

Jurisdiction and Afro-Brazilian Legal Politics from Colonialism to Early Independence*

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Introduction

Atlantic enslavement, the capture and transoceanic shipment of people to confer property rights in them, depended on law to transform a violent process into regulated interpersonal relations. Every polity with possessions in the Americas that used enslaved labour developed a law of slavery that connected the oceans with the land. Brazil, one of the largest slave societies in human history, provides a case in point. In the early-modern era, European Atlantic empires sought to protect their own economies and trade routes according to mercantilist principles. Enslaved Indigenous and African labourers were crucial to the key sectors of the Portuguese colonial Brazilian economy: mining, livestock farming, and plantation agriculture. Imperial law regulated enslaved labour and the export of slave-produced goods as matters that connected the imperial metropole with colonial possessions in Africa and the Americas. After the transfer of the monarch from Portugal to Brazil in 1808, and Brazilian independence in 1822, the law of slavery remained intimately connected to understandings of land and sea. The economy shifted towards the export of coffee and sugar to world markets. The production of these cash crops depended on the labour of enslaved people. Slave traders trafficked many African captives to Brazil in contravention of a bilateral anti-slave-trade treaty with Britain signed in 1826. Trafficking also breached domestic anti-

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slave-trade laws passed in 1831 and 1850. How the transformation from a colony to an independent empire affected the legal politics surrounding enslavement in Brazil invites further study.

This transformation in part corroborates the history of other transitions from European colony to independent polity. Early-modern Portugal was a corporate society, in which the Crown was the preeminent body as arbiter of justice.¹ The Crown's jurisdiction – the authority to state what the law was and where it applied – over land and people sat alongside Church, seigneurial, and company jurisdiction. In the Portuguese empire, public and private agents participated in developing Portuguese imperial sovereignty in its Asian, African, and American settlements and the routes between them. The outcome was similar to other European Atlantic empires which recognized multiple, sometimes overlapping jurisdictions in which officials, companies, and other institutions governed people according to a hierarchical and incorporative structure.² With its imperial economy undermined by the unfavourable balance of trade caused by exchanging Portuguese wine and Brazilian precious metals for British textiles, and by extensive contraband trade in the Americas, across the eighteenth century the Crown attempted a series of reforms to improve both order and revenue from the colony.³ After Brazilian independence in 1822, the House of Braganza provided separate emperors to Portugal and Brazil, shaping the constitutional order of both empires.⁴ The idea of common subjecthood to the emperor among all Portuguese colonial

¹ For the wider European context, see J. H. Elliott, 'A Europe of Composite Monarchies', *Past & Present*, cxxxvii (1992).

² Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, N.J., 2010), chap. 1.

³ Kenneth R Maxwell, *Conflicts and Conspiracies: Brazil and Portugal, 1750-1808*. (Cambridge, 1973); Valentim Alexandre, *Os sentidos do Império : questão nacional e questão colonial na crise do Antigo Regime português* (Porto, 1993); Jeremy Adelman, *Sovereignty and Revolution in the Iberian Atlantic* (Princeton, 2006).

⁴ Gabriel B. Paquette, *Imperial Portugal in the Age of Atlantic Revolutions: The Luso-Brazilian World, c.1770-1850* (Cambridge, U.K., 2014).

territories endured in its ‘third’ empire in Africa, above all in Angola and Mozambique.⁵ In the Luso-Brazilian world, scholars have focused on the power of the state to bolster slaveholding while codifying civil law and the role of the state in ending the Brazilian slave trade.⁶ Unlike the incorporative Portuguese empire, the independent centralized Brazilian state positioned itself as the overarching jurisdiction that governed people according to the recognition of citizens and exclusion of non-citizens. In defining the state’s overarching jurisdiction, Brazilian statesmen became increasingly concerned with defending territorial waters against other polities and internal elites.

But the transformation was also distinctive: engaging with the themes of this Supplement, this article investigates a group of people who were difficult to govern both during the era of colonialism and early independence, rather than a space. Doing so provides a new focus in the legal interactions between imperial officials and Afro-Brazilian people that involved conflict between their rival visions of social order. Imperial officials advanced a social order based on different statuses for European, Indigenous and African people whereas enslaved and free Afro-Brazilian demanded a social order that valued freedom and equality.⁷ The law was a site of communication and conflict between alternative visions of society.⁸ In prominent cases, the legal process ascribed meanings to these rival visions, and how various parties adopted or challenged such meanings.

⁵ Ana Cristina Nogueira da Silva, *A construção jurídica dos territórios ultramarinos portugueses no século XIX: modelos, doutrinas e leis* (Lisboa, 2017).

⁶ Jose Murilo de Carvalho, *A construção da ordem: a elite política imperial* (Brasília, 1981); Ilmar Rohloff de Mattos, *O Tempo Saquarema* (São Paulo, 1987); Brodwyn Fischer, Keila Grinberg, and Hebe Mattos, ‘Law, Silence, and Racialized Inequalities in the History of Afro-Brazil’, in Alejandro de la Fuente and George Reid Andrews (eds.), *Afro-Latin American Studies: An Introduction* (Cambridge, 2018).

⁷ In the eighteenth century, the extraction of wealth from colonial Brazil depended on creating a social order that differentiated Indigenous and African people from Europeans, for which see Kirsten Schultz, *From Conquest to Colony: Empire, Wealth, and Difference in Eighteenth-Century Brazil* (New Haven, CT, 2023).

⁸ E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London, 1975); Robert W. Gordon, ‘Critical Legal Histories’, *Stanford Law Review*, xxxvi (1984).

In formal processes, Afro-Brazilian people developed a legal politics that drew upon diasporic maritime connections to overturn enslavement. Considering their immediate or intergenerational experiences of forced transatlantic displacement, oceanic connections were arguably more relevant to Afro-Brazilian people than anybody else in Brazil. They brought such connections to bear on judicial processes by crafting a surprising diversity of arguments. These arguments included revolutionary antislavery ideology, proof of transoceanic voyages to free soil, and corroborative testimony among captives aboard the same slaving ship. Afro-Brazilian claims to freedom relied on diasporic maritime connections that went beyond Brazil, which were both politically innovative and threatening to the imperial order. Sometimes they arose because the transoceanic journey itself mattered; at other times they arose because Afro-Brazilian people were aware of people in similar predicaments elsewhere.

In tracing Afro-Brazilian legal politics, this article learns from Julius Scott's concept of the 'common wind' of 'Afro-American' political communication after the Haitian Revolution.⁹ For Scott, the revolution provided the paradigm for subsequent antislavery political projects. He saw African diasporic sailors as striving to become masterless in their labour and social lives, as a precondition to (but not coextensive with) full freedom.¹⁰ Here, I place Haiti as one among many sources of inspiration for Afro-Brazilian people, who produced a diverse repertoire of maritime-related legal strategies. Their goals included

⁹ Scott's PhD dissertation was completed in 1986 but only published in 2018. See Julius Scott, *The Common Wind: Afro-American Currents in the Age of the Haitian Revolution* (London, 2018).

¹⁰ For an overview of Scott's arguments and their significance, see 'AHR Roundtable: Julius S. Scott's *The Common Wind: Afro-American Currents in the Age of the Haitian Revolution*', *American Historical Review*, cxxv (2020). Building on Scott's insights, many scholars have focused attention on the legal strategies of migratory women, who were omitted from his focus on sailors. For a case of how one woman and her descendants used legal processes in their migrations around the Atlantic to claim free status, see Rebecca J. Scott and Jean M. Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, Mass., 2012). Other scholars have focused attention on the diasporic political imagination prior to the Haitian Revolution. See, for instance, Vincent Brown, *Tacky's Revolt: The Story of an Atlantic Slave War*. (Cambridge, MA, 2020).

masterlessness but also stretched beyond it. Brazilian historians have shown that maritime connections were an important resource for Afro-Brazilian social life.¹¹ I also emphasize change over time from the colonial to postcolonial periods in legal politics. Both judges and Afro-Brazilian people shifted towards seeing freedom emerging from specific itineraries. Three cases constitute an analytic frame for the transition from colonialism to early independence, rather than an exhaustive sample. An attempted revolution in 1798 was the most famous antislavery uprising in Bahian history. In the early nineteenth century, petitions to the monarch for manumission based on free soil were formulaic rather than transgressive. Some happen to have survived in official archives from the era of the monarch's transfer to Rio. Finally, the capture of the slaving ship *Relâmpago* in 1851 as part of efforts to suppress transoceanic trafficking in captives was the most controversial case of seizure in Bahia. Different Afro-Brazilian groups developed visions of political community and social regulation that transcended the ordering attempts imposed by the colonial regime and postindependence Brazilian government.

