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From Controlled Emancipation to Reactionary Resistance: Humanitarian Expropriation (Eminent Domain) of Slaves in the Abolitionist Legislation (Brazil, 1826-1889)

Da Emancipação Controlada à Resistência Senhorial: Descaminhos da Desapropriação Humanitária de Escravos na Legislação Abolicionista (Brasil, 1826-1889)

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Abstract

Historiography has demonstrated that slavery law in 19th century Brazil followed the same logic of general law (particularly, the civil one), though with some adjustments. Specifically, slaves were simultaneously treated as both things and persons. The objective of this paper is to demonstrate to which point the legislation on expropriation was used or envisaged as a possible solution to the problem of abolition. The sources are the press, the legal doctrine and the parliamentary debates on the laws of free womb (1871), sexagenarians (1885) and the golden law (1888). The first conclusion is that expropriation was used in few occasions and was little remembered as a solution to the problem. The reasons are some incompatibilities with the general legislation and the fact that the debates concentrated mostly on the legitimacy of slave property and its relations with natural law. Moreover, the uses of expropriation had two phases: until the 1860's, it was a centris proposition for an orderly emancipation; from the debates of the free womb onwards, it became the slaveowners' legal argument to seek compensation.

Keywords: Slavery; expropriation; eminent domain; abolition; property.

Resumo

A historiografia tem demonstrado que o direito relativo à escravidão no Brasil oitocentista seguia a mesma lógica do direito em geral (particularmente o civil), ainda que com alguns ajustes. Em especial, vem mostrando que o escravo era tratado ao mesmo tempo como coisa e como pessoa. O objetivo desse trabalho é demonstrar até que ponto a legislação sobre desapropriação era usada ou cogitada como solução para o problema da abolição. As fontes empregadas são a imprensa, a doutrina jurídica e os debates a respeito da lei do ventre livre (1871), dos sexagenários (1885) e áurea (1888). A primeira conclusão é que a desapropriação foi empregada em poucas ocasiões, e foi pouco lembrada como solução para o problema. As razões para isso são incompatibilidades com a legislação geral e o fato de os debates se concentrarem na legitimidade da propriedade escrava e suas relações com o direito natural. Além disso, o uso da desapropriação passa por duas fases: até a década de 1860, ela é uma proposta progressista de emancipação ordeira; a partir dos debates da Lei do Ventre Livre, ela se torna o argumento jurídico senhorial para justificar a indenização.

Palavras-chave: escravidão; desapropriação; indenização; abolição; propriedade.

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1 – Introduction: law and slavery

Emancipation of the servile element: this was the foremost *leitmotif* of Brazilian public debate in the second half of the 19th century[1]. As abolitionists, capitalists, philosophers, slaves and religious leaders mounted increasingly stronger challenges against the nefarious institution, new laws follower each other in 1831, 1850, 1871, 1885, until in 1888 the last western regime of chattel slavery was torn down (BETHELL, 2018). Yet, slavery did not fall by revolution. Step by step, law by law, policy by policy, the legitimacy of the institution was attacked by reform. Actions always led to law. One that was built under the aegis of liberalism[2].

Liberal law supporting slavery? For 19th century Brazil, this apparent paradox could be bluntly solved: slaves were things, and property rights were to be upheld. This meant that the problem of slavery was conflated into a conflict between liberty and property. The Brazilian constitution of 1824, art. 179, XXII, however, stated that the only exception to the right of property was to be expropriation/eminent domain (*desapropriação*). How far were legal debates on the abolition of slavery framed by the concept of *desapropriação*? What can it tell about the nature of legal concepts? Those are the issues tackled by this paper.

The troubled relationship between legal form and the social reality of slavery has already been extensively debated in both legal and social history. Earlier scholarship defended that slaves were treated by the legal order as mere things. Sidney Chalhoub (1990, p. 35-43), conversely, debunked the idea that slaves were seen by themselves and by others as mere things, in a process of reification. Later, legal history showed that the legal system itself viewed slaves as both things and persons (WEHLING; WEHLING, 2002); this intuition has been explored both for civil law (PAES, 2014) and criminal law[3]. A different branch of scholarship has focused on the history of justice, describing how slaves used the justice system to fight for better conditions[4]. This has proved that it was possible

