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Mariana Armond DIAS PAES, *Escravidão e direito: o estatuto jurídico dos escravos no Brasil oitocentista (1860-1888)*

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REFERENCES

Mariana Armond DIAS PAES, *Escravidão e direito: o estatuto jurídico dos escravos no Brasil oitocentista (1860-1888)*, São Paulo, Alameda Casa Editorial, 2019, 338 p., ISBN: 978-8-5793-9553-6, R\$ 64,00

- 1 On a primary level, *Escravidão e direito* (published in Portuguese) provides rich descriptions of Brazil's 19th-century social and intellectual legal histories. Historians have extensively proved that, especially during the second half of the 19th century, Africans and Afro-Brazilians used the courts to obtain freedom, ultimately contributing to slavery's demise. In relating dozens of judicial dramas, Dias Paes adds to this historiography, while opening windows onto a complex social world in which slaves got married, formed families, and owned property. Legal historians know that Brazilian jurists engaged in scholarly and political debates that shaped the nation. Dias Paes's detailed accounts of debates on how civil law applied to slavery immerse the reader in the world of 19th-century law students and professors. Inside courts, legal debates met social realities through the mediation of lawyers, guardians, judges, and scribes.
- 2 However, the book's greatest accomplishment is not to unveil lives caught in judicial disputes or intellectual quarrels about the law. The stories that take us from plantations to courtrooms to law schools and back are indeed fascinating fragments of 19th-century history. But on a second and deeper level, the author brings the history of law into the social history of slavery and vice-versa, with analytical rigor. She

recognizes that law operated relatively independently of social forces, changing according to its own rules. Scholars and judges articulated legal norms working within the limits of legal institutions, reasoning, and culture. Yet at the same time, the actions of common people – and more prominently of slaves – also transformed the law. Through lawyers and guardians, they pressured judges to consider new circumstances in deciding cases that slowly pushed the legal boundaries of slavery. Moreover, using both the court records cherished by social historians, and legal treatises – the primary sources of traditional Brazilian legal histories – Dias Paes encourages a much-needed conversation. Historians of slavery and historians of legal culture and institutions will find this book both insightful and useful.

- 3 The book sustains two major arguments with remarkable breadth. First, that slaves had rights, albeit limited and precarious. Second, that the law of slavery was neither exceptional, nor incompatible with the Brazilian Empire's liberal order.
- 4 To set the intellectual stage, Dias Paes first addresses how Portuguese and Brazilian jurists discussed juridical personality (chapter 1). She then shows how the law recognized slaves' right to stand in court (chapter 2), their rights regarding marriage, property, contracts, and succession (chapter 3), and their right to acquire freedom by prescription, i.e., to become legally free on the basis of the social recognition of their freedom (chapter 4). Chapter 5 turns to how the will of masters conditioned the capacity of slaves to exercise those rights. Finally, chapter 6 reveals that, despite the legal recognition of slaves' rights, jurists hesitated to expressly recognize their juridical personality, and advanced a binary perspective that obscured the situation of people who lived with ambiguous status between slavery and freedom.
- 5 The author's sources reveal what law was in 19th-century Brazil: an amalgam of colonial ordinances, judicial rulings, legal doctrine, ministerial decisions, Roman law, national legislation, and principles of modern natural law. The persistence of colonial law regarding property and civil status is unsurprising given that Brazil passed its first civil code only in 1916. However, other sources show that state actors and jurists reinterpreted *ancien régime* laws, seeking to adapt them to new circumstances and legal theories. Instead of an abrupt change from colonial law to a modern national civil code, there was a series of gradual legal transformations.
- 6 In this book, legal doctrine takes prominence as constitutive of these transformations. In other words, jurists' writings were not portraits of the law produced in chambers and courts. Jurists created law through normative interpretations of other sources, and sometimes arbitrary formulations about, for example, what slaves could or could not legally do. These formulations, whether backed by other sources or not, were invoked by lawyers and judges in courts. For example, doctrine and judicial practice recognized slaves' right to stand in court, even though there was no express statute creating this right. Furthermore, although 19th-century jurists sought to legitimize law as a coherent system, there was a high degree of contradiction between what different sources prescribed. Dias Paes's detailed descriptions of each jurist's take on specific issues may seem repetitive, but her attention to the slight differences among them helps to unveil these contradictions. Ultimately, the author proves that we should not mistake a lack of clear and authoritative written formulations for a lack of law.
- 7 Dias Paes argues that after 1860, this often-incoherent amalgam that people recognized as law indicated that slaves had juridical personality. In her words, they were not only active historical subjects, as a consolidated historiography confirms, but also legal

