in possession of his freedom," proposing a sentence of imprisonment with forced labor for a period of five to twenty years.[11] This was something new, as the Philippine Code, the Portuguese legislation in force in Brazil during the

[10] M. Dantas, "Dos statutes" and "Introdução."

[11] "Art. 152 Reducing to slavery the free man who is in possession of his freedom will be punished with the penalty of the galleys for five to twenty years. And if the unjust captivity has been of longer duration, the penalty will always exceed a third of that plus the corresponding fine." B. Pereira de Vasconcellos, "Projeto do Código Criminal," p. 101.

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colonial period, did not have a specific provision for the crime of enslaving free people. Indeed, the opposite was the case: legislation at the time allowed for the possibility of holding individuals in captivity if a master wished to revoke manumission granted to former slaves or questioned whether they should live as free people. These cases were regulated by the Philippine Ordinances under the heading "Of Gifts and Manumission That Can Be Revoked Because of Ingratitude," which applied to freedpersons.[12] Interestingly, here, re-enslavement was not only legally possible but also based on the premise that enslavement was the natural condition of Africans and their descendants, rendering their freedom always temporary and questionable. All the same, this heading of the Philippine Ordinances applied only to those who had been enslaved, not to just anyone.[13]

Although the Philippine Ordinances sanctioned these instances of re-enslavement, even prior to 1830 there were cases of enslavement of free people that were considered illegal. At least three situations could lead to this: the enslavement of the descendants of Indigenous people (in many cases, the children of Indigenous mothers and Africans or descendants of African fathers), which had been illegal since 1680;[14] the enslavement of children who were born free, meaning the sons and daughters (who often did not even know they were free) of free women; and disregard for the charters (*alvarás*) of 1761 and 1773, which prohibited bringing enslaved Africans into the Kingdom of Portugal. Although this last prohibition referred specifically to the Kingdom, there are indications that it was enforced in the African colonies as well.[15] These three types of offenses led to judicial inquiries. In her analysis of cases of re-enslavement in the cities of Mariana (Minas Gerais, Brazil) and Lisbon from 1720 to 1819, Fernanda Domingos Pinheiro found fifty-four cases that addressed illegal captivity in Mariana alone.[16] In contrast with the prosecutions against illegal enslavement after 1830, however, these earlier instances were civil cases, not criminal. Although it was possible for someone to contest their

[12] C. Mendes de Almeida, "Código Filipino," Book IV, Heading 63.

[13] A. Russell-Wood, *Escravos e libertos*, p. 48; S. Lara, *Fragmentos setecentistas*; E. Paiva, "Revendications de droits."

[14] In 1680, the Portuguese Crown promulgated a decree, based on a previous decision in 1609, establishing the illegality of the enslavement of natives. The order was reiterated in 1755, when the so-called Law of Liberty reinforced the full freedom of the natives, considering them vassals of the king of Portugal as any others. Portugal, "Lei de 6 de junho de 1755."

[15] L. Silva, "Esperança de liberdade"; C. N. Silva and K. Grinberg, "Soil Free from Slaves."

[16] F. D. Pinheiro, "Em defesa da liberdade."

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illegal enslavement through freedom suits, the practice of enslavement itself was not considered a punishable crime. Thus, before 1830, the only consequence for a slaveholder was the loss of his or her alleged property.

By the time the Criminal Code of the Brazilian Empire was being discussed, the context had changed radically: the lines between slavery and freedom were being redrawn as the country prepared for the abolition of the slave trade. Theoretically, as newly enslaved Africans could no longer be brought into the country, new slaves would come only from natural reproduction. Article 7 in Vasconcelos' bill was intended to guarantee the freedom of those who were born free, and we cannot assume that it was meant to protect the newly arrived Africans from enslavement.[17]

It is interesting to note that the final version of the article reverses the premise of earlier legislation, which presumed that enslavement was the natural state of Afro-descendants in Brazil. By making it a crime against individual liberty "to reduce to slavery a free person who is in possession of his freedom"[18] – and thus placing such an action in the same category as undue arrest[19] – the bill treated enslavement not only as an illegal act but as a violation of the fundamental rights of personhood, which were as inherent in Afro-descendant people as they were in anyone else.

According to Monica Dantas, Vasconcelos probably drew inspiration from the Livingston Code, the Criminal Code proposed in Louisiana in the 1820s.[20] Indeed, Article 452 of the Louisiana Code states: "If the offense be committed against a free person for the purpose of detaining or

[17] Newly arrived Africans were generically termed "barbarians" by the members of this same legislature when discussing the law on leasing labor: "Art. 7: The contract maintained by the present law cannot be celebrated, under any pretext whatsoever, with the barbarian Africans, except for those who currently exist in Brazil." Brazil, "Law of September 13, 1830."

[18] "Art. 179. To reduce a free person to slavery who is in possession of his freedom. Penalties – imprisonment for three to nine years and a fine, corresponding to a third of the time; however, the time of imprisonment will never be less than one third of the time of unjust captivity." Brazil, "Law of December 16, 1830."