[1] On the Brazilian abolitionist movement, cf. Angela Alonso (2016).
[2] On the relationship between liberal ideology and the "pre-modern" nature of Brazilian society, one could look for the traditional debate on the "ideas outside their place" (SCHWARCZ, 2014). Contra, Maria Sylvia de Carvalho Franco (1976). On a contemporary outlook on this debate, cf. Bernardo Ricupero (2016). For a contemporary perspective on the relationship between liberalism and slavery, cf. Arno Wehling (2004, p. 243=-245).
[3] On the legal dimension of the repression of slaves, in particular, the famous law of June 10, 1835, see the works by João Luís Ribeiro (2005) and Ricardo Pirola (2015); for a synthesis regarding the historiography on the subject, see the text by Marcos Ferreira de Andrade (2017). Finally, cf. Nilo Batista (2006).
[4] For example, Keila Grinberg (2008).

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to accept a liberal conception of law[5] and society and fight slavery through institutional means (GRINBERG, 2019).

The thorough incorporation of slavery into the legal system provided potential for bizarre outcomes. Even the state, for instance, could own and manage public slaves (AZEVEDO, 2018). Slaves could own other slaves (COSTA, 2021). Could this adaptation go so far as to include expropriation? If the concept of ownership was somewhat altered when it referred to slaves, was also expropriation subject to changes when it was meant to take human property from its previous owners? How do legal concepts meant to be abstract and detached react before a strange and perhaps incoherent reality?

To answer these questions, I followed public debates over slavery in Brazil deploying the concept of expropriation. The mere use of this word might indicate an increased attention to technical aspects, meaning that the actor uttering such remarks would be at least partially familiarized with the legal aspects of the emancipation. On the other hand, public discourse is deeply affected by politics and ideological allegiances. Therefore, the word "expropriation" was not always used in a strictly technical sense. To build my analysis, I used 19th century legal books dealing with slavery, the newspapers in circulation in Brazil at the time[6], and the debates on the main emancipation laws of the second half of the 19th century. The Free Womb (1871), Sexagenarian (1885) and Golden (1888) laws were chosen precisely because they put into question the issue of slave property, but other laws existed. An example is the law of 1886 that abolished the penalty of flogging[7], but since it dealt with criminal and not civil matters it would be of little use for me.

But before understanding how expropriation was considered to solve the problem of abolition, we must first understand the legal tricks behind this challenging practice of taking private property for the public good.

[5] Frequently coupled with formalism (PAES; CANTISANO, 2018).
[6] Avaliable at: *Hemeroteca Digital da Biblioteca Nacional* - http://memoria.bn.br/hdb/periodico.aspx.
[7] For a deeper analysis of this law, cf. Nancy Rita Sento Sé de Assis (2017) and Ricardo Sontag (2018, 2020).

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2 – Between protection of property and state power: expropriation in 19th century Brazil

The reference was the constitution of 1824. More precisely, art. 179, § 22, which, after guaranteeing the right to property, stated that "If the public good legally verified requires the use and employment of the Citizen's Property, he shall be compensated in advance for its value. The law will determine the cases in which this exception shall apply". The process by which public good is determined and compensation is paid was called expropriation (*desapropriação*). A series of laws were issued to regulate the institute, progressively broadening its scope between 1826 and 1903[8]. But the gounds on which private property could be taken by public authorities remained constant, according to Articles 1 and 2 of the statute of 9 September 1826. They were public necessity ("defense of the State; public safety; public assistance in time of famine, or other extraordinary calamity; public salubrity") and public utility ("charitable institutions; foundation of houses for the instruction of youth; general commodity; public decoration"). As this list demonstrates, expropriation would be quite handy at shaping the economic and social development of the country, helping to build streets, railroads, hospitals, schools, etc. It was a controversial institute, which, by putting property and the State on a collision course, could foster difficulties[9]: public and private, the two elements of the great dichotomy of nineteenth-century law (SORDI, 2020), clashed. But the very history of abolition of slavery is the history of a long struggle between property and freedom - could there be a confluence between these two fields?

From the very dawn of Brazilian statehood, slaves were expropriated in Brazil, either as a reward for some favor, or in attention to principles of justice. One could remember the slaves who had fought in the Bahia war of independence and those that took part in the *Farroupilha* War. Later, ministerial letter (*aviso*) n. 188 of 20 May 1856 freed slaves that left the empire, even if escorting their owners. Those are quite restricted examples of forced manumissions. But in a short time, expropriation was also to be deployed on the debate about the abolition of slavery.