The judge had the power to say what the law was and where it applied, but a judicial attempt at ordering was only one social vision articulated in a case. In an era before international agreement over the extent of territorial waters, in Brazil judges faced the question of how to regulate people in coastal provinces like Bahia.¹² Migration, labour,

¹¹ Jaime Rodrigues, *De costa a costa : escravos, marinheiros e intermediários do tráfico negreiro de Angola ao Rio de Janeiro, 1780-1860* ([São Paulo, Brazil], 2005); Flávio dos Santos Gomes, Marcus J. M. de Carvalho, and João José Reis, *O Alufá Rufino: Tráfico, escravidão e liberdade no Atlântico negro (c. 1822-c. 1853)* ([São Paulo, Brazil], 2010); Luiz Felipe de Alencastro, 'Introduction: The Ethiopic Ocean - History and Historiography, 1600-1975', *Portuguese Literary & Cultural Studies*, xxvii (2015).

¹² On sovereign disputes over people and property in territorial waters and along coasts, see Guillaume Calafat and Francesca Trivellato, "'The Shipwreck of the Turks': Sovereignty, Barbarism and Civilisation in the Legal Order of the Eighteenth-Century Mediterranean", *Past & Present*, (forthcoming); On the history of international law regarding the extent of territorial waters, see Tullio Treves, 'Historical Development of the Law of the Sea', in Donald Rothwell et al. (eds.), *The Oxford Handbook of the Law of the Sea* (Oxford, 2015);

shipborne trade, and the matter of whether free status in another jurisdiction would be recognized in Brazil were all pressing concerns. Since Portuguese colonial rule was often justified by the administration of justice, judges and their conceptions of jurisdiction played a central role in defining imperial control. After training, usually at the Universidade de Coimbra, ambitious judges sought a Crown appointment to a colonial judgeship as a steppingstone to becoming a *desembargador*, a high court judge.¹³ Legal cases also offered marginalized people, including Afro-Brazilians, the opportunity to articulate their social visions. In court cases, inquisitorial institutions gathered evidence and connected legislators' priorities to the everyday bureaucratic interactions between state agents, enslaved people, and enslavers. This approach allows us to see how institutions conceived of their jurisdictions and how Afro-Brazilian people developed their own legal politics that would transcend such jurisdictions.

The province of Bahia provided an opportune vantage point from which to survey jurisdictional ordering and Afro-Brazilian legal politics in Brazil. Bahia's capital, Salvador, had been the historic capital of the Portuguese American empire. Bahia's sugar and tobacco industries relied upon the importation of African captive people and the development of mercantile links between West Africa, the city of Salvador, and the plantation zone.¹⁴ Bahia

Tullio Scovazzi, 'The Origin of the Theory of Sovereignty of the Sea', in Lilian del Castillo (ed.), *The Law of the Sea, from Grotius to the International Tribunal for the Law of the Sea, Liber Amicorum Judge Hugo Caminos* (Leiden, The Netherlands, 2015); Luis Valencia-Rodríguez, 'The Contributions of Latin America to the Implementation of the UNCLOS', in Lilian del Castillo (ed.), *The Law of the Sea, from Grotius to the International Tribunal for the Law of the Sea, Liber Amicorum Judge Hugo Caminos* (Leiden, The Netherlands, 2015).

¹³ Stuart B Schwartz, *Sovereignty and Society in Colonial Brazil: The High Court of Bahia and Its Judges, 1609-1751*. (Berkeley, 1973); Airton Ribeiro da Silva Jr., 'Magistrates' Travelling Libraries: The Circulation of Normative Knowledge in the Portuguese Empire of the Late 18th Century', *Rechtsgeschichte - Legal History*, mmxxi (2021).

¹⁴ Pierre Verger, *Flux et reflux de la traite des nègres entre le Golfe de Bénin et Bahia de Todos os Santos du XVIIe au XIXe siècle* (Paris, 1968); Stuart B Schwartz, *Sugar Plantations in the Formation of Brazilian Society: Bahia, 1550-1835* (Cambridge, 1985); Kátia M. de Queirós Mattoso, *Bahia, século XIX: uma província no Império* (Rio de Janeiro, RJ, 1992);

was the province with the largest number of antislavery uprisings between the late eighteenth and mid-nineteenth century. Some prominent political movements that challenged Brazilian state centralization originated in Bahia. The legal politics surrounding antislavery movements and regional independence endured throughout this period and was more pronounced than in other provinces such as Pernambuco or Rio de Janeiro, making it a challenging place to develop jurisdiction. The institutional developments in Bahia provide a compelling example for comparing similarities and differences in different Brazilian provinces before, during, and after independence.

Maritime Free Trade and Popular Sovereignty

Afro-Brazilian people's legal politics connected land and sea to challenge colonial jurisdiction in a revolutionary movement in Salvador, Bahia, in 1798. Commonly known as the Tailors' Conspiracy, in fact the plotters comprised a wide-ranging group of men that crossed occupational, legal, and racial categories. They included tailors, other skilled traders of colour, whom the colonial administration categorized as *mulato* and *pardo*, some enslaved people, and white soldiers. As Gregory Childs has pointed out, they were engaged in acts defined under colonial criminal law as sedition and treason, rather than as a conspiracy.¹⁵ Major historiographical accounts have interpreted the movement of 1798 as a social movement, as a form of radical republican politics, and as seditious speech that operated

Gabriela dos Reis Sampaio, Lisa Earl Castillo, and Wlamyra Ribeiro de Albuquerque, *Barganhas e querelas da escravidão : tráfico, alforria e liberdade (séculos XVIII e XIX)* (Salvador, 2014).

¹⁵ Gregory Livingston Childs, 'Scenes of Sedition: Publics, Politics, and Freedom in Late Eighteenth-Century Bahia, Brazil' (New York University Ph.D. thesis, 2012).

through Black public spheres.¹⁶ Focusing instead on the case's internal legal dynamics reveals how the judge and the defendants crafted narratives about authority over land and sea that created divergent meanings.

The alleged political plotters aimed to wage a civil war that would replace a proslavery monarchy with a democracy governed by the principle of racial equality. They recruited many men from the military. In August 1798, they announced their intentions by writing anonymous posters, one of which stated: 'Be inspired people of Bahia, that the happy time of our liberty is about to arrive; the time when we shall all be brothers; the time when we shall all be equal.' The plotters affixed them to church doors. Within two months, the authorities had arrested forty suspected plotters and established two *devassas* (special inquiries) each under the direction of a judge of Bahia's Tribunal da Relação (high court). One inquiry was into the seditious handbills; the other concerned the accusation of treason. Francisco Sabino Alvares da Costa Pinto headed the second inquiry. A native of Portugal, Alvares da Costa Pinto, had served as a judge in Belem, where an attempted regicide had been quashed in 1758. Appointed to the High Court in 1795, he was a relatively recent arrival and the inquiry was a chance for him to make his mark.¹⁷ The inquiry under Costa Pinto produced many sources that revealed the plotters' plan and its connections to the maritime world.

The plotters drew on wide-ranging diasporic connections over land and sea in their plans to replace colonial monarchical rule with independent democratic constitutional government. According to Portuguese colonial law, a slave did not have the *naturalidade* attributed to freeborn or freed people born in a Portuguese jurisdiction or resident for a long

¹⁶ Ubiratan Castro de Araújo, 'A política dos homens de cor no tempo da Independência', *Estudos Avançados*, xviii (2004); Childs, 'Scenes of Sedition: Publics, Politics, and Freedom in Late Eighteenth-Century Bahia, Brazil'.

¹⁷ Childs, 'Scenes of Sedition: Publics, Politics, and Freedom in Late Eighteenth-Century Bahia, Brazil', 24, 135.

time there.¹⁸ In the principal body of civil law, the Ordenações Filipinas, an enslaved person had limited legal personhood: except in specified circumstances, he did not have capacity to give testimony in court.¹⁹ The plotters probably took inspiration from practices of freedom that would ensure their personhood within the jurisdiction that they hoped to create. The large number of quilombos, formed by people who had escaped from slavery, in urban and rural Bahia likely offered the plotters one source of inspiration. Later, in 1814, another rising in Salvador involved a wide-ranging alliance who sought to reclaim the land from the Portuguese colonial regime: ‘in this confederation were all the free and captive Black Haussas, as many of this city as of the Recôncavo, and that there was nobody who had missed the news and was not invited. That in the same league entered the Indians and some mulattoes, and creoles from outside the city, and that the Indians said that they wanted their land, that the Portuguese had taken from them.’²⁰ Further afield, news of the Haitian Revolution had probably reached Bahia by 1798 and provided a model for general emancipation and state sovereignty. One of the revolutionary pamphlets, attributed by the authorities to Luis Gonzaga das Virgens e Veiga, called for ‘the French nation’, likely meaning Haitian revolutionaries, to assist the uprising.²¹ The maritime circulation of news among African diasporic people across the revolutionary Atlantic world was important for enacting masterlessness.