[19] The crime of enslaving free persons was listed among the "private crimes" in the Criminal Code and was treated as a "crime of public action" in the Code of Criminal Procedure of 1832 (Article 31, par. 1). As a crime that should be judged according to regular criminal procedures, it was technically the jury, presided over by the judge, who had to decide whether to incriminate the defendant and initiate proceedings. The jury was made up of citizens who were classified as "electors" (citizens born free with higher incomes than mere "voters"), and the judge was a civil servant trained in law and appointed by the emperor. J. R. L. Lopes, *O direito*, pp. 268–269.

[20] Monica Dantas has linked the crime of insurrection (Articles 113 to 115 of the Brazilian Criminal Code) to the legislation of certain states in the United States, including Virginia and South Carolina, suggesting that the connection came from Brazilian legislators

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disposing of him as a slave, knowing such person to be free, the punishment shall be a fine of not less than five hundred dollars nor more than five thousand dollars, and imprisonment at hard labor, not less than two nor more than four years."[21]

There is, however, a significant difference in wording between the two Codes. In the proposed Louisiana Code, enslavement was illegal if the perpetrator was aware of the freedom of his victim (which, in a way, always allowed for the defense to claim that the act was based on ignorance of someone's status), even in cases when the person was living under someone's dominion. In the Brazilian case, the situation was different. First, it did not matter whether or not the perpetrator had information about the victim's freedom. Second, enslavement was only criminalized if the victim was living as a free person. The terminology here is particularly important, since it defined the circumstances of the crime and made the assertion of the "possession of freedom" central to legal arguments in lawsuits about enslavement in Brazil. The possession of freedom was the condition that separated illegal from legal enslavement and would serve throughout the nineteenth century to determine whether captives could claim legal protection.

THE PROHIBITION OF TRAFFICKING AFRICANS AND THE EXPANSION OF ILLEGAL ENSLAVEMENT

The law of November 7, 1831, which aimed to abolish the international slave trade to Brazil, referred to Article 179 of the Criminal Code for prosecution of those accused of trafficking. In other words, legislators chose to charge those involved in the financing, the transportation, and the arrival of Africans, as well as those who purchased newly arrived Africans, with the crime of reducing a free person to slavery.[22] This interpretation of the law extended the protection afforded by the provisions of Article 179 to newly arrived Africans, whose "possession of

reading a French copy of the penal code prepared for Louisiana in the 1820s by Edward Livingston (1833), which was never instated. See M. Dantas, "Introdução."

[21] E. Livingston, *A System of Penal Law*, book II, title 19, section II, article 452.

[22] "Importers of slaves in Brazil will incur the corporal punishment of article one hundred and seventy-nine of the Criminal Code, imposed on those who reduce to slavery free persons, and pay a fine of two hundred thousand reis per head of each of the imported slaves, in addition to paying the costs of re-export to any part of Africa; re-export, which the Government will make effective as soon as possible, working with the African authorities to grant them asylum. The offenders will answer each one for himself, and for all." Brazil, "Law of November 7, 1831."

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freedom" at the time of enslavement was impossible to determine. A decree of April 1832 regulated the procedures, specifying that traffickers should be tried in criminal court, while the status of Africans should be addressed as a civil matter.[23] This asymmetrical treatment of criminals and victims often led to confusion because the focus on a victim's status (which, as a general rule, was uncertain) tended to divert attention away from the circumstances of the crime and to minimize the possibilities of punishment.

The law of 1831 became known in Brazil as legislation "para inglês ver" (for the English to see), an expression that, while highlighting British pressure to abolish the slave trade, came to imply in popular usage that the Brazilian government had never intended to apply it. In the last decade, however, research has shown that the uses and meanings of this law varied widely in the nearly sixty years between its adoption in 1831 and the abolition of slavery in 1888.[24] Despite attempts by the Brazilian government to enforce the law, particularly between 1831 and 1834, the smuggling of enslaved Africans resumed and slowly increased in volume, giving political strength to groups advocating amnesty and impunity for those involved. Between the early 1830s and the passage of the second law abolishing the slave trade in 1850, at least 780,000 Africans were smuggled into the country and held illegally in captivity, a status which was then extended to their children.[25]

Rio Grande do Sul, although not the site of frequent clandestine landings, was nonetheless an area with significant illegal enslavement. Most likely, the labor supply for the *charqueadas* (dried meat plants), the cattle ranches, and the towns was met through the internal slave trade between provinces. Tracing the actions of the authorities responsible for repressing the illegal trade and the enslavement of free persons in the province brings to light contradictions and variations that existed throughout the country: repression and collusion coexisted with compliance with guidelines from Rio de Janeiro as well as with attempts to challenge those same guidelines in the courts.

A slave landing on the coast of Tramandaí, in Rio Grande do Sul in April 1852, is a good example of varying legal strategies involving

[23] Brazil, "Decree of April 12, 1832."

[24] K. Grinberg and B. Mamigonian, "Para Inglês Ver?"; K. Grinberg, "Slavery, Manumission and the Law"; E. Azevedo, *O direito dos escravos*; B. Mamigonian, "O estado nacional" and *Africanos livres*; S. Chalhoub, *A força da escravidão*.

[25] M. Florentino, *Em costas negras*; T. Parron, *A política da escravidão*; B. Mamigonian, *Africanos livres*.