[8] For a detailed analysis of these laws, cf. Arthur Barrêtto de Almeida Costa (2019).
[9] For legal debates on the issue, cf. Veiga Cabral (1859, pp. 397-404), Vicente Pereira do Rego (1860, pp. 131-136), Visconde do Uruguai (1865, pp. 204-206), José Rubino de Oliveira (1884, pp. 227-229), and other minor works.

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3 – A humanitarian solution? Natural law Against slavery (1826-1870)

The expropriation of slaves featured for the first time in the parliamentary record at the debates on the very first law on expropriation, the statute of 9 September 1826, originating from a bill by Senator João Evangelista (BRASIL, 1826, p. 113). He labelled it as expropriation for "humanity"[10]: under his proposal, when a slaveowner mistreated his captives, he would be forced to sell or free them – evidently, with fair compensation. During the debates, Senator Carneiro de Campos contested this proposal for touching actually on criminal, and not administrative law: the master's abuse of his slave infringed on the rights of the latter, so that it would be in the captive's interest, and not that of the government, for the sale or release to take place. Therefore, the public good, which the constitution imposed as a criterium for expropriation, was not present. João Evangelista's amendment was therefore rejected.

From the 1840s onwards, more consistent debates associating expropriation (or, sometimes, forced manumission) with the liberation of captives emerged. Slavery itself was still on the agenda: in 1831, the slave trade was prohibited, but the famous *lei para inglês ver* did not produce the expected effects, and it was necessary to reinstate the prohibition in 1850. In this context, Caetano Alberto Soares[11] published the first doctrinal text discussing in detail whether expropriation could help to solve the problem of captive labor.

The text, entitled *Memória para melhorar a sorte dos nossos escravos* (“memorandum to better the fortune of our slaves”), was originally published in 1847 in the *Gazeta Oficial do Império* (SOARES, 1847a)[12]. For Soares, a direct extinction of the property of man over man, as the English and the French had done in their colonies, was not feasible. The reason was workforce shortage: differently from Europe, or even Hispanoamerica, Brazil lacked workers, meaning that enslaved labor was paramount to sustain the economy. Immediate abolition was unfeasible. Caetano Alberto Soares

[10] This "humanity" does not refer to the slave, to a possible "human dignity": it is, rather, the humanity of the legislator and of the law, and of the look they cast on the suffering situation of the captive. Hence, one cannot yet speak of human rights.

[11] Jurist and priest, the author is better known to historians for having antagonized Teixeira de Freitas in the famous quarrel that took place at the Lawyers' Institute regarding the legal status of the *statuliber*. A thorough analysis of this episode can be found in the first chapter of Eduardo Spiller Pena's (1998) thesis on the IAB's actions regarding slavery.

[12] The text was later reproduced as an independent publication (SOARES, 1847b) and in the first volume of the Revista do IAB (SOARES, 1862).

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proposes as a palliatve measure the obligation for the master to sell his slave when offered his fair price. This would be akin to expropriation, since "public utility imperiously demands the gradual abolition of slavery". Under Soares' idea, slaves would be valued by *louvados* judges, similarly to what was supposed to happen in an expropriation process. He warned, however, that stronger slaves would obviously be more expensive, which was unfair: those with more merits would face difficulties in achieving freedom precisely for their virtues. It would then be necessary to give other possible causes for the expropriation of slaves. For example, mothers who raised a large number of slave children, as compensation for theirwork and, at the same time, stimulus to care. Or slaves who cared for the offspring of their masters. Another proposal was to automatically free slaves of masters without necessary heirs upon the owner's death. With no one with the right to claim that inheritance by force of law, but only by force of the will of the late slaveowner, it was best to favor liberty and free the captive. In 1852, similar proposals were put forward by the Society Against the Traffic of Africans, of which Soares was vice-president. The basis was again "public utility" – the same of expropriation - and "natural rights" (SOCIEDADE CONTRA O TRÁFICO DE AFRICANOS, 1852, p. 15).

