Shared Atlantic legal culture: the case of a freedom suit in Benguela

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ABSTRACT
Through an examination of arguments used in an 1866 freedom suit initiated in Benguela, this article highlights the existence of a shared legal culture in the Lusophone Atlantic. Through in-depth analysis of this case, I show how common institutions of the *ius commune* acquired specific meanings in the pro-slavery jurisdictions of Benguela and Brazil. I specifically focus on how legal categories of property law shaped the judicial language of freedom in the Lusophone Atlantic. While drawing on other nineteenth-century freedom suits, legal doctrines, and secondary literature, this analysis of a Benguela suit sheds light upon the existence of a shared Atlantic legal culture and upon a re-signification of legal categories in colonial contexts.

In July 1866, the Curator of Slaves and Freedpersons, Henrique dos Santos Silva, appeared before the ordinary court (*juízo ordinário*) of the Benguela district and stated that it had come to his notice that Luiza Cordeiro Bimbi had illegally enslaved two freedwomen, Bibiana Catumbo and Thereza Caleço, in the Catumbela Council (*Concelho da Catumbela*). He also claimed that those freedwomen were the former enslaved persons of a “free black,” Joaquim Quinpunduca, and that they had been enslaved by Luiza with the help of other individuals. The curator thus filed a lawsuit on the grounds of the Decree of 14 December 1854 and Luiza was summoned to “prove the slave status she attributes to the freedwomen by presenting a certificate of registration.”

Benguela, where Bibiana and Thereza filed their lawsuit, was the major exporting port during the transatlantic slave trade. It is estimated that more than 700,000 enslaved persons were exported from the port of Benguela, thus playing a central role within the Atlantic economic system. After the 1850s, as Brazil stopped importing slaves, Benguela’s participation in the Atlantic economy underwent a downturn. However, the intense decades of the transatlantic slave trade profoundly impacted the region, forging its economic, political, and social structures. These characteristics continued to affect the decades following the end of the transatlantic trade, and for many years Benguela was a society marked by slavery and illegal practices of enslavement.
In this context of ubiquitous risk of enslavement, Bibiana and Thereza’s case is far from unprecedented. Lawsuits concerning someone’s status as free or enslaved still fill the stacks of the Benguela District Court (Tribunal da Comarca de Benguela) today. Analogously, lawsuits also pervade the Brazilian archives. These lawsuits stored in Benguela and Brazil’s archives are not just comparable in terms of content. On both sides of the Atlantic, lawyers and other involved parties mobilized a similar set of norms, legal categories, and arguments.

Atlantic History shows that there was an intense circulation of cultural practices, people, and assets in the South Atlantic. Within these remarkable levels of mobility and circulation, the trade of persons and other merchandise was especially striking. Interestingly, this circulation of goods across the Atlantic surpassed the economic dimension, as pointed out by scholars who argue that the region was also a platform for significant social and cultural integration. Nevertheless, these studies rarely note that the law was also part of this shared cultural environment.

The analysis of Bibiana and Thereza’s case and its comparison with similar lawsuits filed in Brazil discloses a shared legal culture in the Lusophone Atlantic. As they traveled one side of the ocean to the other, people took with them their own understandings of law and justice. Among Atlantic societies, they also spread the idea that turning to courts would allow them to evade illegal enslavement and to assert their rights.

In this article, I use Bibiana and Thereza’s case to examine circum-Atlantic legal culture. In structuring the analysis, certain aspects of this case will be considered within a broader legal context, making connections with similar discussions raised by jurists, politicians, and non-lettered people. It is worth mentioning that cases filed within Portuguese (and later, Brazilian) secular courts on both sides of the Atlantic indicate that, in this specific institutional setting, conflicts were translated into a common referential framework: the ius commune. Notably, secular courts and legal arguments grounded on the ius commune were not the only available mechanisms for people resisting enslavement to assert their claims for freedom. However, as archives show, people often appealed to them and recognized this institutional path as a way to secure their freedom. In fact, the ius commune was so pervasive that even conflicts that were resolved under other institutions might have been tinged to some degree by its norms, categories, and legal principles.

Three aspects of Bibiana and Thereza’s case structure the narrative of this article. The first concerns the role of possession and social recognition as determinants of people’s status in Lusophone jurisdictions. The second addresses the debates around registration and their impact on people’s status in a broader context of gradual emancipation and implementation of liberal reforms. The final aspect refers to the criminalization of enslavement in Lusophone jurisdictions. These three issues raise awareness of the existence of a shared legal culture in the Lusophone Atlantic. From the similarities identified among judicial cases filed on both sides of the Ocean, one can conclude that, despite local peculiarities, a shared legal culture conditioned the judicial recognition of a person’s legal status.

**Claims for freedom and ius commune in the Lusophone Atlantic**

According to the Decree of 30 December 1852, the kingdoms of Angola, Benguela, and São Tomé e Príncipe formed a judicial district composed of three sub districts: Luanda, Benguela, and São Tomé. Benguela comprised the Novo Redondo jurisdiction and the entire Southern territory, along with the districts of Benguela, Mossâmedes, and their dependencies.
Still, the courts created in judicial districts were not the only institutional frameworks available for claims of freedom in the Lusophone Atlantic. Throughout the Portuguese Empire, and later also in Brazil, there were many different institutional mechanisms that could be used by people who were confronting enslavement.

In colonial Portuguese America, indigenous populations also used the Portuguese legal structure to plead for freedom and to defend themselves against enslavement. In the eighteenth century, indigenous people turned to the Junta das Missões to file their freedom suits (autos de liberdade). While African slaves and their descendants resorted primarily to ordinary judges, the indigenous population could use special jurisdictional structures, such as “special judges for indigenous freedom suits (juízes privativos das causas de liberdade dos índios).”

In Angola, in addition to the Portuguese jurisdictional system, the right to freedom was also discussed in the Court of Mucanos (Tribunal de Mucanos), an institution originated from African normative structures. In these courts, African authorities would initially settle the disputes. By the mid-eighteenth century, however, the Portuguese Capitães Mores started to play a pivotal role in the trials. In this regard, another possible way to legally discuss the right to freedom in Angola was to directly appeal to the Capitães Mores or to Catholic priests.

Others preferred to resort to Governors. For example, one of the códices of Angola’s National Archives abound with petitions to the General Governor of Benguela concerning the definition of people’s legal status and denouncements of illegal enslavement. The códice refers to the years 1826–1829, but it is very plausible to assume that similar petitions were made before and after this time frame. It is not possible to determine what led people to choose one jurisdiction over another. They might have taken into consideration either their previous knowledge regarding the authority’s willingness to decide in their favor, languages issues, or the financial costs of the claim.