¹⁸ António Manuel Hespanha, ‘Fazer um imperio com palavras’, in Ângela Barreto Xavier and Ana Cristina Nogueira da Silva (eds.), *O governo dos outros: poder e diferença no império português* (Lisboa - Portugal, 2016), 82–84.

¹⁹ Cândido Mendes de Almeida (ed.), *Código Philippino, ou, Ordenações e leis do reino de Portugal* (Rio de Janeiro, 1870), Livro III título LVI s.3. Consulted via <http://www1.ci.uc.pt/ihti/proj/filipinas/ordenacoes.htm> (date accessed: 10 December 2022).

²⁰ Cópia da Notícia [1814], transcribed in Stuart B. Schwartz, ‘Cantos e quilombos numa conspiração de escravos haussás – Bahia, 1814’, in João José Reis and Flávio dos Santos Gomes (eds.), *Liberdade por um fio: História dos Quilombos no Brasil* (São Paulo, Brazil, 1996), Appendix, p. 447.

²¹ ‘Notice to the Clergy and to the Bahian People’, James Naylor Green, Victoria Langland, and Lilia Moritz Schwarcz, *The Brazil Reader: History, Culture, Politics* (Durham, N. C., 2019), 120.

According to a crucial denunciation of the plan by the captain Joaquim Jose de Santa Anna, the plotters sought to secure an independent democracy by establishing maritime free trade. One leader, the tailor João de Deus do Nascimento, had insisted that the revolution would ‘reduce the people of this city to equality without distinction of any kind... that the port would be open to all Foreign Nations for them to come to trade, bringing foodstuffs, and all merchandise, to take in exchange for them sugar, tobacco, and other goods from the earth, without needing Portugal, of which there were no need in this case, for the extraction of these goods’.²² Santa Anna’s pejorative description of equality as a levelling down conformed to the colonial Portuguese authorities’ fears. Maritime free trade would bring greater benefits than the high taxes imposed by Portuguese extractive colonialism.

An alliance between subaltern people across maritime, urban, and rural locations would build the free-trading egalitarian polity. The denunciation by the blacksmith Joaquim Jose da Veiga, when read alongside Santa Anna’s, suggests as much. According to Veiga, João de Deus said that ‘they would all become Frenchmen, to live in equality, and abundance’. Indeed, ‘all the captives...will be freed, without there being any more slaves, and that those of some Estates are already part of the rebellion: that the Convents will be opened... that the prisoners will be freed, as well as those bound in the galleys, and that everybody will belong to the same party’.²³ To achieve material equality, the plotters would redistribute property owned by the monasteries and convents. The revolution would dismantle the religious and carceral institutions of colonial sovereignty.

Under interrogation that likely included torture, João de Deus produced an alternative narrative of the movement that focused on the future polity that he envisaged. He did not refer to free trade ideas, but committed himself to a vision of popular rule guided by the

²² ‘A Inconfidência da Bahia em 1798. Devassas e Sequestros’, *Annaes da Biblioteca Nacional do Rio de Janeiro*, xliii–xliv (1920), 92.

²³ ‘A Inconfidência da Bahia em 1798. Devassas e Sequestros’, 88, 93.

principle of racial equality. He claimed that a plotter had recruited him to the cause by telling him that the revolution meant that ‘there is no distinction of colour between those racialized as white, darker-skinned mixed-race, and black [branca, parda, e preta] [and that] we will not be subject to a foolish man, who governs us, that only those who have greater sense, and the capacity to command men, will govern, be they from any Nation, making this Captaincy into a Democratic Government, and absolute’.²⁴ The plotters had a transformative agendum. They aimed to replace mercantilism with free trade. In their version of antislavery, racial hierarchy would give way to legal equality. Democratic citizenship, including for foreign-born people, would supersede Portuguese vassalage. Articulating these ideas in speech and writing was seditious.²⁵ Instead of rule by an overseas composite monarch, a free-trade independent republic would ensure that the material benefits of trade flowed to a wide cross-section of Bahian society.

In the inquiry, the plotters’ vision of popular sovereignty bolstered by free trade came up against Judge Alvares da Costa Pinto’s extraordinary jurisdiction granted by Portuguese colonial law.²⁶ As the judge of a *devassa*, he had the power to detain suspects, compel them to testify, convict, and sentence them. Alvares da Costa Pinto received payments for each piece of evidence that he processed, as per a statute of 1754, with each oral hearing followed by an account of the judge’s bill.²⁷ This authority structured the court proceedings in which the defendants did not have a right to counsel: a lawyer for the defendants was present only after they had testified, essentially to plead for mercy during their sentencing.²⁸ Alvares da

²⁴ ‘A Inconfidência da Bahia em 1798’, *Annaes da Biblioteca Nacional do Rio de Janeiro*, xlv (1922), 118.

²⁵ Greg L. Childs, ‘Secret and Spectral: Torture and Secrecy in the Archives of Slave Conspiracies’, *Social Text*, xxxiii (2015).

²⁶ On creating an extraordinary jurisdiction as a colonial governance technique, see Hespanha, ‘Fazer um imperio com palavras’, 80–81.

²⁷ Regimento de 10 de outubro de 1754, Antonio Delgado da Silva, *Collecção da legislação portuguesa desde a ultima compilação das ordenações, 1750-1762* (Lisboa, 1830), 315–327

²⁸ ‘A Inconfidência da Bahia em 1798’, 181.

Costa Pinto convicted nineteen of the thirty-six defendants. The severest punishments, including public execution and exile to Africa, applied to defendants of colour rather than their white, wealthier counterparts. Alvares da Costa Pinto sentenced five leaders to public execution (one sentence was reduced on appeal to imprisonment). Eight defendants were sentenced to exile to Africa, and others to prison and military discharge. The maritime space was important to Alvares da Costa Pinto's power to punish, with one freeman of colour deported and sold to a British naval commander on the West African coast in 1800.²⁹ An inquisitorial process by a judge had reaffirmed colonial jurisdiction by disciplining the internal population through the spectacle of execution and managing external affairs through exile and enslavement. The revolutionaries saw justice as possible only in a political project that used maritime connections to transcend patterns of colonial ordering. Support from Haiti and the organization of commodity exchange according to free trade principles were essential. Both legal authorities and Afro-Brazilian litigants would define maritime spaces differently during the period when the empire faced new threats in the early nineteenth century.

Afro-Brazilian Petitions and the Illegal Slave Trade

The wartime transfer to Rio de Janeiro in 1808 transformed Crown jurisdiction in Brazil and Afro-Brazilian legal politics in relation to it. The British-organized transfer came at a huge economic cost to the Portuguese empire. Dom João VI agreed to open Portuguese imperial ports to foreign ships, effecting by inter-imperial extortion what the plotters of 1798 had hoped to achieve by republican transformation. In 1808, with Napoleon's armies advancing on Portugal, the British Navy blockaded Lisbon to prevent Portuguese ships falling into

²⁹ 'A Inconfidência da Bahia em 1798', 411.

enemy hands. Dom João VI sailed to Brazil in a British convoy to save his empire. The wartime transfer exposed the Portuguese empire's dependence on Britain, even as it enabled new modes of legal ordering within Brazil. The British also gained a preferential maximum tariff of fifteen per cent on imported manufactured goods, stifling Brazil-based manufacturing. The British government extracted a Portuguese declaration against the slave trade followed by a bilateral anti-slave-trade treaty in 1815. As part of treaty negotiations, in 1817 the British agreed a compensation protocol for historic captures of Portuguese slaving ships. The monarchy's defence against internal secession also depended on British naval supremacy, with British ships shelling Recife in 1817 to prevent a breakaway independent federation located at Pernambuco. Portuguese Brazil's internal order and external trade were both dependent on and undermined by the British empire.

Although constrained by British interests, the Rio-based monarch transformed understandings of jurisdiction by hearing petitions directly in cases such as domestic disputes and manumission. In particular, the monarch's presence reshaped understandings of the relationship between executive power and free soil. Free soil was a crucial legal principle for imperial ordering of land, sea, and the connections between them. It was widely recognized within early-modern European empires, including the French, British, and Portuguese. Different versions of free soil existed, but commonly such a rule stated that an enslaved person was freed by entering a particular territory (or refusing to leave it voluntarily), such as the imperial metropole. In the Portuguese empire, a decree in 1761 prohibited the transportation of enslaved people to Portugal and declared free all those arriving after the decree's promulgation. A 1773 decree introduced a free birth law. Neither law changed the status of enslaved people already in Portugal or in the overseas colonies. Instead, both

decrees sought to strengthen public order over enslaved people and enslavers.³⁰ Enslaved people who had entered a free-soil jurisdiction elsewhere in the Atlantic and then returned to Brazil could now petition the monarch directly in Brazil for freedom.