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"illegal" Africans, strategies in which slaveowners and authorities colluded in order to deflect prosecutorial attempts to enforce the regulations. After having crossed the Atlantic, the ship ran aground in the town of Conceição do Arroio, a district of Santo Antônio da Patrulha, in the province of Rio Grande do Sul. Hundreds of Africans – later estimated between 200 and 500 – were quickly unloaded from the ship. Provincial authorities tried to capture the Africans, but most were claimed by coastal residents, and many were then sent "up the mountains."[26] Twenty Africans who were taken into custody by the authorities were emancipated in July and handed over to the Santa Casa de Misericordia in Porto Alegre to fulfill their obligation to provide services as "liberated Africans."[27] They had been seized separately, in small groups. Three African boys found in Lombas (a town in the Viamão district) as part of a mission ordered by the vice-president of the province on April 27 were most likely among this group. Authorities rescued the three newly arrived Africans and also arrested Nicolau dos Santos Guterres and José Geraldo de Godoy, who owned the lands where the boys were found.[28]

Historians, long focused on the fate of enslaved people and assuming that the 1831 law was only *para inglês ver*, have rarely examined the repressive actions of the local authorities or judicial responses to criminal accusations involving illegal enslavement. The cases concerning the Africans who arrived in Tramandaí in 1852 illustrate some of the contradictory measures enacted against such suspects. The two owners of the lands where the three African boys were found, when interrogated by the acting chief of police, claimed that they were unaware of the landing on the Tramandaí coast and that they did not know the people who brought the Africans to the area and offered them for sale. The two did not claim possession or ownership over the Africans, and the authorities did not ask them about how the captives had been acquired. The witnesses who were

[26] P. R. S. Moreira, "Boçais e malungos"; V. P. Oliveira, *De Manoel Congo*; D. Barcellos et al., *Comunidade negra*.

[27] "Liberated Africans" is a legal category that defined enslaved Africans who were found on slave ships caught by authorities from countries such as Britain, Portugal, Spain, the USA, and Brazil during the repression of the illegal slave trade. Although these individuals were legally considered free, their fates were decided by international commissions and local authorities. Most of them went through a long process before being granted autonomy and freedom. In Brazil, for example, liberated Africans had to work for at least fourteen. B. G. Mamigonian, *Africanos livres*.

[28] APERS, Fundo Comarca de Porto Alegre, Vara Cível e Crime, processo 3511, 1852. Digitalized and transcribed by Gabriela Barretto de Sá.

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called to testify could not appear, and the few who spoke about the case said little, simply confirming that the Africans were found on the defendants' lands. Although the prosecutor characterized the accused men's actions as a crime against "art. 179 of the Criminal Code, pursuant to the Law of November 7, 1831," within ten days the interim judge and police chief, Antonio Ladislau de Figueiredo Rocha, dismissed the case for lack of evidence and ordered the two defendants' release.[29]

Ten years later, the rescue of Manoel Congo, another African man who had landed in Tramandaí, again placed in question the willingness of the Imperial justice system to punish those involved in illegal enslavement. According to Manoel Congo's account from 1861, someone captured him after the landing, kept him in hiding, and sold him "up the mountains" after a few months. Aware that he was free, he fled from his first master and headed to the Santa Casa of Porto Alegre. But on the way he encountered Captain José Joaquim de Paula, who dissuaded him from going to the authorities, promising him lands in exchange for his labor. Yet a complaint brought against Paula many years later, when Manoel was discovered and rescued from Paula's property in São Leopoldo, made clear that this promise had been a deception. Not only had been Manoel been baptized as a slave despite one vicar's refusal to cooperate, but around 1854, in an attempt to forge documents that would legitimize Manoel Congo's enslavement, Paula had falsified a document attesting that he (Paula) had purchased Manuel from another supposed "owner," promising Manoel freedom after eight years of labor.[30] Seized in 1861, Manoel was sent to the Santa Casa de Misericórdia in Porto Alegre where, according to the records, he worked as a "liberated African." Paula, in turn, was accused of an offense against Articles 167 and 265 of the Criminal Code, which addressed deceit and the use of falsified documentation to exploit a person. In addition to not being accused of the crime of reducing a free person to slavery, Paula was able to appeal his eventual conviction on charges of deceit, which suggests that he may have gone unpunished, despite the fact that the case had garnered significant publicity.[31]

During the preliminary police inquiry, Deputy Gaspar Silveira Martins addressed the Provincial Assembly to criticize the police chief's handling

[29] APERS, Fundo Comarca de Porto Alegre, Vara Cível e Crime, file n. 3511, 1852, p. 31.
[30] V. Oliveira, *De Manoel Congo*, pp. 39–43, 75–78.
[31] APERS, Fundo Comarca de Porto Alegre, Vara Cível e Crime, processo 3511, 1852, p. 111v.

