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Mariana Armond Dias Paes*

Taking Legal Proceedings Seriously

* Universidade de São Paulo; Max-Planck-Institut für europäische Rechtsgeschichte, Frankfurt am Main, mdiaspaes@gmail.com

capturados ilegalmente en guerras de frontera y expediciones esclavistas contra los chichimecas. Siguiendo la ley a la letra, anuló la esclavización de mujeres y niños capturados en «guerra justa» y declaró libres a todos los esclavos hombres cuyos propietarios no pudieron mostrar su título legal. La Regente Mariana de Austria aprobó la iniciativa y declaró, por consiguiente, todos los naturales de Nueva España vasallos libres. Órdenes similares de puesta en libertad fueron enviadas a Chile (1674) y Perú (1676). Temiendo que los propietarios de esclavos pudieran utilizar la descendencia étnica dudosa como un resquicio jurídico, tanto Monterroso como la Reina incluyeron a los *chinos* en la lista de esclavos indígenas que debían ser liberados. Cuando el decreto llegó a las Filipinas, encontró dificultades en su aplicación, y no entró en vigencia hasta finales del siglo diecisiete. La liberación de los esclavos *chinos*, como Seijas sugiere, fue el giro definitivo en la racialización de la esclavitud que tuvo lugar en el Imperio Español. A partir de esta época, sólo las personas con fenotipos africanos pudieron ser esclavizados legalmente.

Las monografías reseñadas son densas en información y libros bellamente editados. Ningún párrafo de ambas constituye, realmente, un desperdicio, puesto que página trás página encontramos conclusiones significativas, notas al pie de página muy informativas y prometedoras disgresiones destinadas a motivar a la próxima generación de investigadores a elegir tópicos de estudio novedosos.

Es difícil encarecer el impacto que ambos libros están llamados a jugar en la producción historiográfica. *Global Indios* es un libro valioso porque ofrece una mirada profunda y atenta a un tema de investigación muy poco tratado y lo hace además apoyándose en documentación inédita. Los académicos que se ocupan de la esclavitud colonial verán, ciertamente, con simpatía su concienzudo análisis de la periodización y sus perspectivas sobre los cambios en la política esclavista de la metrópolis. El libro se postula además como útil complemento a los enfoques de la investigación reciente sobre la esclavitud ibérica – obras como las de Aurelia Martín Casares, Manuel Fernández Chaves, Rafael Pérez García y Debra Blumenthal. La perspectiva de *Asian Slaves in Colonial Mexico* sobre la dimensión transpacífica de la esclavitud durante la Modernidad Temprana supone también una mirada novedosa y exhaustiva a un tema casi inexplorado. La afirmación de Seijas de que la africanización total de la esclavitud en la legislación de las colonias hispanoamericanas coincide con un giro similar en las colonias inglesas (1676), es un incentivo a la reflexión que debería suscitar más trabajos comparativos e investigación intercolonial. Gracias a estas dos maravillosas monografías, se abren, sin duda alguna, nuevos caminos a la investigación.

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Slavery law was a complex social phenomenon that went beyond written norms. Its daily production was closely connected to broader economic and social phenomena, such as the transatlantic slave trade. Although earlier characterized as an exclusive instrument of slaveholders, the law of slavery was, in fact, an arena of struggle in which slaves could be victorious, depending on the argu-

* Aisnara Perera Díaz, Meriño Fuentes, María de los Ángeles, Estrategias de libertad: un acercamiento a las acciones legales de los esclavos en Cuba (1762–1872), La Habana: Editorial de Ciencias Sociales 2015, 391, 463 p., ISBN 978-959-0-61680-8

ments they mobilized, the evidence they produced, and the historical context in which the lawsuits unfolded. It is from these perspectives that Aisnara Perera Díaz and María de los Ángeles Meriño Fuentes set out to analyze 314 *reclamaciones de libertad* (freedom suits), which were processed in the courts of La Habana and Santiago de Cuba between 1762 and 1872.

The book *Estrategias de libertad: un acercamiento a las acciones legales de los esclavos en Cuba* (1762–1872) is divided into two volumes in which the authors undertake a detailed analysis of lawsuits that discussed the legal status of enslaved persons and those threatened with enslavement. The narrative emphasizes the agency of the subjects involved in these judicial proceedings. In addition to the norms promulgated by the Spanish government, the law of slavery on the island of Cuba was constructed in the daily life of courts, through the agency of parties and the judicial bureaucracy.

The meticulous treatment of court cases as primary sources guides the narrative. The authors took legal proceedings seriously: they did not use these documents as mere repositories of information, but were concerned both with their internal structure and with the external formalities that guided their processing. This attention to the formalities enriches the analysis insofar as the form of legal procedures conditioned the behavior of parties and judges. In this sense, the research shows that the range of legal statuses available to the parties in judicial discussions could vary depending on the types of procedures available and on how the judicial bureaucracy conducted them.

The first chapter shows how political and economic ideals of freedom gave rise to practices that sustained slavery on the island. For example, trade liberalization – advocated as a set of measures aimed at the economic and political improvement of Cuba – boosted the transatlantic slave trade. Thus, political and social factors influenced legal regulations on specific economic activities, including slavery. Through this approach, the authors provide a nuanced analysis of the idea of legal autonomy, without, however, falling back into theories that consider law to be a mere instrument of slaveholders.