In 1817, the sailor José dos Passos, born into slavery in Bahia, petitioned the monarch for manumission based on an innovative reading of free-soil decrees and treaty law. Kirsten Schultz has analyzed this petition to explain how the monarch's presence in Rio de Janeiro produced a new forum for marginalized litigants to make claims.³¹ Focusing on Passos's sources of legal knowledge adds a new dimension to this case. Passos's owner had sent him to the Mina Coast of West Africa, perhaps to work as a sailor, where he had been captured by a British ship. The ship transferred him to the British colony of Sierra Leone, a major anti-slave-trade naval base. Sierra Leone's population comprised various Black diasporic groups. Loyalists who gained their freedom by fighting for Britain in the American War of Independence were some of the earliest settlers under the aegis of a British company. Maroon people deported from Jamaica after conflict with British authorities and shipboard African captives liberated from slaving ships by naval patrols soon joined them. These examples of securing freedom from enslavement through military service or maritime capture perhaps provided inspiration for Passos to apply them in a Brazilian context.

Passos spent two years in Sierra Leone and one in Portuguese colonial São Tomé. He then returned to Brazil and worked as a sailor and then as a blacksmith at the royal stables. He argued that, his '[o]wner has lost all right that he had over him, as much because of his capture, as because His Britannic Majesty has ordered indemnification for Bahia for all the harms committed by English Corsairs on the Mina Coast, which indemnification necessarily

³⁰ Cristina Nogueira da Silva and Keila Grinberg, 'Soil Free from Slaves: Slave Law in Late Eighteenth- and Early Nineteenth-Century Portugal', *Slavery & Abolition*, xxxii (2011).

³¹ Kirsten Schultz, *Tropical Versailles: Empire, Monarchy, and the Portuguese Royal Court in Rio De Janeiro, 1808-1821* (New York, 2001), 173-174 on José dos Passos, and Ch. 5 more generally on petitioning.

covered the Petitioner and he fears that despite all this his Owner, receiving news that the Petitioner is living here, will order him to come, and subjugate him to a new captivity...'.³² According to Passos, maritime conflict between empires and subsequent British compensation as determined in the 1817 protocol had removed an enslaver's private property right within Brazilian jurisdiction. Passos showed remarkable knowledge of recent treaty law that was fundamental to regulating the transatlantic slave trade. Although the British had agreed in principle to pay compensation in 1815, it was only in July 1817 that the two empires agreed a treaty that specified a payment schedule.³³ Perhaps he had heard about rumours of compensation payments during his time in Sierra Leone. Perhaps Passos had spoken about the agreement with one of the confraternities formed by people of colour in Rio. Passos could also claim that he was free by Sierra Leone's free-soil principle. As with the plotters of 1798, the language in which Passos framed his claim to freedom drew upon transatlantic Afro-diasporic communication about where freedom from slavery was possible.

Passos couched his request for a freedom letter within the conventions of monarchical subjecthood. He submitted to the emperor's 'protection' and requested that a carta régia declare him to be free forever from captivity. Passos combined a language of the loss of an individual right to property with an appeal to the protection that he, even as somebody vulnerable to enslavement, could expect from the monarch. After the police official charged with investigating Passos's case confirmed his account's veracity with his former owner, he recommended the approval of his petition for freedom papers without the requirement of going to court.³⁴ Other Afro-Brazilian litigants drew on knowledge of free soil and even

³² Petition of José dos Passos, [1817], OI GIFÍ – Ministério dos Negócios do Brasil, 6J 83, Arquivo Nacional, Rio de Janeiro (hereafter ANRJ).

³³ See Additional Convention to the Treaty of 1815, 28 July 1817, Article 11.

³⁴ Paulo Fernandes Vianna to Thomaz Antonio de Villanova Portugal, 21 October 1817, OI GIFÍ 6J 83, ANRJ.

multi-generational knowledge among kin about an ancestor's free birth in Angola.³⁵ Free status in another jurisdiction could thus be based on illegal enslavement after free birth, on imperial free soil, or on inter-imperial treaty law. Litigants could challenge slave status by drawing on proof of free status in another jurisdiction on the other side of the Atlantic. They then used the monarch in Rio as the appropriate forum to petition for freedom. Each claim to free status depended on proving a specific maritime journey, whether by the litigant himself or by an ancestor.

New constitutional rights gained from the transfer of the monarch remained reversible. Demands for constitutional rule led to the Cortes in Lisbon in 1820 and a barracks revolt in Bahia and public protests in Rio to formalize the new rights.³⁶ As disputes arose over Portuguese aims in sending a pacifying army to Brazil, Brazilian and Portuguese inhabitants of Brazil fought each other over their support for Portuguese rule or independence. Conflict erupted over whether the government should be absolutist, a constitutional monarchy, or a constitutional republic. These political rifts even divided the co-conspirators of the 1798 attempted revolution. One participant, an army officer, became a member of a constitutional club whereas another was killed fighting for absolutism. After the war of independence, militiamen of colour petitioned the new emperor, João's son Pedro I, for promotions, pensions, and rewards, centring the relationship between the monarch and his subjects in creating post-war stability.³⁷ Confronted with economic and military crises, in 1831 Pedro abdicated in favour of a regency until his son came of age. The same year, the

³⁵ Requerimento de Francisco de Paula, escravo do coronel Anselmo da Fonseca Coutinho, a S. A. R. solicitando alforria... [no date]. Seção de Manuscritos, Biblioteca Nacional, Rio de Janeiro, C 420, 49, n.12; John C. Marquez, 'Witnesses to Freedom: Paula's Enslavement, Her Family's Freedom Suit, and the Making of a Counterarchive in the South Atlantic World', *Hispanic American Historical Review*, ci (2021).

³⁶ Schultz, *Tropical Versailles*.

³⁷ Hendrik Kraay, *Race, State, and Armed Forces in Independence-Era Brazil: Bahia, 1790s-1840s* (Stanford, CA, 2004), 115, 137.

regent, Diogo Antônio Feijó, proposed Brazil's first criminal law against the slave trade, which parliament passed. The police and courts enforced the law until 1837, when a new Conservative administration, supported by slaveowning land proprietors, abandoned the law. The effect of the continued trade in breach of treaty and domestic law on independent Brazilian sovereignty grew as an issue in the first decade after independence.

Brazilian territorial integrity faced not only maritime challenges from illegal trading but also internal rebellions, notably in Bahia. In 1835, enslaved African people led the Malê revolt with the aim of instituting regional rule by people born in Africa.³⁸ The revolt was one in a series of uprisings between the late-eighteenth and mid-nineteenth centuries that increased official fears about mass mobilization against slavery. Two years later, another rebellion demonstrated the enduring concerns with regional political movements throughout the empire. In Bahia in the early 1820s, conflict over continued colonial rule had split pro-independence plantation owners from Portuguese troops and their supporters in Salvador. After Brazilian independence, the urban radical Liberal political elite (*exaltados*) demanded greater regional control by contesting centralizing initiatives by Pedro I. In 1837-1838, these demands resulted in the Sabinada revolt, which initially aimed at separation from Brazil and then at temporary independence until Pedro II came of age.³⁹ The *exaltados*, allied with army officers and militiamen, seized control of the provincial government in Salvador for five months. Several hundred enslaved people joined the rebel forces. People of the middling sort who were disappointed by the federalist, decentralizing reforms of the 1830s that aimed to

³⁸ João José Reis, *Slave Rebellion in Brazil: The Muslim Uprising of 1835 in Bahia* (Baltimore, M. D. and London, 1993).

³⁹ Norman Holub, 'The Brazilian Sabinada (1837-38) Revolt of the Negro Masses', *The Journal of Negro History*, liv (1969); Hendrik Kraay, "'As Terrifying as Unexpected": The Bahian Sabinada, 1837-1838', *The Hispanic American Historical Review*, lxxii (1992); Dilton Oliveira de Araújo, *O tutu da Bahia : transição conservadora e formação da nação, 1838-1850* (Salvador, 2009).

constrain the unitary power of the emperor also participated in the rising.⁴⁰ As in the 1798 revolution, the Sabinada rebels responded to the emperor's attempts to centralize rule by insisting on Bahia's jurisdictional separation. A man named Higino Pires Gomes was one of the rebel leaders. As it became clear that the uprising had failed, Pires Gomes led some of his men into the scrubland outside Salvador. The suppression of the Sabinada rebellion by the authorities involved over one thousand deaths and two thousand cases of imprisonment. A key figure in the suppression was Francisco Gonçalves Martins, the chief of police. As we shall see, both Pires Gomes and Gonçalves Martins would play roles in the illegal slave trade in the Bahian courts in 1851. The crushing of Sabinada coincided with the rise of the Regresso (c. 1837-1852), the Conservative administration of Brazilian centralized state formation.