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of the case, specifically alleging that the chief had not ordered the arrest of José Joaquim de Paula or insisted on obtaining evidence to corroborate Paula's version of the facts. Martins' fellow assembly members, however, defended the provincial authorities, based largely on their belief in Captain Paula's good faith. The principle of good faith was used regularly to exculpate those who owned Africans illegally. Silveira Martins responded by proposing to shift the burden of proof from the enslaved to the enslaver: Paula should prove that he had acquired the African legally (by donation, inheritance, exchange, purchase, or other legal means of property transfer) and show that he did not know, and could not have known, that it was an illegal sale: "Paula claims in his defense that he purchased this African from one Agostinho Antonio Leal, and if this is true, he should prove the purchase with a rightful title, and prove further that Agostinho could legally possess this slave."[32] Silveira Martins insisted that the document of manumission was falsified, that there was no record of the master having paid the regular sale tax, and that these facts, together with the testimony of the African, should serve as evidence of the crime. He even accused the chief of police of criminal prevarication, insinuating that he was protecting the captain because he was a person of power and a second-tier elector in Brazil's two-tier electoral system.

Gaspar Silveira Martins had received his law degree from São Paulo in 1856 and had been a municipal judge in Rio de Janeiro since 1859, in addition to being provincial deputy from Rio Grande do Sul. He came from a family of large landowners on the border region with Uruguay, "of the *farroupilha* liberal tradition," and in the late 1860s was involved in the Radical Club of Rio de Janeiro, one of the first republican associations in the country.[33] The young lawyer and deputy, like other radical lawyers and judges, interpreted the 1831 law to mean that Manoel Congo should have been free since landing in Brazil, and therefore Captain José Joaquim de Paula had reduced a free person to slavery. The Ministry of Justice, however, only recognized the right to freedom of Africans rescued at sea or soon after landing on the mainland, thus informally guaranteeing the right to property acquired by smuggling and protecting the holders of illegal slaves from the criminalization of their acts.[34]

A supposed "threat to the public order" was another justification often used to avoid the emancipation of Africans who were being held in illegal

[32] Speech by Silveira Martins on September 30, 1862, cited in H. Piccolo, ed., *Coletânea de discursos*, pp. 614–615.
[33] M. Rossato, "Relações de poder," pp. 93–94. [34] B. Mamigonian, *Africanos livres*.

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captivity. In 1868, other Africans from the 1852 Tramandaí landing turned to Luiz Ferreira Maciel Pinheiro, the public prosecutor of Santo Antônio da Patrulha, to plead for freedom. In Conceição do Arroio, an investigation based on the procedures indicated in the Decree of 1832 was led by the judge, who prepared to "liberate a large number of people from slavery." The putative owners intervened and instigated a debate about the value of the victims' testimony. They complained that the Africans in question "had high stakes in the outcome"; therefore, their depositions could not be taken into account. Prosecutor Maciel Pinheiro, in turn, accused "the masters of these and of other Africans" of being criminals who sought to block the actions of the judiciary. But the voice of the putative owners was more powerful than the judicial proceedings, and Pinheiro, under pressure from the provincial president to terminate the case, resigned.[35] A young graduate from Paraíba who was trained in Recife Law School and had been a colleague of the abolitionist poet Castro Alves, Pinheiro was one of the new voices in the legal field who challenged the policy of collusion in cases of illegal enslavement.

RE-ENSLAVEMENT OF FREEDPERSONS

Although it is practically impossible to quantify, there is no doubt that the practice of re-enslaving freedpersons was a frequent occurrence in nineteenth-century Brazil. Several factors contributed to this. First, it was possible until 1871 to legally revert manumission. Although the procedure was complex – the only motive contemplated in the Philippine Code was ingratitude – and the number of cases decreased significantly in the second half of the century, this masters' prerogative might have enabled other ways of retaining dominion over freedpersons. Secondly, conditional manumission was very common and implied a "legal limbo" that put people's freedom in peril. Did the freedperson start to enjoy the benefits of freedom at the time of manumission or when certain conditions were filled? This uncertainty was particularly damaging to freedwomen, since it cast doubt on the status of their children. Finally, the precariousness of life in freedom, which forced freedpersons to seek protection from higher-status patrons and made it difficult for

[35] Luiz Ferreira Maciel Pinheiro to Antônio da Costa Pinto e Silva, September 29, 1868; Luiz Ferreira Maciel Pinheiro to Antônio da Costa Pinto e Silva, October 6, 1868. Letters from the Historic Archive of Rio Grande do Sul (AHRS), Justiça, Promotor Público, maço 42 (Sto Antônio da Patrulha). The case was analyzed by P. R. S. Moreira, "Um promotor."

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them to differentiate themselves from slaves, also facilitated re-enslavement. In general, those victims who managed to get their cases to the courts did so through civil suits, which were denominated *ações de liberdade* when victims had actually been re-enslaved and *ações de manutenção de liberdade* when they simply ran the risk of re-enslavement. These cases rarely generated criminal proceedings.

The criminal case involving Porfíria in 1849, with which we began this chapter, stands out, shedding light not only on the mechanisms of re-enslavement but also on how the judicial system addressed these crimes. In suits like Porfíria's, the central legal question was the definition of "possession of freedom," and the jurists involved were far from reaching a consensus on the matter.

Manoel Pereira Tavares de Mello e Albuquerque called himself the "master and possessor" of Porfíria and her sons; he sought to demonstrate that she lived under his rule and that she was considered a slave in Porto Alegre, so much so that she had collected alms to pay for her manumission. The procedural discussion and the examination of witnesses revolved around whether Porfíria and her children actually possessed their freedom or not. The police chief, who was also a municipal judge, dismissed the complaint against Albuquerque, having concluded that Porfíria and her children were not in "possession of freedom," which implied that they were not under the protection of Article 179 of the Criminal Code. Moreover, the chief/judge determined that "the right of the mother and her children is not a given," meaning that he doubted their status as free persons, which led him to send Porfíria to a civil court so that her status could be determined before the criminal investigation moved forward.