In addition to the broad array of African and Portuguese authorities that heard freedom claims, the Portuguese judicial system offered protection to those Africans recognized as Portuguese vassals. According to the treaties signed by Portugal, vassals and their subjects could not be enslaved because they were considered Christians. However, the pressures imposed by the transatlantic slave trade bolstered the enslavement of Africans regarded as Portuguese vassals. In 1769, the Portuguese administration created the Interrogator of Freedom office (Inquisidor da Liberdade) to ascertain whether there were free people among the enslaved who were transported to Brazil. Judges of Freedom (juízes da liberdade) were also appointed to hear cases of “original freedom” (liberdade originária). Despite being an institutional mechanism for defense of freedom, these judicial disputes also reinforced Portuguese colonial authority in African territory.

In secular courts – either in colonial Portuguese America or in Portuguese Africa – judges, lawyers, and parties would most likely use ius commune institutions to put forward legal arguments. Let’s consider, for instance, the freedom suits filed in Mariana (in Portuguese America) and Lisbon between 1720 and 1819, and that were analyzed by Pinheiro. Although access to courts was a relatively common practice in both Mariana and Lisbon, the judicial strategies adopted by enslaved and freedpersons in each of these jurisdictions differed. In Mariana, freedom suits were primarily based on the Philippine Ordinances, on the existence of manumission titles, or on possession of freedom. On the other hand, in Lisbon, the Alvarès of 1761 and of 1773 served as their
The latter Alvará in particular circulated among the enslaved in Paraíba (Portuguese America), who interpreted it as a document that would grant them freedom. Thus, for many centuries, the legal framework of the *ius commune* enabled the possibility of filing freedom suits which were appropriated and mobilized by historical agents in diverse colonial societies. In these contexts, the norms and legal categories of the *ius commune* were challenged by the large-scale practices of African and indigenous enslavement, forcing those institutions to reshape and acquire new meanings.

By the end of the eighteenth century and in the nineteenth century, this legal framework underwent important changes due to the abolition of indigenous slavery in Portuguese America (Law of 6 June 1755 and *Alvará* of 8 May 1758) and the abolition of African slavery in Portuguese metropolitan territory (*Alvarás* of 16 September 1761 and of 15 January 1773). Although Brazil became independent in 1822, the possibility of judicially discussing people’s legal statuses continued far into the nineteenth century.

But what was the *ius commune* and its legal architecture that enabled the enslaved and freedpersons to access courts in order to demand and protect their freedom? What is more, what were the grounds for their legal standing?

During colonialism, multiple normative systems overlapped throughout the Portuguese Empire. But Portuguese law primarily guided the judicial resolution of conflicts in secular colonial courts. Portuguese norms – even when they sought to address specific questions of African or colonial territories – were embedded in the broader doctrinal and referential framework of the *ius commune*. Around the fifteenth and eighteenth centuries, the *ius commune* structured Portuguese law, which was a highly doctrinal normative body that aimed to interpret legal texts from Justinian’s Roman law. Primarily an elite group of legal experts created the *ius commune* as well as the categories that would guide conflict resolution. They publicized and organized this normative body in the form of legal texts – the so-called “legal doctrine.” Thus, between the sixteenth and eighteenth centuries, peninsular European law was a set of intellectual constructions designed by jurists who reinforced normativity as they structured legal categories. Hence, far from merely describing the law, the *ius commune* jurists created it.

That said, it is important to observe that Lusophone jurists shared a relatively homogeneous legal education (most had studied at the University of Coimbra), and many held bureaucratic positions in colonial territories. The dominance of the legal system was such that, even after Brazilian independence, legal education and training were essentially based on the same legal texts, and the “Coimbra educational system” continued to dictate the canons of Brazilian law schools.

Therefore, as a result of this monopoly in legal training, it was very likely that a lawyer in Benguela or in Rio de Janeiro would have had very similar legal education and access to almost the same texts. These publications had a major role in shaping Lusophone jurists’ legal conceptions over general topics and matters specific to the law of slavery. These texts were also important in configuring and framing the interpretation of legal norms that would enable the legal standing of people resisting enslavement.

The use of the same texts on both sides of the Ocean attests to the circulation of legal knowledge in the Lusophone Atlantic. Though decidedly scholarly, these texts had a relevant social impact and their dissemination was possible, in part, because of their own structure. They were mostly written in the form of aphorisms and brief statements that...
expressed a norm, a style that facilitated their oral communication and memorization. Official documents and notaries then reproduced these norms through repeated formulas, enabling the absorption of legal knowledge into daily life. All these elements allowed people who challenged enslavement to deploy legal terms and give them renewed significance, thus building up a vernacular understanding of law, slavery, and freedom. In other words, in the everyday practice of Portuguese jurisdictions, the production of *ius commune* norms was not a solely intellectual activity restricted to jurists but a discourse available to and used by the general public.

More traditional and hegemonic approaches to *ius commune* history read it as an essentially European legal system that was exported or transplanted to other parts of the world during colonialism. Nevertheless, recent criticism observes that *ius commune* categories were in fact constructed through a complex interaction within Mediterranean societies, which would make it difficult to sustain that it was a purely European legal system.

In addition to those Mediterranean interactions, *ius commune* norms and categories were granted new meanings in Atlantic colonial societies, where they were re-signified as they interacted with historical agents, cultural practices, and local norms. Due to its continuous reconfiguration of meaning, this legal system endured for centuries and became the guiding framework for conflict resolution within Portuguese bureaucracy.

The *ius commune* allowed the court to discuss a person’s status as free or enslaved. Legal doctrines regularly addressed this possibility. An early example is the *Tratado da forma dos libellos* (1549), by Gregorio Martins Caminha. The book classified the different types of *libellos* as lawsuits in which one party claimed that someone was his slave, as lawsuits in which an enslaved person fought for freedom, and as lawsuits in which one party claimed someone to be his freedman (*liberto*).

Eighteenth- and nineteenth-century jurists also elaborated and justified an array of legal arguments that made it possible to claim for freedom at the courts. For example, according to Portuguese jurist Joaquim José Caetano Pereira e Sousa, a “plaintiff” was someone asking courts to adjudicate their claim to a right. In his view, enslaved persons could be plaintiffs. However, their right of action suffered some limitations: theoretically, they could only sue in court with the permission of their masters. Yet, in practice, on both sides of the Atlantic, enslaved persons resorted to courts even without their masters’ consent.

Another Portuguese jurist, José Homem Corrêa Telles, considered that the enslaved had no standing and, as such, could only be defendants in enslavement suits if they were living as free persons. Concerning freedom suits, he asserted the plaintiff was not in fact a slave, but a “free person who is treated as a slave,” and thus had standing to sue in court. In effect, Telles constructed a legal fiction according to which, in a freedom suit, the plaintiff was not really a slave, but a free person illegally enslaved.

One obligation that complicated enslaved persons’ right of action was the need to be represented by a curator in order to be party to a lawsuit. Thus, according to this legal construction, the enslaved had a right of action but could not exercise it by themselves. As in the case of Bibiana and Thereza, sometimes the curator himself would act as the plaintiffs’ lawyer. However, it was also common for the curator to name another person as the slave’s attorney.