The government's political base comprised slaveowners who depended on the continued illegal trafficking of African captives to Brazil, but such trafficking came at a huge political cost. The illegal trade brought three distinctive threats together: new arrivals of African captive people whom the authorities perceived as the likeliest to rebel, slaving merchants whose landownership and international trading networks formed enclaves beyond any jurisdiction, and British anti-slave-trade attacks on Brazilian vessels and coastal possessions. Eventually, the risks prompted Brazil's parliament to pass a new anti-slave-trade criminal law in September 1850.⁴¹ Into 1851, the British Foreign Office ordered the Navy to

⁴⁰ Juliana Serzedello Crespim Lopes, *Identidades políticas e raciais na Sabinada: (Bahia, 1837-1838)* (São Paulo, 2013).

⁴¹ For overview of the processes leading to the new law, see Robert W. Slenes, 'Malungo Ngoma Vem - África coberta e descoberta no Brasil', *Revista USP*, (1992); Jeffrey D Needell, 'The Abolition of the Brazilian Slave Trade in 1850: Historiography, Slave Agency and Statesmanship', *Journal of Latin American Studies*, xxxiii (2001); Sidney Chalhoub, 'Os conservadores no Brasil império', *Afro-Ásia*, xxxv (2007); Jake Subryan Richards, 'The Adjudication of Slave Ship Captures, Coercive Intervention, and Value Exchange in Comparative Atlantic Perspective, ca. 1839–1870', *Comparative Studies in Society and History*, lxii (2020).

capture suspicious ships in Brazilian waters.⁴² The situation had changed remarkably since the 1798 uprising, where antislavery revolution inspired by several internal and transoceanic connections seemed to be the most pressing hope (or threat). In 1817, Passos used his transoceanic voyages as evidence of freedom under both the free-soil principle and treaty law. By 1850, the transoceanic itineraries of trafficked people who arrived on the Brazilian coast became the focus of both judicial ordering and diasporic legal politics to overturn slave status. The coast was the zone where illegal trafficking brought multiple internal and external threats to order into Brazil's jurisdiction.

Anti-Slave-Trade Jurisdiction in Formation

By 1850, imperial jurisdiction over territorial lands and waters and over people in Brazil seemed possible, yet fragile due to the widespread illegal trade. This tension became stark in Bahia in a major case of illegal trading in 1851. In October 1851, the slave ship *Relâmpago* sped towards the coast of Bahia, in one of the last acts of the illegal slave trade to Brazil.⁴³ The slave ship crew and its financiers were desperate: they had packed around 800 African captive people into the hold without installing a second deck to increase the space between them. Nor had they provided sufficient food. One hundred captives, approximately 12.5% of the total, had already died during the month-long voyage from the Bight of Benin. This mortality percentage was higher than the average for the transatlantic slave trade. Chased by the Brazilian naval cruiser *Itagipe*, the Spanish captain Benito Derizanz and his crew decided on a risky strategy. They ran the ship aground on the plantation Pontinha, owned by the

⁴² Jake Christopher Richards, 'Anti-Slave-Trade Law, "Liberated Africans" and the State in the South Atlantic World, c.1839–1852', *Past & Present*, ccxli (2018).

⁴³ Voyages. Transatlantic Slave Trade Database Vessel ID: 4786

slave-owning former Sabinada rebel and active Liberal politician, Higino Pires Gomes.⁴⁴ The coast was a space of uneven rather than uniform jurisdiction, and its unevenness became starker for all parties in this case of illegal trading.

While the Brazilian coast assumed unprecedented importance in the attempts to suppress the illegal trade, it had been subject to legal regulation during the colonial period. Coasts were zones of revenue extraction through import and export duties. Bahia's economy depended on a vibrant export industry. Alongside sugar, which comprised 68.2% of export staples by value of revenues in 1796, Bahia exported tobacco, cotton, coffee, hides, gold, and timber.⁴⁵ Yet Portuguese colonial officials long knew that such goods could also be smuggled out of Brazil due to the difficulty of policing people and vessels in coastal regions. In 1772, the Crown obligated all ships that visited ports in the colonial possessions in America or Africa to return directly to Lisbon to stop the smuggling of goods between colonies by slave traders based at Mozambique.⁴⁶ Extensive Pombaline reforms of the mining sector aimed to increase tax collection and eradicate the contraband diamond trade. One decree targeted abuses caused by the 'superfluous number of slaves, schemes, coercion, and other similar matters, used in the service of the mines'. It mandated a new state registry of enslaved people in diamond-mining districts. It stipulated that 'Black women, who appear to have fled, will be brought to their owners... to assign terms for their sale outside the District, under penalty of eviction'.⁴⁷ The decree formed part of a broad attempt to prevent Afro-Brazilian women's independent economic activity in these districts. Other regulations sought to increase revenue collection by imposing a head tax in each district. The tax would cover any deficit in the

⁴⁴ Luís Henrique Dias Tavares, *O desembarque da Pontinha* (Salvador, Bahia, 1971).

⁴⁵ B. J. (Bert Jude) Barickman, *A Bahian Counterpoint: Sugar, Tobacco, Cassava, and Slavery in the Recôncavo, 1780-1860* (Stanford, Calif., 1998), Table 1, p. 24.

⁴⁶ Alvará of 12 December 1772, Antonio Delgado da Silva, *Collecção da legislação portuguesa desde a ultima compilação das ordenações... 1763-1774* (Lisboa, 1858), 627.

⁴⁷ Alvará, 2 August 1771, Delgado da Silva, *Collecção da legislação portuguesa desde a ultima compilação das ordenações... 1763-1774*, 552–564, quotations at 552, 556.

collection of the ‘royal fifth’ due on the production of precious metals. They also awarded new inspection powers to councils to assess the quality of sugar and tobacco from slave plantations.⁴⁸ Colonial reforms sought to increase tax revenue by improving the regulation of the production and export of the most important products.

The Crown also granted special privileges and jurisdictions to other corporate bodies, such as to companies for the sale of enslaved people and for establishing sites along the coast for processing fish and whale catches using enslaved labour.⁴⁹ This imperial strategy aligned with how European empires in the Caribbean recognized colonial households as a major vehicle for holding and moving property, including in enslaved people.⁵⁰ The Crown resorted to delegation where official enforcement was unlikely to succeed: ordering as the assertion of authority remained limited in a coastal region where widespread smuggling and independent Afro-Brazilian mining and fishing disrupted the boundary between legal and illegal behaviour.⁵¹ By 1850, the independent empire relied on its growing centralized institutions, including the navy and maritime courts, rather than delegated companies to regulate coastal regions.

The crew of the *Relâmpago* wrecked the vessel in landing the captives to smuggle them as quickly as possible inland, where traffickers could re-present the captives as legally-held slaves. The crew had time only to grab some of the captive boys and girls – perhaps because they were close to hand on deck and less likely to resist. They put these child captives in canoes to row them ashore. The crew threw a rope to the rest of the captives, ordering them to unfold aching and wasted limbs, climb from the hold to the deck, and drag

⁴⁸ Maxwell, *Conflicts and Conspiracies*, chap. 1.

⁴⁹ Alvará, 7 May 1774, Delgado da Silva, *Collecção da legislação portuguesa desde a ultima compilação das ordenações... 1763-1774*, 760.

⁵⁰ Lauren Benton and Timo McGregor, ‘A Sea of Households: Violence and Regional Order in the Seventeenth-Century Caribbean’, *Past & Present*, (forthcoming).

⁵¹ See the editors’ Introduction to this supplement.

themselves one-by-one through the surf to the beach. Several hundred made it to land, where Pires Gomes's men smuggled them into the surrounding scrublands. But sixty African people perished, drowned by the breaking waves. Over the next several days, the crew of the *Itagipe* and various police and Guarda Nacional officers recaptured around 310 Africans from the *Relâmpago*'s hold and from the scrublands, including some who were turned over by private citizens.⁵² Less scrupulous residents bought the remaining captives, thereby holding illegally-trafficked people in a legally uncertain chattel bondage. The longer these residents detained the trafficked people, the likelier that they could re-present them in society as legally-held slaves through labour assignments on plantations and fake paperwork. There were two ensuing court cases regarding the *Relâmpago*. The first was an adjudication of the capture in the marine court, the Auditoria da Marinha; the second was a criminal prosecution of those involved in the voyage. The Chief of Police and presiding judge (Auditor) in the first case, João Mauricio Wanderley, was a prominent defender of the Conservative national government.⁵³ In his investigation, Wanderley collaborated with Gonçalves Martins, the provincial president who had been chief of police during the Sabinada revolt.