All of this revealed that even the legal definition of possession was complicated at this time. The variety of meanings conferred on the notion extended back to Portuguese medieval law; until at least the middle of the thirteenth century, the words "possession" and "property" were designated by a single expression, *iur* (from the Latin *ius*), which shows that they were imprecise and confusable terms. In this context, it was possible for a person to obtain ownership of a thing, be it a farm or a person, after possessing it, even if only for a few years. Over time, the concepts of possession and property came to be dissociated, thus increasing the time it took for a possession to be considered property. Yet, even though the right of ownership of some property was contested, possession was still guaranteed to the possessor in the absence of contrary proof, as jurist Correia Telles emphasized in 1846:

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Title XIII: Rights and obligations resulting from possession
The possessor is presumed to be master of the thing until it is proven otherwise. If no one else proves that this thing is his own, the possessor is not required to show the title of his possession. If all have the same rights, it is the possessor who has the best condition of all. Any holder or possessor must be protected by Justice against any violence that is intended to be done.[36]

This last sentence illustrates how difficult it was to deal legally with cases based on Article 179. For example, how were the courts to handle cases of conditional freedom – quasi-possession, in legal terms – which was the liminal status of many freedpersons at that time?

Pinho, the public prosecutor in Porfíria's case, thus tried to recast the issue when he appealed the decision to the Municipal Court. Doubting the validity of the documents presented by the defendant and insisting on Porfíria's right to freedom, he directed the legal debate to the moment when manumission took effect. He attached to the records a letter of conditional manumission given to Porfíria and her children by their first master, which had been ignored when they were sold. Pinho claimed that Albuquerque could not "deny them this possession, because freedom is not a material object to be held on to, but rather, it is a right acquired by the person to whom it is transmitted or granted, from the moment in which it is granted." Pinho thus argued that Porfíria and her children possessed civil liberty even though they did not have the material possession of the manumission letter. He reasoned that freedom was granted in the act of manumission and did not depend on the realization of autonomy or the end of the alleged master's domain over Porfíria. In the end, the case was decided against Porfíria, since the judge in charge of the case rejected the prosecutor's appeal.

This question of when a freedperson would be considered legally free occupied multiple jurists and even resulted in a discussion at the Brazilian Bar Institute (Instituto dos Advogados Brasileiros – IAB) in 1857, eight years after Porfíria's case was first opened. As noted earlier, this was a particularly sensitive issue for women, since their status determined that of their children. In the case discussed at the IAB, manumission had been granted in a will, conditional on the provision of services after the death of the master. Jurist Teixeira de Freitas, then presiding the IAB, defended the minority position, according to which the freedperson would be considered free only after fulfilling the conditions, which implied that the children born in the interval between manumission and the fulfillment

[36] Proposed legal language from J. C. Telles, *Digesto português*, pp. 86–87.

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of the conditions would be born slaves. By contrast, for jurists Caetano Alberto Soares and Agostinho Marques Perdigão Malheiro, freedom was granted in the will, even though the freedperson would only enter into the full benefits of freedom when conditions were fulfilled. Under this interpretation, which was the official position adopted by the IAB, any children that the freedwomen gave birth to in that interval would be free. This decision preserved the principle of seigneurial will, so dear to defenders of property, while simultaneously opening a space for the interpretation of freedom as a natural right and for manumission as the restitution of freedom, principles that would guide gradual emancipation in Brazil.[37]

KIDNAPPING AND THE ENSLAVEMENT OF FREE PEOPLE

The original focus of Article 179 of the 1830 Criminal Code was the enslavement of persons already recognized as free, whose cases would not have raised the same doubts regarding admissibility as did cases involving conditionally manumitted persons or newly arrived Africans. Still, the proceedings reveal the limits to criminalizing the common practice of illegal enslavement, which intensified around 1850 with the closing of the Atlantic slave trade and the rise of the price of slaves.[38]

Although the enslavement of free people has not been systematically investigated, scattered studies give evidence of the profile of the victims, who were most often children or young people of African origin, especially boys, or Afro-descendant women of childbearing age.[39] In Rio Grande do Sul, the border with Uruguay was decisive: most of the victims were kidnapped from "beyond the border," an expression used by Silmei de Sant'Ana Petiz to describe escapes to Uruguay and Argentina in the first half of the century.[40] This geographic detail turned cases of illegal enslavement in the province into diplomatic issues, adding a new layer of complexity to the analysis of how authorities reacted when faced with calls to crack down on these activities.

Although enslaved individuals were being smuggled across borders long before the criminalization of illegal enslavement, the act took on new significance with the independence movements and the gradual

[37] L. Nequete, *O escravo na jurisprudência*, pp. 141–163; E. Pena, *Pajens da casa imperial*, pp. 71–144; T. Hoshino, "Entre o espírito da lei," pp. 228–258.
[38] M. Florentino, "Sobre minas"; R. Salles, *E o Vale*.
[39] J. Bieber Freitas, "Slavery and Social Life"; M. Carvalho, *Liberdade*, pp. 242–244; J. Caratti, *O solo da liberdade*, pp. 205–213; A. Pedroza, *Desventuras de Hypolita*.
[40] S. Petiz, *Buscando a liberdade*.