A few years later, in 1855, the fanciest rooms of Rio de Janeiro would once again discuss the clamor from the *senzalas*. But now, the demands of captives would be heard not merely on the headquarters of the IAB, but rather on the coveted meetings of the Council of State. The councilors discussed whether it was possible for the State to force a slaveowner to sell their human property; this discussion served as basis for the Ministry of Justice letter (*aviso*) of 21 December 1855[13]. Fair appeal to humanity or odious interference in a private property relationship? It was up to the councilors to decide.

The President of the Province of São Paulo had taken before the Ministry of Justice the case of a slave owned by several heirs who had been put up for sale in a public auction; a private individual offered the minimum bid to free her, but the orphan's judge, who run such cases, did not know how to proceed. Should she be released regardless of the will of the heirs, or was it necessary to consult them? The central power argued with the imperial resolution of 6 March 1854, which granted to individuals promising to release slaves the right of preference – that is, if they could match the highest offer, they would

[13] *A Pátria: Folha da província do Rio de Janeiro*, 04/04/1856, Alforria em Hasta pública, http://memoria.bn.br/DocReader/830330/159?pesq=desapropriação%20escravo.

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automatically buy the soon to be ex-captive. This was also the common practice in Pará, according to the president of the province.

The crown prosecutor explained that usually, when a slave belonged to several heirs and at least one did not want to sell, the common practice was to auction the captive, subsequently freeing him. Doing so, the law reconciled property (of the slaveowner) and freedom (of the slave). But, in the case brought before the Council of State, contrary to common practice, none of the heirs were interested in accepting less money to free their human property. How to proceed? The crown prosecutor argued that, in the absence of any law mandating slaveowners to sell against their will, nothing could be done: "this is doubtlessly harsh, but it is a consequence of slavery. Reasons of state require it so that this slavery does not become more dangerous than it already is"[14]. The prosecutor suggested that a statute should determine such cases of mandatory sale, as a way to reward the long services of the slave to the deceased master; after all, only the “greed" of heirs could justify refusing the offer of freedom. But since such a statute had not been passed, property must be respected in full – and the Council of State agreed.

The *aviso* found most of its legal ground on art. 179, § 22 of the Imperial constitution, which only authorized the sale against one's will under the clout of public utility or public necessity – that is, expropriation. An anonymous article published in 1856 and entitled "*alforria em hasta pública*"[15] intended to counter the precise reasoning of the 1855 *aviso* by expanding this restrictive view. For the author of this short text, by protecting the plenitude of property, the 1824 charter simply intended to shield the private individual from eventual State despotism, but did not void the entire regime of compulsory manumissions inherited from colonial law[16]. Slave ownership would be a special form of property, which "by divine and human laws was far from attaining fullness”. Therefore, when the legal issues were murky, freedom should prevail, even if the expropriation law did not explicitly mentioned manumissions. Accordingly, in public auctions, bids tied with the promise of selling slaves must be accepted even if they were not the highest offer. The author cites as legal grounds the *Ordenações Philipinas*, L. 4º, tit. 11, § 4, which ordered the sale of Moors in exchange for the freedom of Christians:

[14] This clearly refers to the almost unchecked power of the *pater familias* within his household, an ideology which still held sway in 19th century Brazil. Cf. Airton Seelaender (2017).
[15] *A Pátria: Folha da província do Rio de Janeiro*, 04/04/1856.
[16] Some examples cited are automatic release in case the captive finds 24-carat diamonds, or suffering cruelty - crimes, by the way, as defined by the penal code.

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from this concrete provision, the author drew the general conclusion that freedom should be favored over property, because the text stated that "in favor of freedom are many things granted against the general rules". In the name of the cardinal value of liberty, some were willing to topple the Brazilian constitution with 17th century Portuguese laws.

This hazardous path was not followed by everyone, though. Teixeira de Freitas (1876, pp. 70-74), in his *Consolidação das Leis Civis* ("consolidation of the civil laws"), proposed an interpretation equally restrictive as the one from of the 1855 *aviso*, and criticized the more liberal opinions presented at the debates[17]. He dismisses the application of Ord. Liv. 4 Tit. 11 pr. For the compulsory sale of captives in favor of freedom had been designed only for Moor slaves[18]. According to him, "no rule should be made" from "special" provisions. Teixeira de Freitas explicitly cited the 1855 consultation to the Council of State, which attacked the "abusive" Bahian practice of forcing owners to sell slaves to whomever wanted to free them for the minimum bid.