Illegal voyages like that of the *Relâmpago* played a crucial role in Bahia's export-led economy in the mid-nineteenth century. In 1851, sugar exports comprised 69.5% of all export revenues. Tobacco, cotton, and coffee claimed smaller shares.⁵⁴ The principal townships near

⁵² For different estimates of the number of recaptured African people, see *Relatorio apresentado á assembléa geral legislativa na quarta sessão da oitava legislatura pelo ministro e secretario d'estado dos negocios da justiça...*, (Rio de Janeiro, 1852), 12; Wanderley (as Chief of Police) Report to President of Province, 18 November 1851, second enclosure in Southern to Palmerston, 5 January 1852, in House of Commons Papers, Parliament 1852–53, Class B. Correspondence with British ministers and agents in foreign countries, and with foreign ministers in England, relating to the slave trade, 1851–52, Paper number 0.3, 338; Tavares, *O desembarque da Pontinha*.

⁵³ Wanderley Pinho, *Cotegipe e seu tempo* (São Paulo, 1937), 192–214; Wlamyra Albuquerque, 'O samba no sobrado da baronesa: liberdade negra e autoridade senhorial no tempo da abolição', *Revista Brasileira de História*, xxxviii (2018).

⁵⁴ , Table 1, p. 25 Barickman, *A Bahian Counterpoint: Sugar, Tobacco, Cassava, and Slavery in the Recôncavo, 1780-1860*.

Pontinha, including Valença, Camamu, and Ilhéus were centres of coffee production for export and farinha de mandioca (cassava flour), the most significant staple in Bahia.⁵⁵ Coffee and sugar exports increased in the 1830s and 1840s, as the United States removed tariffs on Brazilian coffee and Britain did the same on sugar. Coffee and sugar production would remain important to Pires Gomes long after the capture of the *Relâmpago*. Since death rates were higher than birth rates among the enslaved population, illegally-trafficked labourers were crucial to producing each of these staples for domestic and global markets.

The Auditoria's proceedings were based in part on Portuguese laws that the independent Brazilian state had adopted.⁵⁶ For instance, a notice from the Ministry of Justice stipulated that the Auditoria was to treat slaving ships as 'enemy' ships, a concept defined in a royal letter of 1627.⁵⁷ Unlike this royal decree to release Christian captives immediately from captured enemy ships, the 1850 law stipulated that African captives were to be detained. Imperial officials would register the liberated Africans would for registration, assign them into bonded labour, and at the end of service, deport them to Africa. The same notice specified that the Auditor would receive payment for hearing evidence in line with the 1754 Regimento, just as Alvares da Costa Pinto had done in 1798.⁵⁸ The court generated captor

⁵⁵ Barickman, *A Bahian Counterpoint: Sugar, Tobacco, Cassava, and Slavery in the Recôncavo, 1780-1860*, 27, 88.

⁵⁶ On the Auditor Geral da Marinha in Rio de Janeiro, see Daniela Paiva Yabeta de Moraes, 'A capital do comendador: A Auditoria Geral da Marinha no julgamento sobre a liberdade dos africanos apreendidos na ilha da Marambaia (1851)' (Unirio Mestrado, 2009); Jake Subryan Richards, *The Bonds of Freedom: Liberated Africans and the End of the Slave Trade* (Yale University Press, forthcoming), Chapter 6; Beatriz Mamigonian, *Africanos livres: A abolição do tráfico de escravos no Brasil* (São Paulo, SP, 2017).

⁵⁷ Carta Régia de 8 de maio de 1627, José Justino de Andrade e Silva, *Collecção chronologia da legislação portuguesa : 1620-1627* (Lisboa, 1855), 179.

⁵⁸ Aviso da Justiça, 9 de janeiro de 1851, *Coleção das decisões do governo do Império do Brasil. Tomo XIV. 1851.*, (Rio de Janeiro, 1852), 313.

accounts, statements by Pires Gomes's men, and even testimony from some of the rescued African captives, and drew up itemized financial accounts for each hearing.⁵⁹⁶⁰

In court, the primary issue for the Auditor, Wanderley, was to establish the legality of capture of the vessel and captives. The most obvious evidence of an illegal voyage was the presence of the shipboard Africans. Wanderley instructed a notary and competent witnesses to record the liberated Africans' identifying features including age, ethnicity (mainly Nagô and Haussa), dental condition, facial cicatrices, and brandings. The court assigned each recaptured person a number and Lusophone name that could then be used to register them as apprentices.⁶¹ The *Itagipe* crew provided additional material evidence such as sacks of maize and farinha on board, a barrel of vinegar, and fittings such as covers and hatches. The crew also found a tin of sugar 'of the type belonging to Higino Pires Gomes'; there was no explanation of how they could make this attribution but perhaps a local informant could identify the tin as Pires Gomes's.⁶² Based on this evidence, Wanderley judged that the *Itagipe* had lawfully captured the *Relâmpago* as a good prize.

Wanderley also needed to investigate how many African people had been disembarked from the coastal landing, with important ramifications for their political status. After independence, Brazil's new constitution of 1824 declared citizens to include "those who were born in Brazil, whether they are freeborn or freed from slavery [libertos]."⁶³ This

⁵⁹ Report by Chief of Police, 18 November 1851, translated and enclosed in Southern to Palmerston, 5 January 1852, 'Correspondence with British Ministers and Agents in Foreign Countries, and with Foreign Ministers in England, on Slave Trade, 1851-52 (Class B)', *19th Century House of Commons Sessional Papers*, Paper Number : 0.3 (1853), 338.

⁶⁰ Report by Chief of Police, 18 November 1851, translated and enclosed in Southern to Palmerston, 5 January 1852, in House of Commons Papers, Parliament 1852-53, *Class B*, paper number 0.3, 338.

⁶¹ 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago*, 1851, Arquivo Público do Estado da Bahia, Brazil.66r-115v

⁶² Ibid., 40r-40v, 63v-64r

⁶³ Constituição Política do Império do Brasil (de 25 de março de 1824), Título 2, Art. 6, §I. The full clause made clear that such citizenship included a Brazil-born person "even if their

clause excluded those born in Africa, including African captives liberated from slaving ships like the *Relâmpago*. Citizenship was fundamentally the result of oceanic ordering, excluding people born overseas and who had at some point been enslaved. Wanderley heard testimony from the police officers who had found many Africans being forcibly marched by armed guards through the nearby Rancho Velho scrubland. The guards were enslaved plantation labourers owned by Pires Gomes and others were agregados (dependants) attached to Pires Gomes's estate. The leaders were a man of colour, Adriano, and a nephew of Pires Gomes, Augusto da Silva Neves.⁶⁴ During the pursuit, the armed guards fired on the police officers but were overwhelmed, resulting in two deaths and nine arrests. The police also seized six mules 'known to belong to Higino'. Again, the attribution of goods involved in slave-trading to Pires Gomes seemed to rely on confidential information or rumour. During their investigation, the police seized additional recently-trafficked African people whom they described as 'wearing loincloths and [suffering from] hunger'. They spoke little Portuguese.⁶⁵ This evidence suggested that the Africans were recently trafficked, rather than being imported between 1837 and 1850 when Brazilian state authorities had permitted the illegal slave trade. Establishing that all the Africans came from the *Relâmpago* was important because in previous cases from Rio de Janeiro the Conselho do Estado (the appellant authority) had set the precedent that the Auditor had jurisdiction only over captures *after* 1850, and not over the preceding years of illegal slave-trading.⁶⁶ The Auditor might liberate all these captives from enslavement, but liberty would not provide them with citizenship.

father is a foreigner, as long as he does not reside in Brazil in service of his Nation", an exclusion that targeted foreign diplomats and naval and military personnel, above all British.

⁶⁴ Neves is identified as Pires Gomes's nephew in *Correio da Tarde*, 23 March 1852, p. 1.

⁶⁵ Apreensão do navio *Relâmpago*, 1851, 34r-36v.

⁶⁶ Sidney Chalhoub, *A força da escravidão: ilegalidade e costume no Brasil oitocentista* (São Paulo, 2012), chap. 5.

Even during the forced march inland, the illegally-trafficked captive people had looked for ways to claim freedom. The march was a large-scale operation, with at least eighteen guards marching over 250 Africans across the land. As they were marching, two unidentified Africans escaped. As the enslaved armed guard José Cabra later explained during his interrogation, Pires Gomes had instructed him to escort the ‘negros novos’ through his owner’s estate. After the two captive people escaped, José and a fellow guard, Manoel, went back two leagues to find them, but failed. When they returned empty-handed, Neves ordered the rest of the guards to return to Fazenda Canoa and José and Manoel to continue the search. As José testified, ‘on this occasion... he was taken prisoner’.⁶⁷ What happened to the escapees is unknown: perhaps they became self-liberated people, or perhaps a different enslaver kidnapped them. Africans’ fugitivity indirectly facilitated collective recapture and the criminal detention of some of Pires Gomes’s guards, whom Wanderley had authority to refer for prosecution.