A curator could be assigned independently of whether the person whose legal status was under discussion was living as a free person or as a slave at the time the lawsuit
was filed. In practical terms, assigning a curator to a free person implied a limitation on his right to action. In other types of lawsuits, only attorneys represented free persons. The courts would thus treat all the persons whose status was under deliberation as if they were legally slaves and assign them a curator as their representative.30

The legal justification for the existence and necessity of representation by a curator underwent modifications and re-signification over time. The *ius commune* considered slaves “miserable persons” and thus in need of legal assistance. Hence, the curator would act as the representative of these “miserable persons,” for they needed protection from the legal system.31

But liberal reforms in the eighteenth and nineteenth centuries gave new meanings to legal institutions of representation. Liberal legal systems were built on the basic assumption that individuals had subjective rights. Individuals, however, did not have the same ability to exercise these rights. Some of them were considered “incapable” and thus could not exercise their rights by themselves and needed a representative. Under this new paradigm, slaves – as well as minors and married women – were “incapable persons” and were required to have a curator to defend their rights in court.32

In nineteenth-century Angola, the obligation of representation by a curator was reinforced in the Decree of 30 December 1852. This norm established that in each district there would be a “Curator of the Poor Prisoners, the Slaves and the Freedpersons” (*Curador dos presos pobres, escravos e libertos*). The Province’s Governor would appoint the Curator, chosen from the most prestigious lawyers of the region.33

“... as slaves they were delivered”: determining possession and status

The freedom suit filed by Bibiana and Thereza began with the curator’s appointment and all the other required formalities. The judge summoned Luiza to contest the claims filed by the plaintiffs. Her attorney, Carlos Maria da Cunha Figueiredo, claimed that Joaquim Quin-punduca had been living together (*amancebado*) with a “black woman” named Manbella, who “belonged to” Luiza. Joaquin, however, beat Manbella so much that he ended up killing her. After Manbella’s death, some slaves that belonged to Joaquim died of smallpox. "Given the superstition of his country,” Joaquim believed that the cause of this outbreak had been Manbella’s murder. To avoid further smallpox deaths, Joaquim decided to speak to Luiza and offered her four cows and three slaves as recompense for Manbella’s soul. Luiza accepted the offer and they formalized the agreement before the Chief of the Council of Catumbela.34 Joaquim gave Luiza the three slaves – among whom were Bibiana and Thereza – and promised to deliver the cattle.

After explaining what happened, the lawyer then argued that this situation proved that Luiza had not enslaved Bibiana and Thereza, since “as slaves, they were delivered by the black Joaquim as payment [for their agreement].” That is, Bibiana and Thereza had been “recognized as slaves by the abovementioned black man, and not free.” In addition, the curator himself, in his initial petition, had referred to Bibiana and Thereza as “slaves who belonged to the black Joaquim.” In other words, the curator recognized and treated them as slaves. Finally, the lawyer argued that, if Bibiana and Thereza’s free statuses were proven, their enslavement should not be attributed to Luiza, but to Joaquim. It was Joaquim, and not Luiza, who had to be condemned under the terms of Article 40
of the Decree of 14 December 1854, which criminalized the holding of free persons as slaves.35

Luiza’s lawyer, however, did not present any document proving the registration of the supposed slaves, as determined by Article 5 of the Decree of 14 December 1854. Luiza sought to prove her legitimate property rights over Bibiana and Thereza not by presenting the register (which would function as a title deed) but by grounding her ownership claims on the social recognition of Bibiana and Thereza as slaves. They were considered Joaquim’s slaves and as such had been transferred to her. However, the question remained: what were the legal grounds of this argument in these circumstances?

Under the *ius commune*, besides material objects, rights and statuses were also considered as “things.” Therefore, norms and legal categories that regulated the relationships between persons and material things also applied to status definition. Since things were legally attainable through the exercise of possession, the continued and pacific exercise of possession over freedom in good faith could lead to the judicial recognition of free status (freedom by prescription).36

Although the *Philippine Ordinances* did not expressly note the possibility of acquiring freedom by possession, the issue emerged forcefully in doctrinal and judicial debates. In his *Practicarum observationum, sive decisionum Supremi Senatus Regni Lusitaniae* (1602–1604), Jorge de Cabeço presented a Lisbon *Casa da Suplicação* decision according to which, whenever the master abandoned his slave, the slave would gain free status if he “managed himself as a free person.”37

In 1621, Gabriel Pereira de Castro, in his *Decisiones Supremi eminentissimique Senatus Portugaliae*, analyzed another decision of the *Casa da Suplicação* in which judges recognized the option for an enslaved person to acquire freedom by prescription. This decision was premised upon Title 79, Book 4, of the *Philippine Ordinances*. However, this norm addressed prescription in general, not specifically freedom by prescription. Hence, doctrine and courts made extensive interpretations of the *Philippine Ordinances* to endorse the possibility of acquiring freedom by the exercise of possession and prescription.38

In *Decisiones Supremi Senatus Iustitiae Lusitaniae* (1660), Antônio de Sousa Macedo transcribed the *Casa da Suplicação* rule in the case of Blasij da Costa (whose status was under discussion) against Dona Antonia Pereira. According to this decision, a enslaved person who lived as a free one, in good faith and without interruption for twenty years, could acquire his freedom by prescription. Pereira had not exercised her dominion over Costa for more than thirty years. During those years, he functioned as a free man and worked as a merchant. The court also emphasized that when masters had not exercised their authority for a prolonged time, the slave was considered derelict and abandoned.39

Still on the issue of acquiring freedom by the exercise of possession, Melchior Phaebo transcribed, in his *Decisiones Senatus Regni Lusitaniae* (1616–1625), another decision issued by the Lisbon *Casa da Suplicação*. In the case of Pedro Simões against Beatís Ribeyra in 1582, the court ruled that being in possession of freedom for twenty years precluded any claim to judicially contest this status. The judges also stressed that a free person could never become enslaved by prescription. Also, in *Promptuarium juridicum* (1690), Bento Pereira wrote about the prohibition against the enslavement of free persons by possession and prescription.40

Hence, in theory, it was not legally possible to enslave a person through the exercise of possession. However, the analysis of Brazilian lawsuits and the case of Bibiana and Thereza
in Benguela indicate that the continued exercise of possessory acts over a person could ground the future judicial recognition of slave status and ownership rights.\textsuperscript{41} That is, in the daily practice of Lusophone jurisdictions, it was possible to enslave someone by the exercise of possessory acts and subsequently have ownership rights over that person sanctioned by courts.\textsuperscript{42}

For example, in 1865 – a year before the beginning of Bibiana and Thereza’s freedom suit – Angelica went before the municipal judge of Antonina, a city in Southern Brazil, arguing that her mother, Escolástica, had gained manumission from her former master. Thus, under the principle of “partus sequitur ventrem,” she and her descendants had been illegally enslaved and should be declared free. The notary then initiated a freedom suit so that they could have their claims heard. The defendant, João Antonio de Mello, contested the plaintiffs’ claim for freedom. One of the arguments raised by his lawyer was that Angelica and her descendants had always been under the dominion of Mello and had been always considered and treated as slaves “without anyone’s slightest objection.”\textsuperscript{43}

The judge then heard eleven witnesses. In their testimonies, the plaintiffs’ witnesses were extremely prejudicial towards their freedom claim. All but one of the witnesses stated that Angelica and her descendants had always been considered slaves and treated as such, and that, as slaves, they had always lived under the dominion of the defendant. The defendant’s witnesses corroborated that the plaintiffs had been living as slaves. In the end, the fact that the defendant had always been in possession of the plaintiffs was the decisive factor for the judge to decide against their freedom. In this Brazilian case, the exercise of possession over a group of people sustained the judicial declaration of their slave status.