In the 1860s, the emancipationist movement that would lay ground for abolitionism in the 1880s began to take root (MATTOS; SANTOS, 2008): the very core of slavery and its very legitimacy started to be incisively lambasted. In the realm of law, this tendency is best represented by the work of Agostinho Marques Perdigão Malheiro - a long exposition in three volumes published in 1866 on legal, historical and social issues related to slave labor. He too discussed the abolition of slavery employing the legal instruments of expropriation.

He did not believe that the constitutional protection of property applied to slaves (MALHEIROS, 1866, pp. 131ss). For two reasons: first, when dealing with freedom, one does not speak of property, but of personality. Second, slave ownership does not have the same nature as any other kind of ownership: property of men over men is an exclusive creation of positive law, with no basis whatsoever on natural law: it is a "fictitious property, odious even", enshrined "by an unspeakable abuse" of human law. Therefore, the government could lawfully extinguish slavery without any compensation: in doing so, the "divine law is imposed, the law of the creator, by which all are born free".

[17] On Teixeira de Freitas' positions regarding the law of slavery, see the text by Mariana Armond Dias Paes (2015).

[18] Freitas, however, considers valid other cases of forced manumission provided in the Ordenações, such as the discovery of diamonds of 20 carats, the denunciation of smuggling, or the departure of slaves outside the Empire. This measure, in fact, was determined by article 1 of the traffic prohibition act of 1831, and aviso no. 188 of 1856 extended it even to slaves that had left Brazilian territory in escorted or ordered by their masters.

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Compensation paid to masters was merely of "equity as a consequence of positive law itself, which acquiesced to the fact and gave it force as if it were a true and legitimate property; this fictitious property is rather a toleration by the law for special reasons of public order than the recognition of a right". Hence the transitory character of this property: at any time, the public power could extinguish it as it saw fit. Expropriation was not even necessary.

This position was quite common in transatlantic debates on slave traffic (STORTI, 2018). The Viscount of Jequitinhonha[19], developing the same argument, concluded that expropriation of slaves called for no compensation[20]. In such uses of natural law, many[21], though not all, used the concept of expropriation[22]. These references to natural law were often associated with religious considerations; Malheiros (1866b, p. 134) mentions that the "doctrine of the Christian Church" rejects slavery; Agrícola (1866, p. 133) says that the "successors of St. Peter" had already decided that slavery is "contrary to the law of the creator, offensive to the unrelinquishable rights of man, and unworthy to be retained by Christian peoples". Articles in the press went so far as to say in the late 1860s that, if slave ownership breached natural law, compulsory manumissions should not generate claims to compensation[23]. This forced several members of the slave owning classes to write pieces defending more conservative proposals[24]. Malheiro himself tried to reconcile the extinction of slavery and property protection[25]. After all, even if treating a man as property was a monstrosity, this abomination had been sanctioned by law: the State that had

[19] Francisco Gê Acaiaba de Montezuma, founder of the IAB.

[20] *Jornal do Comércio*, 05/06/1865"O Visconde de Jequitinhonha em resposta ao ilmº sr. Agrícola, http://memoria.bn.br/DocReader/364568_05/8825; Jornal do Comércio, 14/08/1865, http://memoria.bn.br/DocReader/364568_05/9002.

[21] Diário de Pernambuco, 07/02/1854, Desapropriação de escravos: http://memoria.bn.br/DocReader/029033_03/4882. Cf. Perdigão Malheiros (1866, p. 74, 134).

[22] This is the case of Agrícola (1866).

[23] "Não cremos que o escravo seja uma propriedade, e votaríamos pela não indenização aos senhores". *Correio paulistano*, 22/07/1869, "Um novo ensaio de imigração estrangeira": http://memoria.bn.br/DocReader/090972_02/5848?pesq=desapropriação%20escravo. The same author rejects that expropriation could help the debate: "quanto à desapropriação, se o escravo é uma propriedade, a lei seria um atentado contra a propriedade, porque disporia do alheio contra a vontade de seu dono, e não por utilidade pública, mas em dano público" – "expropriation" seems to be uttered here in the legal sense.

[24] *Jornal do Comércio*, 07/10/1870, "Emancipação da escravatura": http://memoria.bn.br/DocReader/364568_06/1418.