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abolition of slavery in the former Spanish colonies of South America, which included the enactment of legislation forbidding the slave trade and declaring freedom of the womb. Illegal kidnappings could then be considered, in fact, an expansion of the frontiers of enslavement, much like that identified by Joseph Miller in Angola, in which people were illegally enslaved outside areas where enslavement, even if not always legal, was accepted by local authorities. The profile of the victims – predominantly children – also coincides with Benjamin Lawrance's characterization of nineteenth-century illegal trafficking in Central and West Africa.[41]

In this context, the border between Uruguay and Brazil constituted a region particularly prone to illegal enslavement. Fully integrated to the agrarian economy of Rio Grande do Sul, it was an area of extensive land holdings and low population density. Most landowners in the north and northeast of Uruguay were Brazilian, and in several of these locations slaves made up one-third of the total population, similar to the figures in Rio Grande do Sul at that time.[42] Especially in the 1840s, the troubled situation in Uruguay and the political instability of the province of Rio Grande do Sul contributed significantly to the increase in the number of people crossing the borders. The Farroupilha Revolution (1835–1845), the Gaucho separatist movement against the Brazilian Empire, and the Guerra Grande (1839–1851), a civil war between the Blancos and Colorados in Uruguay, provoked significant social unrest in the border region, with military incursions on both sides, cattle and horse theft, and the appropriation of slaves to enlist as troops. The tensions in the border area became even more heightened when, desperate for men for its defensive troops, the Colorado government of Montevideo, of which Brazil was an ally, proclaimed the abolition of slavery in 1842. The Blanco government of Cerrito followed with a proclamation in 1846. Aggravated further in the early 1850s with the end of the Atlantic slave trade to Brazil, these factors contributed to a situation which made the Afro-descendants north of the Negro River easy prey to a new form of human trafficking organized on the border of Brazil and Uruguay that lasted from the mid-1840s until at least the early 1870s.[43]

[41] J. Miller, *Way of Death*; M. Candido, *An African Slaving Port*; B. Lawrance, *Amistad's Orphans*.

[42] E. Palermo, "Los afro-fronterizos," pp. 190–191; A. Borucki et al., *Esclavitud y trabajo*, pp. 114–163.

[43] R. P. de Lima, *A nefanda pirataria*; J. Caratti, *O solo da liberdade*; E. Palermo, "Secuestros y tráfico"; K. Monsma and V. Fernandes, "Fragile Liberty"; K. Grinberg, "The Two Enslavements of Rufina"; K. Grinberg, "Illegal Enslavement."

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It is difficult to ascertain how many of the free people who were victims of kidnapping managed to report the crimes. Probably few. At any rate, unlike the cases of newly arrived Africans and re-enslaved freedpersons, evidence suggests that the Imperial authorities began to seriously address the enslavement of persons recognized as free as of 1850. The problem, clearly not contained to Rio Grande do Sul, was raised in the reports of the Ministry of Foreign Affairs. Indeed, the trafficking of free Uruguayans went all the way to Rio de Janeiro.[44] The frontiers of enslavement also expanded into the Brazilian interior, and in 1869 the minister of justice monitored three cases of illegal enslavement of free persons: two involving minors in Bahia and Pernambuco, the third involving a family of Africans in Minas Gerais.[45]

At a moment when Brazil was suspected of turning a blind eye to the illegal trafficking of slaves, cases involving other countries were taken even more seriously, as the Brazilian government was concerned about negative international repercussions. The abduction of the minor Faustina, analyzed in detail by Jonatas Caratti, is a good example of this situation. In February 1853, the president of the province of Rio Grande do Sul asked the chief of police of the southern city of Pelotas to investigate the whereabouts of Faustina, who "as a free person, was seized by a Brazilian and sold as a slave in that town."[46] A few days later, the Uruguayan authorities demanded the extradition of Faustina, arguing that she was Uruguayan and free. The complaint seems to have had an effect: in an attempt to obtain more information about Faustina, her father, having informed the authorities of her daughter's abduction, was interrogated in Melo, Uruguay; her baptismal record was also located and sent to Brazil. While this was happening, Loureiro, the judge in charge of the case, expedited the order to arrest Manoel Marques Noronha, accused of the crime, on the "presumption of guilt." Noronha was found, arrested, and questioned. The judge concluded that he was in fact guilty, finding that the complaints and documents were sufficient evidence to prove the girl's free status.

Faustina was released and taken home to Uruguay, but the case did not stop there: because of the seriousness of the accusation, the Noronha trial

[44] R. P. de Lima, "Negros uruguaios."

[45] J. Sinimbu, *Relatório da Repartição dos Negócios Estrangeiros* (1860); Brazilian National Archive (AN), "Redução de pessoas livres à escravidão," Relatório da 3a seção [Min. Justiça], April 30, 1870, IJ6 510, fls. 17–17v.

[46] J. Caratti, *O solo da liberdade*, pp. 388 forward.