Cases such as these occurred regularly.\textsuperscript{44} Although the Brazilian law forbade enslavement through the exercise of possession, in practice, the exercise of possessory acts had the potential to create a permanent situation of slavery. In a society where titles had no absolute probative force and where social recognition played a fundamental role in judicial discussions, enslavement by possession was a common practice.

On the other side of the Atlantic, Luiza claimed that Bibiana and Thereza were recognized as slaves and should thus be declared so by the courts. However, she lost the case as a result of the Decree of 14 December 1854, which required the registration of slaves. Unable to present such registration, Luiza’s lawyer mobilized the arguments of possession and social recognition, as they might have been still applicable appeals, even after the issuance of the aforementioned decree.\textsuperscript{45} Perhaps they would have been able to convince the judge in other circumstances, given the strong roots of possession in Lusophone legal culture. Knowing that she did not have a title to prove her ownership over Bibiana and Thereza, Luiza sought to claim possession of them taking advantage of a long legal tradition that made room for the judicial recognition of enslavement by possession.

**Registration, titles, and freedom: the Decree of 14 December 1854 in an Atlantic context**

As mentioned previously, the Decree of 14 December 1854, published by the Ministry of the Navy and Overseas (Ministério da Marinha e Ultramar), determined the mandatory registration of slaves. More specifically, all slaves in “Portuguese overseas domains” had to be registered within thirty days of the publication of the decree, and those not
registered would be considered freedpersons. Under these circumstances, courts were not meant to admit any freedom lawsuit without the presentation of certificates of registration.46

On 16 August 1866, judge (juiz de direito) Dias da Silva heard the parties in audience. He required Luiza to present the title that proved her possession of Bibiana and Thereza as slaves. Luiza then presented two documents to try to prove the legitimacy of her dominion over them. The first one was a written promise made by Joaquim that he would deliver to Luiza four cows and one slave. This promise was written on a letterhead document of Junta da Fazenda da Província de Angola, which the Chief of Catumbela Council had also signed. The second document was a certificate of a conciliation hearing, in which Joaquim had promised to deliver four cows and three slaves to Luiza, for he had caused Manbella’s death. The justice of the peace (juiz de paz), Joaquim Corrêa Bastos, had considered that Joaquim’s promise and the reason behind it were an “immorality,” but he eventually decided that the parties had to settle “according to their country’s own ways” and ratified the promise.47

After presenting these documents during the audience, Luiza insisted that Bibiana and Thereza now belonged to her because of the promise made by Joaquim, also noting that, at the time the promise was made, she did not know if they were registered. The judge then asked the curator who had informed him that the slaves were not registered, to which he replied that it had been Joaquim himself. To counter-argue Luiza’s possession claim, the curator then stressed the obligation of registry, which she had not presented.

At the end, the judge declared Bibiana and Thereza free since Luiza had not shown their certificates of registry. He grounded his decision on articles 1 and 4 of the Decree of 14 December 1854. He also ordered the expedition of their freedom documents and pointed out that Luiza had the right to sue Joaquim for what he owed her. Joaquim, on the other hand, was condemned according to the same Decree and taken to jail. Finally, the judge handed the case over to the Public Prosecutor’s Office (Ministério Público) to initiate criminal proceedings against Joaquim.

The Decree of 14 December 1854 was central to the judge’s decision. As we delve into its history, it is clear that this Decree was issued in a context of intense debates concerning the abolition of slavery throughout Atlantic societies, when many governments were developing strategies aimed towards the abolition of slavery.48 Thus, both the Portuguese Decree of 14 December 1854 and the Brazilian Law of the Free Womb (1871) are generally studied by historians within this framework. Both pieces of legislation sought to address abolitionist claims by implementing a process of gradual emancipation. This took place in a context within which several other legal possibilities could enable a process that would lead to the complete abolition of slavery, and when many political projects needed to be translated into legal language when transformed into written norms. In this scenario, both the Portuguese Decree of 14 December 1854 and the Brazilian Law of the Free Womb framed the topic of emancipation within the new legal discourses concerning property rights and dominion.

The Decree’s preamble sheds light on the legal and political reasons for the mandatory registry of slaves. It stated that there were many uncertainties concerning the extension of dominion rights in various Portuguese Overseas Provinces and, consequently, it was urgent to obviate these rights.49 Therefore, one of the reasons that allegedly led to the drafting of the Decree and to the subsequent obligation to register slaves was the putative
confusion and uncertainty about the extent of ownership rights in those provinces. This concern was not exclusive to Portuguese politicians and jurists, nor was it restricted to slave property, but was part of a broader debate about ownership rights, their identification, and protection.50

Since the late eighteenth century, with the rise of the so-called “legal enlightenment,” demands to reform the *ius commune* structures grew stronger. Such reforms aimed to ground legal orders on the idea of individuals with subjective rights.51 Legal relations between people and things would then presuppose that property was a subjective right. That is, property rights would be inherent to individuals. Ownership would no longer need to be effectively exercised to be judicially recognized. In the *ius commune*, “effectiveness” was the idea that guided the recognition of rights. This idea gave way to that of “individuality.”52

In this context, titles gained new meanings and functions. The idea that a title could generated ownership rights already existed in the *ius commune*. Nevertheless, the notion of a title was then quite broad, encompassing much more than a piece of paper. The idea of title was associated to the origin of the right, whether or not it was a transaction that generated a written document.53

Throughout the nineteenth century, the consolidation of capitalist economies and the increase in financial transactions were entangled with legal discourses of “security.” As noted in the preamble of the Decree of 14 December 1854, jurists and politicians defended that, in order for economies to develop, commercial transactions had to be more “certain” and “secure.” For this purpose, it would be paramount to identify owners with relative certainty. Titles – understood at this time in the strict sense of written documents – and registrations were viewed as the most appropriate mechanisms for promoting this alleged security.54