Escapes by captives underscored a major legal problem regarding illegal trade on the coast: how could Wanderley be sure that the various police and naval seizures involved Africans exclusively from this attempted disembarkation in 1851? Could any of them have instead been trafficked during the period 1831-1850? Any such “confusion” in state seizures of enslaved people risked undermining private property rights in a slavery-based society. Wanderley’s task was made harder by the fact that, since recapture, the liberated Africans had been scattered across Bahia into time-limited compulsory service. Wanderley needed to interrogate some of them to confirm that the authorities had lawfully recaptured them. On 5 December, he took separate statements from some Africans at the Hospital da Caridade in Nazaré, about thirty-five kilometres inland north-west from Pontinha.

⁶⁷ 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago*, 46r.

Afro-Brazilian people generated an innovative legal politics to counter how smuggling inland could quickly turn an illegal act into a presumptive property right. In their testimony, Afro-Brazilian people drew upon on shipboard social connections to assert their own conception of justice. Present at the interrogations were a municipal judge, police delegado, notary, public prosecutor, and a hospital employee. Also present was an enslaved woman, Delfima Nagô, owned by the employee. Delfima was to be the interpreter for the recaptured Africans. First, the assembled authorities interrogated the African Noé, numbered 238 in the register of capture. Detailed, invasive bodily descriptions preceded Noé's testimony. The notary described him as five feet seven inches tall, with a long face, 'large and protruding eyes', a regular nose, and a small mouth, who was about twenty-three years old. 'Where are you a native of and at what time more or less did you come from your land?' Noé replied that 'he was a native of Loanda where during war with the Ebá [Egba] people he was imprisoned and after spending four days [he was] embarked seeming to him that the voyage lasted two moons, or a little less than one month, [but] he was not sure'.⁶⁸ Every African witness interpreted the question not as asking for birthplace and journey time but rather to relate to the violence of enslavement: Adão was 'grabbed' when on his way to 'Loanda' for business, Abil was 'sold' while still *pequeno*, Frack 'sold', and Eva 'stolen' from her homeland in Efou.⁶⁹ Their stories demonstrate how an event such as war could

⁶⁸ 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago*, 133v. 'Loanda' likeliest refers to Lagos as the Africans call it a 'cidade' and it served as their embarkation point. Two less likely but possible options could be the Ondo people and their eponymous town, east of River Osun, or Allada, i.e. Porto Novo in Dahomey. It is highly unlikely to be Luanda in Angola: slaving ships involved in the illegal trade rarely travelled hundreds of miles northwards along the West African coast.

⁶⁹ The captive people were mainly Yoruba speakers from the region between Ibadan and the Kingdom of Dahomey. 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago* 135v, 138v, 140v, 141v. 'Efou' is perhaps Ife.

distort regular patterns of life, such as a quiet childhood in Akure or trading in the extensive cotton, bead, and brass markets at Ijebu.⁷⁰

The authorities then asked whether the captive people had disembarked with the crew. Left below deck while the crew rowed off with some child captives, the Africans were required to grab a rope thrown by Pires Gomes's armed guards to the vessel. As Noé put it, only those who 'escaped from death' made it to shore.⁷¹ Eva said that after she and her 'companheiros' had dragged themselves hand-over-fist to the beach 'eight armed black men drove them through the scrublands'. The term 'companheiro' denoted kinship bonds between shipmates on the same slaving voyage, a term of solidarity in the face of peril. As Abil said, 'every person was trying to flee [and] soon afterwards they were imprisoned by the troops and taken from there to this City'.⁷² The shipmates corroborated each other's testimony about their specific voyage from the Bight of Benin to the Bahian landing site in their collective legal strategy to claim freedom.

The authorities wanted to use liberated Africans' testimony to strengthen public order against traffickers in the coastal region. Wanderley needed to decide whether to the captain, his crew, Pires Gomes, and his guards had a criminal case to answer. Did the Africans know the captain's name or could they describe him, and the crew? Although some did give physical descriptions, the overriding response related to how little they knew. Adão did not see much of the crew because 'he was always in the hold'.⁷³ Sen could describe those crewmembers involved in the daily distribution of food rations and thought there might have been six of them; Abil could describe only two involved in this daily task.⁷⁴ The court was a

⁷⁰ A. I. Aṣiwaju and Robin Law, 'From the Volta to the Niger, c. 1600-1800', in J. F. Ade. Ajayi and Michael Crowder (eds.), *History of West Africa* (London, 1985), i.

⁷¹ 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago*, 134v.

⁷² 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago*, 139r.

⁷³ 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago*, 136v.

⁷⁴ 04/167/06 Seção Justiça. Apreensão do navio *Relâmpago* 138r (Sen), 139v (Abil).

site where the liberated Africans could narrate each step in illegal enslavement to present their own vision of a just outcome. They explained captures in Africa, sales to coastal traders, the illegal crossing with its privations, brutal disembarkation, forced march into the scrublands, attempted flight, and forcible recapture. The African witnesses refocused their testimony away from the authorities' desire to fix timing and criminal identification, and towards their own critique of systemic violence.

Punishing selected traffickers under criminal law extended jurisdiction over elites who were difficult to govern because of their illegal trading activities. In February 1852, Wanderley found thirty-three individuals guilty of importing slaves. Those convicted included Captain Derizanz, his crew, Pires Gomes, Neves, José Cabra, and eight other enslaved guards. In criminal terms, the importation amounted to piracy and of reducing free persons to slavery.⁷⁵ The captain and crew were punished with a fine of up to 200\$000 reais per African imported and imprisonment of between three and nine years.⁷⁶ The remaining convictions were for complicity with these crimes, punishable with the same sentences discounted by one third.⁷⁷ These convictions were part of a trend across Brazil in 1850-1851. The courts applied criminal punishments to a comprehensive range of illegal traders who connected land and sea and whom the authorities considered to be a threat to public order. Illegal traders had integrated trafficking across the spaces of the high seas, territorial waters, and coastal land; defining a new criminal jurisdiction had followed this same spatial ordering.

⁷⁵ Verdict, 28 February 1852, enclosed in Wanderley to President of Province, 8 March 1852, reprinted in *Correio da Tarde*, 23 March 1852, pp. 1-2. See Articles 3 and 4 of Law 581 of 1850.

⁷⁶ Article 2, Law of 7 November 1831; Article 179, Código Criminal

⁷⁷ Articles 34 and 35, Código Criminal. See the criminal sentencing, 28 February 1852, translated and enclosed in Wetherell to Malmesbury, 15 April 1852 in House of Commons Papers, Parliament 1852–53, *Class B. Correspondence with British ministers and agents in foreign countries, and with foreign ministers in England, relating to the slave trade*, 1852–53, Paper number 0.5, pp. 259–60.

Was the adjudication of the *Relâmpago* simply a case of the conservatives Gonçalves Martins and Wanderley using their offices to settle old scores with their Liberal opponent, Pires Gomes? Since the coast was an uneven jurisdictional zone, interest groups could use prosecutions for illegal trading to pursue their own priorities. Using anti-slave-trade law as a political weapon was possible: Marcus J. M. de Carvalho has demonstrated that in Pernambuco the *praeiros* (Liberals) used the law to seize trafficked Africans whom their rival *guabirus* (Conservatives) had claimed to own at coastal locations.⁷⁸ Yet the case of the *Relâmpago* was clearly different: law-as-politics cannot explain why a Conservative minister of justice, Eusébio de Queirós, decided to pardon Pires Gomes.⁷⁹ Other defendants in the case made arguments that revealed how the adjudication was far more concerned with court jurisdiction over maritime traders and domestic populations than with political rivalry. In 1857, the authorities charged a Brazilian trader, Marcos Borges Ferras, with importing captives on the *Relâmpago*. The authorities suspected that he owned the vessel and was a major slaving merchant who had been expelled from Lagos.⁸⁰ Borges Ferras denied any involvement, arguing that he had been ‘employed in bookkeeping by Kosoko, the King of Onim [Lagos], by whose order he had to charter the said schooner, which he needed for his business in Havana’.⁸¹ Borges Ferras claimed that he had no other means of subsistence on the African coast and that he did not know the *Relâmpago*’s itinerary or cargo. He also testified that his written recommendation for Melchior Garcia, captured aboard the

⁷⁸ Marcus J. M. de Carvalho, ‘A repressão do tráfico atlântico de escravos e a disputa partidária nas províncias: os ataques aos desembarques em Pernambuco durante o governo praieiro, 1845-1848’, *Tempo*, xiv (2009); Marcus Joaquim Maciel de Carvalho and Paulo Henrique Fontes Cadena, ‘A política como “arte de matar a vergonha”: o desembarque de Sirinhaém em 1855 e os últimos anos do tráfico para o Brasil’, *Topoi*, xx (2019).