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was brought to a jury, made up of the "good citizens" of Pelotas. Noronha defended himself, arguing that he was suffering political persecution. He further alleged good faith, accusing Maria Duarte Nobre, from whom he had bought Faustina, of being the real culprit. The jury accepted the defendant's arguments and acquitted him, and by September 1854 he was already free from prison. Maria Duarte Nobre was convicted of the crime; however, as she had never been arrested and was not imprisoned during the trial, she remained free. In the end, nobody paid for the crime of Faustina's enslavement. Her release, however, allowed the Brazilian authorities to demonstrate their commitment to suppressing the illegal slave trade and preventing illegal enslavement. Two years later, Manoel Marques Noronha was again accused of kidnapping; this time the victim was twelve-year-old *pardo* Firmino. Of the many cases of kidnapping and illegal enslavement of free people on the border of Brazil and Uruguay, Noronha was the only person convicted. He was condemned and sentenced to three years of prison and the payment of a fine, but, as he brought his case to the Court of Appeals in Rio de Janeiro, it is not known whether he actually ever served his prison sentence.

In this same year, the African Rufina and her four children had a fate similar to Faustina's. Abducted in Tacuarembó, Uruguay in 1854, they were taken to Brazil and sold there. Somehow, Rufina managed to report the crime to the Brazilian police. It became a lawsuit that caught the attention of journalists and the Uruguayan and British consuls in Porto Alegre. At the time, British Foreign Minister Lord Palmerston wrote to Brazil's minister of foreign affairs, Paulino José Soares de Souza, requesting energetic measures against this "new form of trafficking" taking place on Brazilian borders. Rufina was not only freed but also reunited with her family and returned to Uruguay. None of the kidnappers, however, were convicted. They alleged that they were trying to recover escaped slaves and were unaware of the free or freed status of those kidnapped, and the jury acquitted them all.[47]

The conclusion here is somewhat obvious: because of the diplomatic attention they received, cases of enslavement from "beyond the border" reached the courts more frequently than other cases. In the early 1850s, the Brazilian government was forced to take a stand, and it thus pressed the local courts to prosecute captors who imported slaves into Brazilian

[47] Public Archive of the State of Rio Grande do Sul, Processo criminal 3368, maço 88, Bagé, 1855. This case is discussed in J. Caratti, *O solo da Liberdade*; R. P. de Lima, *A nefanda pirataria*; and K. Grinberg, "The Two Enslavements of Rufina."

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territory.[48] But already in 1868, during the Paraguayan War, when the Brazilian military depended largely on the mobilization of the Gaucho troops, the minister of justice decreased the pressure on slaveowners on the southern border, stating that the alleged owners of anyone brought from Uruguay to Brazil and illegally enslaved should only be prosecuted under Article 179 if they refused to admit the victim's right to freedom.[49] Nonetheless, the central government did not support the practices of enslavement by masters on the borders in Rio Grande do Sul in the same way or on the same scale, as it overlooked cases involving the illegal enslavement of freedpeople or turned a blind eye to the large-scale enslavement of newly arrived Africans.

CONCLUSION

In late 1851 and early 1852, a major popular revolt against a civil registration law erupted in the backlands of Northeast Brazil. The people who protested against the new law had one recurring concern: to protect their freedom, as they understood that the mandatory civil registration was actually a strategy to enslave free people of African descent after the prohibition of the Atlantic slave trade. They probably feared that civil registration would make official the threats of illegal enslavement they observed in their daily lives.[50] Hardened and cynical from decades of forced military recruitment and severe physical punishment equivalent to that of slaves, they did not trust local authorities to generate vital records or to secure their status.[51]

Although there were no reports of this type of manifestation in southern Brazil, it is plausible that the free population there would have had the same fears. The general picture outlined in this chapter, although preliminary, suggests that the practice of illegal enslavement was recurrent and was met with a variety of legal responses, depending on the victims and the

[48] See, for example, "Resolução de 10 de maio de 1856 – A respeito dos escravos que entram no Império, vindos de países estrangeiros," in J. P. J. da Silva Caroatá, ed., *Imperiais Resoluções*, pp. 599–601.

[49] See Brazil, Ministry of Justice, "Notice of the Ministry of Justice to the President of the Province of Rio Grande do Sul, May 6, 1868."

[50] S. Chalhoub, "The Precariousness of Freedom," p. 429; G. Palacios, "Revoltas camponesas"; M. Loveman, "Blinded Like a State."

[51] The mobilization resulted in a reversal of plans by the Imperial government, which canceled the decree of the civil registry and also of the census. M. L. F. Oliveira, "Resistência popular"; M. Loveman, "Blinded Like a State"; S. Chalhoub, *A força da escravidão*, pp. 13–31; P. Beattie, *Punishment in Paradise*.