Processes of construction and consolidation of national states also marked the nineteenth century. Among the goals of these national construction projects were centralization of power, demarcation of borders, promotion of statistical surveys, and standardization of names, languages, and measures. In this context, emerging discourses among political and bureaucratic agents made the titling and registration of private property even more pressing.55

From a legal point of view, slaves were property just like any other good. Therefore, as in the case of land ownership, the declared obligation of ownership identification also fell upon slaves. In this regard, compulsory registration would also function as ownership titles over slave property and, as such, would be considered in judicial proceedings, as in the case of Bibiana and Thereza.56

Brazilian authorities adopted a similar solution to the problem of slave property “confusion.” On that margin of the Atlantic, gradual emancipation was translated into the legal language of property rights. For example, on September 28, 1871, the Brazilian government enacted Law 2,040 (Free Womb Law). Article 8 determined the “special registration” of all existing slaves in the Brazilian Empire. During the registration process, masters had to declare the slave’s name, sex, marital status, working abilities, and filiations. If the master did not register his slaves within a year after the end of the “special registration,” they would become free.57

Moreover, the Free Womb Law declared all babies born of slave mothers free. The mothers’ masters should also register their free children (*ingênuos*). Those who failed to
register would pay a fine and incur penalties for the crime of reducing a free person to slavery (article 179 of the Brazilian Criminal Code of 1830).

The Free Womb Law also served as a means for the Brazilian State to “observe” the slave population and its owners. During parliamentary debates that preceded the law, deputy João Manuel Pereira da Silva made explicit reference to the measures adopted by Portugal, claiming that the Portuguese registry enabled the government to acquire better knowledge of the enslaved in the African colonies. This information would later be useful in the process of gradual emancipation. Thus, mandatory registration in Brazil served to inform the State about the slave population with a view to gradual emancipation and, at the same time, issue titles to slave property, responding to a demand for identification of individual owners.

In Brazil, the mandatory special registration of slaves took place in 1872, leading to the regularization of illegally acquired slave property. In order to register slaves, it was not necessary to prove the origin of dominion. Ownership was declaratory, that is, all a supposed master had to do was go to a notary and declare that he had property over certain persons. This way, the notary would issue a certificate of registry without inquiring about the origin of the ownership right. This procedure led to the regularization of a large number of illegal slaves imported via transatlantic trade after its prohibition in 1831. Therefore, the mandatory register of 1872 enabled the extensive regularization of illegal slave property in Brazil.

For the case of Angola, I could not identify any research that analyzed how the mandatory registration of the Decree of 14 December 1854 took place. Consequently, it is still not possible to know if it also enabled a regularization process of illegal slave property. However, it should be noted that, as with the Brazilian Free Womb Law, the Decree of 14 December 1854 did not determine the need to prove the origin of slave property at the moment of registration. Thus, it is plausible to think that masters might have also used it to legitimize and consolidate illegal enslavements.

Before the mandatory special registration in 1872, long discussions about the validity of ownership titles had pervaded Brazilian freedom suits. What kinds of documents were considered ownership titles? What was the strength of these titles in the face of possessory situations? Who was legitimately allowed to produce these documents? These were some of the issues legally undefined at that time. Throughout the diverse judicial proceedings, parties presented various types of documents, hoping they would be considered by the judges as valid titles: baptismal certificates, sales contracts, private deeds, manumission letters, and documents produced by notaries, among others.

In each case, the strength and legitimacy of these documents were put under discussion. Certain lawyers argued that if the standards for determining a valid title were too rigid, the guarantee that the Constitution of the Empire gave to property would be ephemeral and ineffective. That is, guaranteeing rights of ownership depended on judges being flexible in recognizing documents as legitimate ownership titles.

After the 1872 mandatory special registration, however, these discussions declined, and Brazilian judges started considering the certificate of registration as the title of slave property par excellence. Masters who did not support their lawsuits with the certificates of registration of the supposed slaves had very little chance of winning the case.

Bibiana and Thereza’s case indicates that a similar process was likely to have happened in Benguela. It is possible that, prior to the Decree of 14 December 1854 and the
mandatory registration of slaves, judges in Angola also faced discussions about which documents should be considered valid ownership titles and proof of property rights. Due to the possible existence of this undefined legal status of ownership titles, Luiza’s lawyer tried to make up for the absence of a registration certificate by using other documents. He presented Joaquim’s promise and the conciliation hearing certificate in which Joaquim ratified the promise. Joaquim’s promise was on the letterhead document of the Junta da Fazenda da Província de Angola (a tax agency), which seems to have endowed the document with a sort of “official character.” In addition to that, the Chief of Catumbela Council had signed the promise, what might also indicate that Luiza and Joaquim were trying to enhance the document they produced. Last but not least, ratifying the promise at a court hearing could also have been a strategy for making it appear more authoritative.

It is thus likely that, before the Decree of 14 December 1854, there were legal debates on which specific documents would be judicially considered slaves’ ownership titles in Benguela. In this context, strategies concerning the production of documents – letterheads, signature of the Chief of the Council, and judicial ratification – could be decisive for winning a case. Accustomed to this, the lawyer may have tried to adopt such strategies even after the mandatory registration of slaves and the demand for certificates.

**Criminalizing enslavement**

In addition to the provisions concerning slaves’ registration, the article 40 of the Decree of 14 December 1854 determined that those who, in bad faith, kept free or freedpersons as slaves would be accused of false imprisonment (cárcere privado).

Indeed, article 330 of the 1852 Portuguese Penal Code established penalties for the crime of false imprisonment. It is noteworthy that the Decree made reference to this Article of the Code and not to Article 328, which prescribed the crime of subjecting a free person to captivity. Despite this choice made by legislators, in Bibiana and Thereza’s case Joaquim was charged with the crimes under articles 328 and 330 of the Portuguese Penal Code.

After the end of the civil proceeding that declared Bibiana and Thereza free, the Public Prosecutor filed a criminal case against Joaquim. When accepting the lawsuit, judge Antonio Eleutherio Dias da Silva stressed that Joaquim was in prison for giving Bibiana and Thereza to Luiza as slaves, and that he had for a long time kept them both in “his power as slaves.” The judge then heard the witnesses.

One of the witnesses, Pedro Ferreira d’Andrade, stated that Joaquim had kept Bibiana and Thereza as slaves in bad faith. After handing Bibiana and Thereza to Luiza, Joaquim had gone to the curator Henrique to denounce that they were actually free. In other words, he knew that they were freed women and still delivered them as slaves to Luiza. Hence, in his understanding, this attitude proved Joaquim’s bad faith in the case.

The judge also heard the testimony of curator Henrique. He attested that Joaquim had gone to his house to hire him as his lawyer in a case against Luiza. Joaquim explained that he wanted to sue Luiza to reclaim back two slaves that she had taken from him. Henrique then summoned Luiza to come to court and prove her right over the slaves. Luiza, however, refused to appear in court. Her attitude raised suspicions from Henrique, who asked Joaquim for more details on the case. It was only then that Joaquim mentioned
that Bibiana and Thereza were unregistered slaves. Since Henrique knew that the registration was mandatory, he decided to act according to his office as a curator and legally demand their freedom.