⁷⁹ *Atas do Conselho de Estado Pleno*, 6 September 1852.

⁸⁰ For Borges Ferras’s background, see Hugh Thomas, *The Slave Trade: The Story of the Atlantic Slave Trade, 1440-1870* (New York, NY, 1997), 744; Robin Law, *Ouidah: The Social History of a West African Slaving ‘Port’, 1727-1892* (Oxford, 2004), 217.

⁸¹ Tribunal de Justiça, Apelação Crime, Salvador, Réu Gomes, Higino Pires [and others], 1851, 07/Caixa 260/Doc. 1, 325v.

Relâmpago and charged with the crime of importing African captives, was ‘an innocent letter’.⁸² For Borges Ferras and Garcia, the 1850 law was a mild deterrent against a maritime commercial opportunity that they were adept at exploiting. The traffickers did not view the illegal trade as a threat to creating a legal order over maritime commerce and the domestic enslaved population.

The judge disagreed, stating that the *Relâmpago*’s course was clearly to Brazil and that ‘the documents and questioning of the convicted defendants prove Borges Ferras to be the owner of the said schooner [at Lagos] where it embarked the apprehended Africans’.⁸³ The judge sentenced Borges Ferras to three years in prison.⁸⁴ Pires Gomes escaped severe punishment. By 1857, this consummate trickster had found new sources for personal gain. Pires Gomes contracted with the provincial government for an interest-free loan of 30:000\$000 Rs. The loan would fund the shipment of one thousand ‘colonists’ from Europe to his estates in Valença as coffee and sugar cultivators. It seems that he did not fulfil the contract.⁸⁵ Wanderley rose from police chief to provincial president, to national senator, and prime minister. As Barão Cotegipe, he was partly responsible for the Saraiva-Cotegipe Law (1885), which freed enslaved people in Brazil aged over sixty years old. He also voted against the successful bill that enacted general emancipation in 1888.

⁸² Tribunal de Justiça, Apelação Crime, Salvador, Réu Gomes, Higino Pires [and others], 1851, 374v.

⁸³ Tribunal de Justiça, Apelação Crime, Salvador, Réu Gomes, Higino Pires [and others], 1851, 349v.

⁸⁴ The file for the criminal court case is damaged and incomplete: what happened to Melchior Garcia is unclear.

⁸⁵ *Falla recitada na abertura da Assembléa Legislativa da Bahia pelo presidente da provincia, o desembargador João Lins Vieira Cansansão de Sinimbú, no 1. de setembro de 1857.*, (Bahia, 1857), 92 and ‘Termo de Contrato’ between President of Province and Hygino Pires Gomes, 17 March 1857 in the appendix [unpaginated, numbered S19-1 - S19-3 in the CRL database]. on the failed immigration scheme, see Araújo, *O tutu da Bahia : transição conservadora e formação da nação, 1838-1850*, 343. It is unclear from the Fallas if the loan was ever repaid.

In the *Relâmpago* case, the Auditor's jurisdiction to investigate illegal slaving to assert state authority over coastal waters converged with African captives' claims to freedom based on shipmate testimony. Wanderley ordered social relations to prevent private parties like Pires Gomes from undermining Brazilian sovereignty through illegal trading in a liminal zone. Corroborative testimony was less overtly politically threatening than popular revolution, yet it still challenged the conventional mechanisms of manumission. Instead of the enslaver's benevolence or the emperor's accession to a petition, the grounds for freedom for the liberated Africans was their oral evidence about illegal trafficking. Transoceanic displacement from Africa, which the Brazilian constitution used to exclude them from citizenship, became grounds for freedom even when arriving on slave soil rather than free soil. As the struggles against coastal smuggling in the eighteenth century revealed, putting territorial waters and coastal land under criminal jurisdiction was far from inevitable.⁸⁶ It required the harmonization of a vision and practice of jurisdiction between the regional Auditor, naval crews, police officers, and imperial statesmen. The Auditor used liberated African testimony to locate the coast within imperial jurisdiction rather than British extraterritorial jurisdiction or the jurisdiction of landowners like Pires Gomes. The Auditoria both inserted the coast into imperial jurisdiction and provided a forum in which such testimony drew attention to illegally-trafficked people who still languished in bondage. Shipmates' testimony about their maritime displacement both reinforced imperial jurisdiction's immediate authority and undermined its longer-term political project of preserving the institution of slavery.

⁸⁶ The abandonment of British imperial jurisdiction in the Andaman Sea reveals that the extension of criminal and admiralty law in the nineteenth century was neither inevitable nor irreversible. See Kalyani Ramnath, 'Adrift in the Andaman Sea: Law, Archipelagos, and the Making of Maritime Sovereignty', *Past & Present*, (forthcoming).

New tools to control territorial land and enslaved people emerged from anti-slave-trade jurisdiction. For instance, as Isabel Cristina Ferreira dos Reis has revealed, the Bahian authorities assigned some liberated Africans as apprentices in a settlement along Rio Jequitinhonha, on the southern border region with Espírito Santo.⁸⁷ In granting them land to cultivate, Bahia's provincial president hoped that the apprentices would secure the frontier against Indigenous groups. One policy regarding landownership that the Conservative administration implemented in parallel to asserting Brazilian jurisdiction over coastal waters and land was the Lei de Terras (1850). This law created a market in 'vacant land' in Brazil. Such lands were not vacant, as Indigenous people lived in and conserved these areas. After ten years, many apprentices felt 'abandoned'; some had started families in the borderland settlement.⁸⁸ The implementation of criminal law against trafficking on the coast thus produced bonded labour that the authorities assigned to attempt to settle regions outside colonial control.

Conclusion

By drawing on a diverse range of maritime connections, Afro-Brazilian people developed a legal politics that affected the development of jurisdiction from the colonial era to early independence. Across the period, judges, major landowners, and legislators agreed that slaves were necessary for economic growth but also posed a threat to domestic order. They sought to control enslaved and freed people's politics, but each attempt produced counteractions in Afro-Brazilian legal politics. This continuity sat alongside two major changes. First, Afro-

⁸⁷ Isabel Cristina Ferreira dos Reis, 'A família negra no tempo da escravidão : Bahia, 1850-1888' (Unicamp Doutorado em História, 2007), 146–170; for intertwined Black and Indigenous histories of this region, see Yuko Miki, *Frontiers of Citizenship: A Black and Indigenous History of Postcolonial Brazil* (Cambridge, 2018).

⁸⁸ Reis, 'A família negra no tempo da escravidão : Bahia, 1850-1888', 161.

Brazilian people drew on an expanding repertoire of transoceanic connections, starting with the Haitian Revolution and reaching far beyond it, to claim freedom. Free soil and corroborative testimony from shipmates were two such connections. Second, judges and Afro-Brazilian parties in court came to define maritime spaces more clearly in their legal interactions. Specific itineraries to free soil and to the Brazilian coast – but not farther inland – grounded claims to freedom. Whereas in 1798 a special enquiry enforced public order, by 1851 the maritime court was the leading edge for punishing parties complicit in illegal trade.

Over time, the claims to freedom became more limited as they became more acceptable within imperial legal structures. That said, each claim raised important implications for all people held in slavery in Brazil. The revolutionary movement aimed to outlaw both slavery and legal racialized inequality. An individual freedom suit based on free soil raised the question of how free status in another jurisdiction could be recognized in Brazil. Shipmate testimony about illegal slave-trading highlighted cases where trafficked people were forcibly marched from the coast to the plantations. Afro-Brazilian people developed a legal politics that drew attention to fellow diasporic people who also deserved liberty. Once these varied Afro-Brazilian visions were recorded in legal processes, they became a resource for subsequent litigants. In the years after the *Relâmpago* case, testimony by shipmates would provide legal evidence in petitions to the Ministério da Justiça to end compulsory labour.⁸⁹ The struggle to define, and strive for, a just social order under national jurisdiction would endure long thereafter.

⁸⁹ For these lineages, see Jake Subryan Richards, *The Bonds of Freedom: Liberated Africans and the End of the Slave Trade* (Yale University Press, forthcoming), Chapter 7; Bruno Rodrigues de Lima, *Luiz Gama Contra o Império* (São Paulo, 2024), chap. 2.