[25] On the difficulties he faced in his intellectual and political attempts to reconcile gradual liberation with the protection of freedom, see the third chapter of Eduardo Spiller Pena's thesis (1998) and the work of Mariana Armond Dias Paes (2010).

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endorsed those heinous practices could not pretend to fade into the foreground as if private citizens should bear the brunt of the nefarious institution[26].

4 – Gradual emancipation: property and expropriation around the Free Womb Act (1871)

Until the early 1870s, the destiny of Brazilian abolitionism was disputed between groups defending immediate abolition, gradual and slow abolition and no abolition by law at all. In 28 September 1871, the latter was finally excluded when, after decades of pressure, the Free Womb law freed all children of slaves born from 28 September 1871 onwards[27]. This measure did not blossom spontaneously from philanthropic hearts; rather, it was the product of a change in the political sensibilities of the Brazilian political class brought by international pressure, slave resistance and a changing political landscape. Alfredo Bosi (1988) synthesizes the dispute as a division between two ways of understanding liberalism. The first, until the 1860s, freedom was conceived as liberty of action against government interference. Slavery, therefore, was compatible with economic freedom – of the owners. But in the 1860s, public discourse started to absorb notions of *political* freedom. Slavery, therefore, become unacceptable. In this section, we will follow the parliamentary debates on the Free Womb Act[28], which turned these sensibilities into law.

The push for reform came from high: the emperor, in his speech from the throne. encouraged the deputies to "reconcile the respect for the existing property with this social improvement" of abolition (BRASIL, 1871a, p. 3). Pushback was not so strong[29]. The nature of slave property, a civil creation against natural law, seemed settled also for deputies[30].

[26] This is what Brandão Júnior (1866) thinks, for example: he states that slavery was sanctioned by law and, therefore, is legitimate, even if it is "an unjust institution" according to "the ideas of the century" (p. 135).
[27] In addition, a series of other measures were put in place, such as the installation of an emancipation fund, the legal authorization for the captives to form their own *peculios*, slave registration, etc.
[28] For a careful analysis of the legislative path of the proposal and previous attempts to free the womb, see the work of Ana Guerra Ribeiro de Oliveira (2016); for a general contextualization of the processes that led to this initiative, see the text by Christiane Laidler (2011).
[29] *Diário do Rio de Janeiro*, 28/07/1871, O ministério e a propaganda abolicionista: http://memoria.bn.br/DocReader/094170_02/27601
[30] Teixeira Júnior affirmed that: "a commissão especial do anno passado não julgou necessario discutir a natureza do direito de propriedade que os senhores têm sobre os seus escravos, porque parecia então que todos estavamos acordes em considerar esse direito como um facto legal, que conquanto não se funde nos principios absolutos da lei natural, é todavia estabelecido pela lei civil, e como tal eleve ser respeitado; mas as contestações que se tem suscitado pela imprensa deviam ter a consequencia necessaria de obrigar a

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Slavery was defended not on ideological, but pragmatic grounds: even some recognizing that slavery violated natural law supported compensation[31].

Therefore, it was not obvious which consequences should follow from straightforward legal principles. Pragmatic solutions were brought forward, such as to respect "present property" and to free the "future generation" (BRASIL, 1871, p. 116). Even Perdigão Malheiro, considered a champion of the abolitionists, seemed to oppose the bill filed by the government[32]. In the session of the Chamber of Deputies between 15 and 21 July 1871, deputy Alencar Araripe read a fragment from Malheiro's book defending abolition without compensation, and drew the conclusion that "we can see, therefore, that for the dissident deputies there is no slave property"; an opinion that the book's author dismissed right away on the floor as misplaced (BRASIL, 1871a, p. 208). He felt compelled – as many of his colleagues sure have felt – that it was paramount to reaffirm his respect for property rights in the form of gradual and smooth abolition.

Defenses of the right of property against expropriation went high: "the false zeal over the right to property came to the point of declaring that the commission established the principles of the Commune of Paris" (BRASIL, 1871a, p. 210)[33]. But most deputies were inclined to a middle ground. They defended that article 179, § 22 of the constitution authorized limits to property[34], not outright destruction (BRASIL, 1871a, p. 278). Even of rights against natural law (BRASIL, 1871a, p. 277), as was the case of slave ownership. But, for those not yet born, the same problem did not arise: property could only affect goods

illustrada commissão a entrar em uma analyse de princípios, aliás inconcussos, para chegará conclusão ele que o projecto não offende a propriedade desde que se procurar a origem do direito" (BRASIL, 1871a, p. 115).