Joaquim, while detained, also gave his testimony. At the beginning of his hearing, Joaquim claimed that he did not speak Portuguese. The judge then appointed a translator to act on the case. With the help of the translator, Joaquim stated that he presumed that he was thirty years old. He also claimed to have been born in Catumbela, to be a current resident in Benguela, single, and a fisherman, stressing that he had never been in jail before. Concerning the criminal charges he was facing, he argued that he had bought one of the slaves from Leonardo, a bricklayer, and the other one from “a black man from Catumbela.” He also alleged that he had not registered the slaves because he was ignorant of the law. In addition, he stated that it was not true that he had informed the absence of registration to the curator. He also stated that it was false that he had the obligation to pay Luiza what she demanded.

After all testimony had been heard, the Public Prosecutor denounced Joaquim on the crimes of Articles 328 and 329 of the Penal Code. Article 328 prescribed a fine and condemned to prison those who kept a free person in captivity. Article 329 prescribed as a crime forcing someone to do or preventing someone from doing something by employing corporal offense. Atlantic legal experts heatedly debated Article 328, among them the Portuguese jurist Silva Ferrão, who commented on it in 1857. In interpreting this piece of legislation, he made constant references to Article 179 of the Brazilian Criminal Code of 1830 and to the Brazilian Law of 7 November 1831. The Criminal Code prescribed the crime of reducing a free person to captivity, and the Law of 1831 prohibited the importation of new slaves into Brazilian territory.

Article 179 of the Brazilian Criminal Code established the enslavement of a free person who was in possession of her freedom as a crime. As I argued in a previous section, possession was the most common way to prove the legal status of freedom or slavery in the ius commune Lusophone legal culture. It is not a coincidence that the definition of a free person as someone who was in possession of freedom also appeared in the Brazilian Criminal Code.

Just as Brazilian law served as a reference to Portuguese jurists, the same holds true the other way around. Brazilian jurist Thomaz Alves Júnior, in his Anotações teóricas e práticas ao Código Criminal, posed the following question: “If the person is not in possession of her freedom, does the crime occur?” To solve this issue, he referred to Article 328 of the Portuguese Penal Code, which adopted the expression “free person (homem livre).” To Alves Júnior, the wording of the Portuguese Code was more precise and succinct than the Brazilian one because it did not raise the issue of possession. He also argued that the condition of freedom presupposed possession of freedom. From a legal point of view, there was no freedom without possession.

According to Alves Júnior’s interpretation, victims of the crime of enslavement were required to be in possession of their freedom. Thus, only those who lived as free persons and whose community recognized them as such could be victims of this crime. This interpretation prevented people who had always lived illegally as slaves – for example, Angelica and her descendants – from being legally victims of the crime of enslavement.
Illegal enslavement and re-enslavement practices were widespread in Brazilian society. These practices already occurred in colonial Portuguese America and made the experience of freedom extremely precarious. There might be a relationship between the rise of illegal enslavement practices and the prohibition of the Atlantic slave trade alongside the growth of slavery economies during the nineteenth century. People made use of various enslavement techniques: from kidnapping children to selling free people at public auctions. Among these practices, it is worthwhile stressing that more than 700,000 Africans were illegally transported to Brazil after the prohibition of the transatlantic slave trade in 1831. Another common practice was to kidnap free people of color in bordering countries, such as Uruguay, and bring them as slaves to Brazil.70

To pursue a successful criminal prosecution on the grounds of Article 179 of the Brazilian Criminal Code meant facing many obstacles in courts. For example, Grinberg and Mamigonian analyzed criminal procedures issued at the criminal courts of the Province of Rio Grande do Sul, in the south of Brazil. They found that judges declared the victims free in many cases. However, no offender faced criminal conviction under Article 179. Similarly, there was a restricted range of enslavement practices that actually reached criminal courts: illegal importation, manumission abrogation, and kidnapping followed by selling of free persons.71

On the other side of the Atlantic, illegal enslavement was also widespread. Legal structures allowed the enslavement of persons. In regions controlled by Portuguese colonial authorities, African authorities had the prerogative to punish certain crimes and, during the expansion of the slave trade, many of those authorities abused their power and punished minor crimes with enslavement. Further, Portuguese authorities often colluded with practices of illegal enslavement such as the kidnapping and enslavement of Portuguese vassals.72 Some groups were also more vulnerable to enslavement than others. Women and freedpersons who worked crossing political frontiers such as sertanejos and pombeiros were particularly vulnerable.73

It is clear then that in both Brazil and Angola, government agents and legal authorities timidly restrained the widespread practices of illegal enslavement. Joaquim’s judgment took place in January 1867 within this context, and the judge decided that he was guilty of committing the crimes of Articles 328 and 329 of the Penal Code and of Article 40 of the Decree of 14 December 1854. The judge, however, observed that the accused was poor and imprisoned since 16 August 1866. He also considered that Joaquim was “a black man ignorant of our laws.” Thus, he ruled that Joaquim had atoned for his guilt and did not need to pay fines because he was incarcerated for a long time.

Final remarks: a shared legal culture in the Lusophone Atlantic

The parallels between Bibiana and Thereza’s case and the lawsuits processed in Luso-American jurisdictions suggest that there was a shared legal culture in the Lusophone Atlantic. On both sides of the ocean, courts processed social conflicts concerning people’s statuses through freedom suits. What structured these judicial conflicts were the categories, principles, and norms of property law: possession, registration, titles, domain, etc. The discourses that permeated legal discussions on freedom and slavery were those of possession, legitimate domain, and the probative force of titles. Thus, in the Lusophone Atlantic, the legal language of freedom was the language of property.
However, freedom suits were not the only part of this shared legal culture. The law of slavery was not a law of exception. In Lusophone Atlantic jurisdictions, slavery was regulated by the same set of norms as other civil and criminal matters. Hence, the same body of legal principles and categories used to solve conflicts concerning land, family, contracts, etc. were also applied to slavery issues and guided the definitions of people’s status. This way, a detailed analysis of Bibiana and Thereza’s case not only indicates that there was a shared legal culture in the Atlantic regarding slavery law, but that this culture permeated law in general. The complex circulation of people and legal texts across the Atlantic corroborates this assertion. Moreover, Bibiana and Thereza’s case was filed in the nineteenth century, a time when law was undergoing substantial transformations. Thus, the debates and arguments brought forward by the different parties show that these reforms were also discussed within the broader framework of a shared legal culture.

Further empirical research is still needed within this field. In this sense, lawsuits such as Bibiana and Thereza’s can shed light on how this shared Atlantic legal culture was built upon the daily conflicts of colonial societies. This kind of source can also enable researchers to partially access vernacular understandings of law and justice, shedding light on how common people were also participants in the construction of this legal culture. Lawsuits can then open up new possibilities for an Atlantic Legal History. They provide access to an Atlantic world where people were the ones who daily produced and gave new meanings to norms and legal categories.