The second chapter describes the judicial organization of the island of Cuba. The authors did not restrict themselves to listing existing courts, but rather related the political and economic changes that occurred from 1762 to 1872 to the various reforms that the judicial structure underwent during this period. In addition, they detailed how each reform impacted the course of freedom suits. The awareness of formal legal aspects is also apparent in the assessment of the individuals involved in these lawsuits as well as the litigants: *procuradores de número*, lawyers, *síndicos procuradores*, *depositarios*, judicial experts, doctors, *alcades mayores*, *promotores fiscales*, and governors. The chapter thus seeks to establish relations between formalities in the processing of lawsuits, and tensions inherent to Cuban slavery society.

Chapter three presents quantitative data on the temporal distribution of the lawsuits; types of complaints (individual or familiar); courts where the lawsuits were processed; the duration of the proceedings; the types of sentences; the results of appeals; the places of residence, places of birth, color, gender, and professions of the supposed slaves; the gender, color, places of birth, and professions of the putative masters; and the ethnic-linguistic denominations of Africans.

The accurate analysis of the freedom suits, especially in chapter four, which opens the second volume of the book, raises issues of paramount importance to understanding the daily dynamics of slavery law. The authors classified the 314 freedom suits according to the arguments that grounded them: a) money; b) conditions and promises; c) *amparo*, possession and prescription; d) prostitution; e) legal norms; and f) free soil. For each of these types, they discussed the arguments the litigants made, the legal grounds of the claims, and the evidence produced.

Finally, the book includes an annex with transcriptions of various lawsuits and legislation from the National Archive in Havana and the Provincial Archive in Santiago de Cuba, among other repositories. Considering the difficulties and the cost of accessing archives in general and the especially complicated access to materials in Cuba, where documents are rapidly deteriorating due to humidity and improper storage, these transcriptions are a welcome addition to the volumes and a sign of the authors' commitment to preserving and publicizing the history of their country. These sources can help researchers who deal with the relations between law and slavery in Cuba as well as in other jurisdictions.

The book thus valuably contributes to the most recent debates on legal history of slavery. Among the various issues raised by the authors, I can

highlight, on the one hand, the concerns raised by proofs of freedom and of slave property and, on the other hand, re-enslavement practices.

In the freedoms suits analyzed by Perera Díaz and Meriño Fuentes, evidence produced by the parties could be oral (witnesses) or written. The authors show that the dynamics of human mobility and of the slave trade more specifically pervaded the tensions between these two types of evidence. Take, for instance, the cases of foreigners. A considerable number of free people of color originally from Saint-Domingue – later Haiti – lived in Cuba. When confronted with an attempt to enslave or re-enslave them, these people could face difficulties in producing documentary evidence of their freedom. Their baptismal records, for example, could be inaccessible outside of Cuba or even be written in a foreign language. In these cases, having a network of relationships could be crucial to satisfying the need for evidence with witnesses' testimonies. The authors also point out that, in this context, people subject to enslavement were aware of the importance of documents that could later serve as proof of their condition. Therefore, producing this type of evidence was part of their strategies to achieve or maintain freedom.

But, as the authors show, not only enslaved persons faced obstacles in producing documentary evidence. Slave property was seldom documented in domain titles. Because of the illegal slave trade, many people were smuggled onto the island and, therefore, their masters did not have valid ownership titles over them. Faced with this reality, judges seldom demanded that the putative masters present proof of their ownership titles, and the burden of proof ended up falling on the supposed slaves.

The documents analyzed and transcribed in the book also highlight the recurrence of practices of illegal enslavement and re-enslavement. In addition to the transatlantic slave trade, the domestic slave market was also illegally supplied by property acquired through kidnapping, forgery of baptismal records, successive buying and selling of free persons, mortgages of free persons, etc. Many also resorted to forging ownership titles.[1]

Such dynamics of producing evidence of one's condition and its very close relationship with the issue of illegal enslavement was not exclusive to Cuban slavery law. Similar issues were present in other slavery jurisdictions,[2] and the book is therefore in close dialogue with other research on the legal history of slavery. The circulation of people in the Atlantic World may have contributed to the emergence of analogous legal issues in other slavery jurisdictions. On their travels, people took with them their conceptions of how to constitute and prove their property or freedom. Ships cruising Atlantic waters also carried publications that contained legal discourses on the solution to these issues. Perera Díaz and Meriño Fuentes' book, together with other research on the law of slavery, suggests that there was a shared legal debate among the slavery jurisdictions of the Atlantic World, all of which sought to respond to similar legal problems raised by the presence of slave labor and by the dynamics of illegal and legal slave trade.

In the areas just touched upon above, the book clearly makes a contribution to the academic debates. In addition to the history of slavery and the legal history of slavery, it could very well add something to the discussions being carried out in other areas of legal history, especially given that it provides evidence that the law of slavery was not a law of exception, but rather was grounded in the general norms and principles of *ius commune* as well as later civil, commercial, criminal and administrative law.

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1 The authors also found forged freedom papers.

2 Chalhoub, Sidney (2012), A força da escravidão, São Paulo. Grinberg, Keila, Re-enslavement, Rights and Justice in Nineteenth Century Brazil, in: Translating the Americas 1 (2013) 141–159. Hébrard, Jean, Rebecca Scott (2012), Freedom papers, Cambridge. Mamigonian, Beatriz, O Estado Nacional e a instabilidade da propriedade escrava, in: Almanack 2 (2011) 20–37. McKinley, Michelle (2016), Fractional Freedoms, New York. Scott, Rebecca, Social Facts, Legal Fictions, and the Attribution of Slave Status, in: Law and History Review 35 (2017) 1–22. Silva Júnior, Waldomiro (2015), Entre a escrita e a prática, São Paulo. Undurraga, Carolina (2014), Esclavos y esclavas demandando justicia, Santiago de Chile.