[31] The Viscount of do Rio Branco said: "Sim, reconheçamo-lo bem alto: têm eles (os proprietários de escravos) interesses reais, extensos, respeitáveis; se da natureza os não receberam como direito, conferiu-lhos a sociedade, que faltaria a outro dever sagrado se os esbulhasse do que a lei considerou, bem ou mal, propriedade circunscrita, mas propriedade. Os foros do proprietário de escravos estribam-se, pois, não em direito natural, mas em razão política de ordem pública" (BRASIL, 1871a, p. 104).

[32] This real contradiction can be explained in large part by the fact that Perdigão Malheiro was elected by districts deeply based on slave labor, and with the support of the large landowners. But a deeper analysis of his earlier work also reveals that he never failed to value respect for property in the emancipation process. For more details on this strange behavior, see the third chapter of Eduardo Spiller Pena's thesis (1998).

[33] A text published at the Jornal do Comercio not only qualified the liberation of the womb as equivalent to "desapropriar a força" slaveowners, but also wrote: "Quanto às novas teorias do governo sobre o direito de propriedade, parecem ter sido bebidas na fonte do comunismo parisiense... A diferença é que no Brasil essas estranhas doutrinas descem do alto do trono e dos conselhos do governo, em vez de serem decretadas na praça pública". *Jornal do Commercio*, 31/06/1871, "Elemento Servil IV", http://memoria.bn.br/DocReader/364568_06/2735.

[34] "Ora, se em relação ao escravo não há esse direito ele usar e abusar, não esse domínio illimitado, é consequencia que a propriedade sobre ele não é completa e perfeita como a propriedade sobre os demais objetos (...) A propriedade sobre o escravo é uma verdadeira usufruição elos seus serviços; só destes podemos usar e abusar, ficando salva a pessoa" (BRASIL, 1871a, p. 210).

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presently in existence, but did not concern the future[35]. This was a road for granting legitimacy to the free womb.

Expropriation was only sparsely mentioned in the debates[36], using the already mensioned *topos* of "expropriation for humanitarian reasons" (BRASIL, 1872b, p. 563). Only two deputies engaged more closely with this aspect of administrative law: Benjamin Pereira, who defended its applicability, and Araújo Lima, against. For Benjamin Pereira, the expropriation legislation in Brazil covered only real state, because this was the "noblest" form of property; expropriation of movable goods - such as slaves - was theoretically possible, but not yet regulated. Therefore, it could be pursued regardless of the requisites of the 1826 law, such as previous compensation (BRASIL, 1871a, p. 287). Araújo Lima, conversely, believed that, if the constitution "is the consecration of the fundamental rights of a people" (BRASIL, 1871b, p. 236), it could never mention slaves, since "the slave is the negation of all rights; to mention him would be to stain the great work of liberty" (BRASIL, 1871b, p. 237)[37].. Hence, "slavery, as a very special matter, would require special legislation". If equality before the law, enshrined in the constitution, did not apply to slaves, the provisions on expropriation were not applicable either. Furthermore, "humanity" was not established by the relevant laws as a cause for expropriation, neither for utility nor for public necessity. Compensation could be granted, but only as a matter of "equity" (BRASIL, 1871b, p. 241).

In the end, bowing before the yearnings of public opinion, the statute passed. But citizens did not stop discussing the measure in detail. Teixeira de Freitas, for example, attacked the liberation of children conceived but not yet born[38], and defended that the obligation of the master to sell to the slave his own property by means of a *pecúlio* should

[35] Same opinion as Araújo Lima: "O direito natural, o direito por excelência, o direito immutavel e eterno, o direito, ele que todos os direitos não são senão applicação e desenvolvimento, não conhece senão homens. A lei associou ao ventre a escravidão; a lei desfaz o que a lei faz." (BRASIL, 1871a, pp. 230-231).

[36] One exception was Alencar Araripe: "Ora, resolver a questão ela escravatura não é senão resolver uma questão de desapropriação, que não é questão constitucional, que é questão toda civil; e assim evidente é que temos os necessários poderes para resolve-la" (BRASIL, 1871a, p. 215).