Notes

1. Luiza Cordeiro Bimbi was single and a farmer (agricultora). On women’s access to property in nineteenth-century Benguela, see Candido, “Women, Family, and Landed Property.”
2. Boletim Oficial do Governo Geral da Província d’Angola, n. 517. Since there is no catalogue of the documents stored in the Benguela District Court (Tribunal da Comarca de Benguela), the references will include the information available on the first page of the document. Tribunal Provincial de Benguela, 1866, cível, número geral 571, número do maço 6, número do processo 259, número da classificação 9. The pages of the document are unnumbered. Translation of archival material are mine.
3. Candido, An African Slaving Port.
4. There is no catalogue of the documents stored in the Benguela District Court. There was an early attempt to inventory the collection: Curto, Luce, and Madeira-Santos, “The Arquivo da Comarca Judicial de Benguela.” Currently, there is an inter-institutional project to organize and catalogue the legal files. The project is led by Mariana Candido (University of Notre-Dame), Mariana Dias Paes (Max-Planck Institute for European Legal History), and Juelma de Matos Ngala (Universidade Katayavala Bwila).
5. In Brazilian historiography, these lawsuits are commonly known as “freedom suits” (ações de liberdade). See, for example, Chalhoub, Visões da liberdade; Dias Paes, Escravidão e direito; Espindola, “Papéis da escravidão”; Grinberg, “Re-enslavement, Rights and Justice”; Grinberg and Silva, “Soil Free from Slaves”; Mattos, Das cores do silêncio; Pinheiro, “Em defesa da liberdade”; Pinheiro, “Transformações de uma prática contenciosa”; Silva Júnior, “Entre a escrita e a prática.”
6. Alencastro, O trato dos viventes.
7. See Candido, An African Slaving Port; Ferreira, Cross-Cultural Exchange; Thornton, Africa and Africans. For a biographical study that enhances the role of Atlantic circulation in the formation of cultural backgrounds, see Ceita, “Silva Porto (1839–1890) na África Central.”
8. See Hébrard and Scott, Freedom Papers.
9. The Decree also stated that the *juiz de direito* of Benguela should reside part of the year in Mossâmedes. Portugal, *Decreto de 30 de dezembro de 1852.*

10. Mello, “Desvendando outras Francisca”; Pinheiro, “Em defesa da liberdade.” On freedom suits filed by indigenous people see Bombardi and Prado, “Ações de liberdade de indias e índios.”

11. Ferreira, *Cross-Cultural Exchange,* 88–125; Madeira-Santos, “Esclavagem africain et traite atlantique.”

12. Arquivo Nacional de Angola, códice 7,182. See also Curto, “Struggling Against Enslavement.”

13. Candido, “African Freedom Suits.” On discussions over people’s status as free or slaves before the Governors of Angola or Benguela, see Curto, “Struggling Against Enslavement.”

14. Pinheiro, “Em defesa da liberdade.” Alvará of 1761 abolished the slave trade in Portuguese metropolitan territory and declared that the illegally imported slaves would be free. Alvará of 1773, in turn, stated that those born after its publication would be free. Lara, *Legislação sobre escravos africanos,* 342–345, 359–360. See also Grinberg and Silva, “Soil Free from Slaves.”

15. Silva, “Esperança de liberdade.”

16. For Angola, see Candido, “African Freedom Suits”; Candido, “O limite tênue entre liberdade e escravidão”; Ferreira, *Cross-Cultural Exchange.* For Brazil, see Chalhoub, *Visões da liberdade;* Dias Paes, “O procedimento de manutenção de liberdade”; Dias Paes, *Escravidão e direito;* Espindola, “Papéis da escravidão”; Grinberg, “Re-enslavement, Rights and Justice”; Grinberg and Silva, “Soil Free from Slaves”; Mattos, *Das cores do silêncio;* Pinheiro, “Em defesa da liberdade”; Pinheiro, “Transformações de uma prática contenciosa”; Silva Júnior, “Entre a escrita e a prática.”

17. See, for example, Ferreira, *Cross-Cultural Exchange,* 88–125; Madeira-Santos, “Esclavagem africain et traite atlantique.”

18. On the administration of justice in Portuguese colonial territories, during the nineteenth-century, see Silva, *A construção jurídica dos territórios ultramarinos.*

19. Hespanha, “Direito comum e direito colonial.”

20. Decock, *Theologians and Contract Law;* Hespanha, *Como os juristas viam o mundo;* Hespanha, “Direito comum e direito colonial.”

21. Camarinhas, *Juízes e administração da justiça;* Camarinhas, “Justice Administration in Early Modern”; Roberto, “O direito civil nas academias jurídicas.”

22. On the circulation of written norms, see Baltazar and Cardim, “A difusão da legislação régia.”

23. In the book *O fiador dos brasileiros,* Grinberg presents a table of the legal experts quoted in 402 freedom suits filed before the Court of Appeals of Rio de Janeiro (Tribunal da Relação do Rio de Janeiro) between 1806 and 1888. Of the 20 experts she identifies, nine were Portuguese and eight were Brazilian. That is, there was a relevant presence of Portuguese legal texts in Brazil, even after independence. These Portuguese lawyers were often quoted in freedom suits and were also studied in Brazilian Law Schools during the nineteenth century. Grinberg, *O fiador dos brasileiros,* 244; Roberto, “O direito civil nas academias jurídicas.” Many of the books that Grinberg mentioned also circulated in Angola during the nineteenth century. There is no systematic research on the issue of circulation of legal texts in Angola. However, the Benguela District Court holds in its depository many copies of books such as *Digesto português* by Corrêa Telles, *Primeiras linhas sobre o processo civil* by Pereira e Sousa; *Instituições de direito civil português* by Coelho da Rocha, among others. There is still no catalogue of these books. On the circulation of legal knowledge and its appropriation by general population, see Herzog, *Frontiers of Possession;* Hespanha, *Como os juristas viam o mundo,* 12–13; Premo, *The Enlightenment on Trial.*

24. There is still no systematic research on this topic, but some insights on the issue can be found at Hespanha, “Southern Europe.” For African-Mediterranean regions, see El Hamel, *Black Morocco.*

25. Hespanha, “Direito comum e direito colonial.” For the processes of resignification of *ius commune* categories in colonial territories, see Herzog, *Frontiers of Possession.* For the usage of *ius commune* in nineteenth-century Brazil, see Dias Paes, “Escravos e terras entre posses e títulos.” The late eighteenth and nineteenth centuries were marked by attempts to reform the *ius commune* legal order. However, like any profound modification of cultural
practices, this process was slow, and some ius commune categories and institutions persisted far into the late nineteenth century. See, for example, Madeira-Santos, “Entre deux droits.”