subjects. They had the rights, for example, to get married, inherit and own property, enter contracts, and stand in courts. By telling their stories, the author reveals that many behaviors that historians often mistake for social customs were in fact legally sanctioned. Nonetheless, the status of slaves came with strong limitations on their ability to exercise those rights. On many occasions, they needed their master's authorization. To stand in court they had, like children, to be represented by a guardian. In an insightful summary of this first argument, the author states that slavery was more than the subjection of human beings to the powers attached to property ownership. It was the *precarization of rights and their exercise*. Her insight reinforces the importance of legal history for an understanding of the spectrum of labor conditions that existed in Brazilian society, stretching beyond the slave/free binary divide.

- 8 Dias Paes's second argument reveals the importance of legal history for an understanding of the relationship between liberalism and slavery in Brazil. Historians have long proved that the liberal ideologies articulated by Brazilian elites after independence coexisted with, and even reinforced, the ideology that sustained the masters' power to create and control dependents. The author argues that jurists, judges and lawyers perpetuated this compatibility. Some jurists tried to artificially differentiate the law of slavery from general civil law. However, the daily production and practice of law reveals that slavery was not a special institution. Rather, it was subject to the civil law that regulated persons, property, and contracts. Furthermore, slavery's place within Brazilian law was not eroded by the introduction of liberal legal theories. Modern liberal civil law was based on individualism and voluntarism. These frameworks reinforced the prominence of the masters' will in the reproduction of dependency and inequality. Many of the rights afforded to slaves, such as the right to own property, depended on their master's authorization – an act of individual will.
- 9 These arguments could change how historians of slavery analyze court records. The book compels researchers to acknowledge how legal culture and institutions influenced the course and outcomes of cases. When slaves pressured courts to guarantee their rights, they were both reinforcing and appropriating a legal system that recognized them as juridical subjects. Going to court was an act of resistance that had both individual and political significance. Nonetheless, success in court depended on more than the agency of slaves and the political views of judges. In those cases, parties had to conform to the internal rules of the law by, for example, reasoning within the limits of that individualistic voluntarism that conditioned slaves' exercise of rights upon their masters' will. Moreover, taking legal culture and institutions into consideration is also taking the roles of mediators such as lawyers and guardians seriously, and thus acknowledging the different interpretative layers that separate us from enslaved voices.
- 10 Legal historians interested in 19th-century legal culture and institutions will also benefit from reading this book. They know that jurists produced law. But Dias Paes's intertwined histories of legal doctrine and judicial practice reveal that just as the jurists were not simply academics, so lawyers, guardians, and lower-court judges were not simply legal laborers. Rather, these largely unknown actors shaped Brazilian law. More importantly, legal historians interested in the histories of property, family, contracts, and civil capacity will grasp how slavery fitted within these legal fields, even as they were permeated by modern liberal theories. While 19th-century jurists often

portrayed slavery as an outdated institution, incompatible with modern law, some of these same jurists and judges recognized the regularity of slavery and slaves' rights within the Brazilian legal system.

- 11 Finally, both social and legal historians may use this book as reference to clarify myriad specific legal debates that they might encounter in their own research into court records and legal doctrine. The author's detailed analyses of sources may well contain insights relevant to numerous research questions. However, in using this book as reference, scholars must have in mind that while the author used a remarkable number of legal treatises, she incorporated only 41 court records in her analysis. They were randomly selected in order to make this ambitious research project feasible. Furthermore, Dias Paes's work in itself is a reminder of the fragmented and contradictory character of the law. Her main arguments will nonetheless shape future histories of Brazilian slavery and law.
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