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context. Of the 2,341 criminal cases listed in the catalog of crimes related to slavery in Rio Grande do Sul in the years between 1763 and 1888, sixty-eight, or about 3 percent, were related to reducing free persons to slavery.[52] Thirty-five of those cases refer to illegally enslaved persons, and twenty-nine of those were "beyond the border," confirming that it was the politically and diplomatically charged cases that were most criminalized. Almost all such cases took place in the 1850s and 1860s. Of the sixty-eight cases, the outcome of five was inconclusive (because of trials records with no final verdict, missing pages, etc.). In twelve cases, the decision called for the release of the enslaved victims. None of the defendants in these cases were punished, even though the determination of freedom constituted, in practice, an acknowledgment of the crime. In forty-eight of the cases, the accusation against the slavers was dismissed or they were acquitted. In only three of the sixty-eight cases were the defendants convicted under Article 179 of the Criminal Code, and in two of those it is not known whether they were actually ever imprisoned. In one case, from 1856, the defendant appealed to the Court of Appeals of Rio de Janeiro, and the final verdict is not known; in the other, which occurred in Encruzilhada do Sul in 1878, the defendants were convicted but then released when the guilty verdict was dismissed. Apparently only Joaquim Fernandez Maia, who was prosecuted for beating and enslaving a nine-year-old, João, was sentenced to prison based on Articles 179 and 201 of the Criminal Code. It is important to note that the three cases that led to convictions referred to free or freed people enslaved by a third party.[53]

The early 1870s brought about changes. It had already long been impossible to legally enslave Africans, and after 1871, with the establishment of Free Womb Law, the enslavement of newborn children was prohibited as well. The law of 1871 also created a mandatory slave registry that, for the first time, would generate a record of who was held in slavery and by whom, definitively closing the borders of enslavement. This mechanism, however, also had the role of legalizing the slave status

[52] B. Pessi and G. Souza e Silva, eds., *Documentos*.

[53] The cases are: Pelotas, n. 791, 1856; Cachoeira do Sul, no. 3059, 1860; Encruzilhada do Sul, no. 1644, 1878, all from the Public Archive of Rio Grande do Sul. In Cachoeira do Sul, José Bonifácio Machado, Manoel Peixoto da Silveira, and Joaquim Antonio de Borba Junior were sentenced to imprisonment for the enslavement of Margarida, who had a letter of manumission. Although the conviction rate is quite low in these cases, it is important to note that the number of cases leading to convictions in Imperial Brazil in general was not high. See T. Flory, *Judge and Jury*, p. 125.

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of those Africans who had been smuggled into Brazil or otherwise illegally enslaved.[54] It is true that among the stipulations of the Free Womb Law and subsequent decrees was a prohibition on registering as a slave a person who had been conditionally manumitted, which subjected anyone who did so to the penalties provided for in Article 179.[55] Of the twenty-four cases in Rio Grande do Sul between 1763 and 1888 that involved conditionally freed persons, twelve of them were brought to court precisely in this period, in the 1870s and 1880s. Extending protection to conditionally freed persons implied that they counted, at least for the legislators, as free people in possession of their freedom. However, this was not the understanding that prevailed in the courts. Most commentators of the Criminal Code, when discussing the application of Article 179, indicate that by 1860 the possession of freedom had become a mandatory requirement in cases that would be tried by the jury.[56] This indicates that the judiciary came to limit the criminalization of illegal enslavement to only those cases where the victim was undeniably free. This approach had important consequences: as they were not viewed as criminal offenses, cases of illegal enslavement would be brought to court as civil suits (*ações de liberdade*), thus increasing the load on the civil courts. Moreover, the enslavers, even if they lost the slaves, went unpunished.

The existence of court proceedings refutes the conclusion that there was a general collusion between the authorities of the judiciary, legislative, and executive branches – at all levels of power – with illegal enslavement. The cases analyzed here suggest that the prosecutors played an important role in identifying the mechanisms of illegal enslavement and defending the victims. Yet they were overrun by judges who declared the cases inadmissible, by juries that acquitted the defendants, and by superior courts that decided in favor of property even if it was illegally acquired. It is clear that criminals were rarely brought to trial even in the 1880s, when engaged lawyers and judges succeeded in expanding the chances for liberation through freedom lawsuits. In practice, the Brazilian judiciary

[54] B. Mamigonian, "O direito de ser africano livre" and "O estado nacional."

[55] See the Law of September 28, 1871, article 8; Decree n. 4835 from December 1, 1871, arts. 33 and 34; Decree n. 5135 from November 13, 1872, art. 87; and the notice from September 22, 1876. Brasil, *Coleção das Leis do Império do Brasil* (1880).

[56] These are recurrently cited in the judgments of the Relação de Rio de Janeiro no. 3446 of September 11, 1860, and no. 3514 of March 12, 1861 (held in Brazil's National Archives), according to which, among the questions for the jury, one should inquire whether the defendant reduced a free person to slavery and whether the victim was in possession of his freedom. See, for example, Filgueiras Júnior (1876, 204) and Luiz Alves Júnior (1883, 87).

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allowed for the liberation of individuals through civil cases and made it difficult, if not impossible, to pursue any criminal conviction. After all, the liberation of particular individuals through freedom lawsuits had a impact (albeit limited) on the dynamics of nineteenth-century slavery in Brazil, but this would not be true of criminal offenses. If the enslavers were punished for the crime of illegal enslavement, the potential impact would have been much greater and could even have jeopardized the very survival of master–slave relations, especially after the end of the Atlantic slave trade. Faced with this situation, by guaranteeing impunity to the enslavers at each new phase of the relations among slaves, masters, and the Imperial government, the Brazilian judiciary supported a pact that maintained slavery.

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