26. Caminha, Tratado da forma dos libelos, 339–360. Libelo was the document that initiated a lawsuit. It should contain the description of the facts and the legal groundings of the claims. Hespanha, Como os juristas viam o mundo, 582–584.

27. Sousa, Primeiras linhas sobre o processo civil, 29–31. In nineteenth-century Brazil, slaves also needed permission from their masters. However, in the daily practice at courts, this authorization did not necessarily take place. Dias Paes, Escravidão e direito, 55–112.

28. Telles, Digesto português, vol. 2, 220; Telles, Doutrina das ações, 12–13.

29. Dias Paes, Direito e escravidão, 55–112; Pinheiro, “Transformações de uma prática contenciosa.”

30. Ibid.

31. On “miserable persons,” see Duve, “La condición jurídica del indio”; Rebagliati, “Pobreza, caridad y justicia en Buenos Aires.”

32. Dias Paes, Escravidão e direito; Welke, Law and the Borders of Belonging.

33. Portugal, Decreto de 30 de dezembro de 1852, 232.

34. “Chief of the Council” was a Portuguese colonial office.

35. Boletim Oficial do Governo Geral da Província d’Angola, n. 517, 4.

36. Hespanha, Como os juristas viam o mundo, 309. On the acquisition of freedom by possession, see also Scott, “Social Facts, Legal Fictions.”

37. Cabe do, Practicarum observationum, decisio CLXXXVI, 168–169.

38. Castro, Decisiones Supremi, 34–38.

39. Macedo, Decisiones Supremi Senatus, 108–111.

40. Phaebo, Decisiones Senatus Regni Lusitaniae, 433; Pereira, Promptuarium juridicum, 293–294.

41. See Chalhoub, “The Precariousness of Freedom”; Dias Paes, Escravidão e direito, 195–240; Grinberg, “Re-enslavement, Rights and Justice”; Pinheiro, “Em defesa da liberdade.”

42. On various practices of legal and illegal enslavement in Angola, see Candido, Fronteiras da escravidão, 163–213; Ferreira, “Slaving, and Resistance to Slaving in West Central Africa”; Silva, The Atlantic Slave Trade from West Central Africa, 142–166.

43. Arquivo Nacional do Rio de Janeiro (hereafter, ANRJ). Processo número 11.321, fundo 84 Relação do Rio de Janeiro, série apelação cível, código de referência 84.0.ACI.00123, apelante Antônio de Melo, ano inicial 1865, ano final 1871, caixa 3.690, local Antônina, microfilme AN_074.2006.

44. Dias Paes, “Escravos e terras entre posses e títulos.”

45. On the plausibility of legal arguments, see Farge, The Allure of the Archives.

46. Boletim Oficial do Governo Geral, n. 517, 1.

47. On the complex — and often tense — attitude of Portuguese authorities towards African practices, see Figueiredo, “Feitiçaria na Angola oitocentista.”

48. On the gradual abolition of slavery in Portugal, see Marques, Sá da Bandeira e o fim da escravidão. In Brazil, see Conrad, Os últimos anos da escravatura; Pena, Pajens da casa imperial. In Cuba, see Scott, Slave Emancipation in Cuba.

49. Boletim Oficial do Governo Geral, n. 517, 1.

50. For these discourses in Brazil, see Rodrigues, “As frações da classe senhorial”; Varela, Das sesmarias à propriedade moderna. For the regulation of property law and reform discourses in the Portuguese Empire, see Direito et al., Property Rights, Land and Territory.

51. Ajello,Arcana juris; Bicrocchi, Alla ricerca dell’ordine; Villely, La formation de la pensée juridique.

52. Blaufarb, The Great Demarcation; Clavero, “Les domaines de la propriété”; Congost, Tierras, leyes, historia; Decock, Theologians and Contract Law, 21–104, 352–383; Grossi, Il dominio e le cose, 281–384; Halpérin, Histoire du droit des biens; Hespanha, Como os juristas viam o mundo, 307–319; Luna, “Property, Dominium, and the Hispanic Enlightenment.”

53. Hespanha, Como os juristas viam o mundo, 370.

54. Congost, Tierras, leyes, historia; Rodrigues, “As frações da classe senhorial”; Varela, Das sesmarias à propriedade moderna.

55. Garavaglia and Gautreau, Mensurar la tierra; Scott, Seeing Like a State.
56. For the Brazilian case, see Espíndola, “Papéis da escravidão”; Mamigionian, “O Estado Nacional e a instabilidade da propriedade.”
57. Brasil, Lei n. 2.040.
58. Brasil, Annaes do Parlamento Brasileiro, 265–273.
59. Mamigionian, “O Estado nacional e a instabilidade da propriedade.”
60. Dias Paes, “Escravos e terras entre posses e títulos.”
61. ANRJ. Processo número 866, fundo 84 Relação do Rio de Janeiro, série apelação cível, código de referência 84.0.ACI.00014, apelante Felisminda, apelado Francisco Machado, ano inicial 1836, ano final 1839, caixa 3.685, local Rio de Janeiro, microfilme AN_037_2006.
62. Dias Paes, “Escravos e terras entre posses e títulos”; Espíndola, “Papéis da escravidão.”
63. Portugal, Código penal, 99–100.
64. Pedro Ferreira d’Andrade was a 48-year old, unmarried, notary public.
65. Henrique dos Santos e Silva was a 38-year old primary school teacher and unmarried.
66. Portugal, Código penal, 99–100.
67. Ferrão, Teoria do direito penal, 266–274.
68. Brasil, Lei de 16 de dezembro de 1830, and Brasil, Lei de 7 de novembro de 1831.
69. Alves Junior, Anotações theoreticas e praticas, 91–93.
70. Chalhoub, A força da escravidão; Freitas, “Slavery and Social Life”; Grinberg, “Illegel Enslavement, International Relations”; Pinheiro, “Em defesa da liberdade.”
71. Grinberg and Mamigionian, “Le crime de réduction à l’esclavage.”
72. Candido, “African Freedom Suits”; Ferreira, “Slaving and Resistance to Slaving.”
73. Candido, “African Freedom Suits”; Curto, “Struggling Against Enslavement.”
74. Dias Paes, Escravidão e direito.
75. Similar claims are made in Benton, “The Legal Regime”; Green “Baculamento or Encomienda,” which corroborates the need to advance a research agenda focused on the existence of an Atlantic Legal Culture.

Acknowledgments

The author thanks the anonymous readers, Manuel Bastias Saavedra, Cristina Dallanora, Soraia Sales Dornelles, Camilla de Freitas Macedo, Waldomiro Lourenço da Silva Júnior, Raquel Razente Sirotti, Alain El Youssef, and the participants in the conferences “Angola: os legados do passado, os desafios do presente” and “Comparative Abolition in the Atlantic and Indian Oceans” for suggestions and feedback. She also thanks Justine Collins and Rita Elena Melian Zamora for the help with English proofreading.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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