[37] On the mechanisms employed by Western legal systems to reconcile declarations of law with slavery, with particular reference to the Ibero-American world, see the text by Ana Cristina Fonseca Nogueira da Silva (2010).

[38] He claims that the Free Womb Law could only have brought out of captivity those children still unconceived at the time of its enactment; those still in gestation should be considered liberated. The rationale is the combination of art. 179, § 3 of the constitution, which prohibits retroactivity of laws, and the principle that the unborn child already has personality. Hence, the General Assembly violated the property, and therefore should have followed with expropriation, in accordance with art. 179, § 22 of the same constitution (TEIXEIRA DE FREITAS, 1876b).

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be regarded as a form of expropriation[39]. Others tried to divert the problem from property to the impending issue to the fate of newborns, abandoned without any government assistance (OTONI, 1871, p. 74). These are the first signs of a shift in the debate away from the legitimacy issues that rocked the 1850s and 1860s. But some writers still tenaciously defended the position of the masters and the fairness of slave ownership[40], focusing on its legality[41]. But the mere need to defend this position shows how threatened it was. The years leading up to 1885 only deepened the chasms between the two positions. Shortly before the Sexagenarian's Act, texts against compensation were published by the Abolitionist Confederation (1883) and by *Jornal do Comércio*[42], based precisely on the illegitimacy of the property of man by man. The expropriation of slaves was again mentioned[43]. There were proposals for taxation to increase the emancipation fund, but they faced backlash[44].

As abolitionism advanced, the very legitimacy - not only moral, but also legal - of slave property was undermined. Slaveowners, increasingly cornered, had to adapt, gradually accepting the looming end of slavery. No one was born a slave anymore; the captives could accumulate resources to buy their own freedom (GRIMBERG, 2011); public opinion was increasingly on the side of the "serf element". Still, slavery persisted.

[39] In the *Consolidação das Leis Civis*, the jurisconsult of the Empire argued that article 4, §2 of the Lei do Ventre Livre (Free Womb Law), which gave the right to freedom when the slave obtained his own price by means of a savings account, should be considered as expropriation. This was because it forced the master to grant a freedom that he might not agree with - it was an annihilation of property, albeit upon payment by the slave, not by the state. The liberation of the womb, however, is not expropriation, because "o futuro não é propriedade de ninguém, é só propriedade da lei" (TEIXEIRA DE FREITAS, 1876a, p. 74).

[40] *Jornal do Comércio*, 04/07/1871, "Elemento Servil": http://memoria.bn.br/DocReader/364568_06/2810.

[41] "O escravo é uma propriedade adquirida à sombra da lei, por ela garantida com todas as vantagens inerentes a esse direito (...). Sei com Lamartine - que perante Deus esta propriedade é urna profanação, uma blasfêmia, um ultrage a creatura. Mas perante a justiça esta propriedade é tão inviolável, sem compensação, quanto a propriedade de vosso campo" (UM LAVRADOR ANÔNIMO, p. 10).

[42] *Jornal do Comércio*, 11/03/1885, A Indenização. "Pois, nesse caso, não se trata de desapropriação por utilidade pública, sim somente de voltar ao direito comum: trata-se de abolir um privilégio, que nada justifica mais".

[43] *O Abolicionista: órgão da sociedade brasileira contra a escravidão*, 01/09/1881, Mercado de escravos: http://memoria.bn.br/DocReader/230812/93.

[44] *Diário de Pernambuco*, 21/01/1883, O abolicionismo no Ceará: http://memoria.bn.br/DocReader/029033_06/7340.

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5 – Illegitimate property does not deserve compensation: the Sexagenarians' Act (1885)

Under pressure from multiple fronts, the government sent to the Council of State in mid-1884 a bill that would soon become the Sexagenarians' Act. On 25 June 1884, the joint sections of Treasury, Justice, and Empire met to discuss the convenience of prohibiting the sale of slaves, measures to further the emancipation fund, mechanisms and criteria to define the price of slaves, stimulus to the work of freedmen; and, finally, the liberation of slaves over 60 years old. The importance of the discussions was such that they were published first in the press[45] and later as a short book (CONSELHO DE ESTADO, 1884). Let's look at the course of these debates.

The Viscount of Paranaguá presented an opinion to the joint sections stating that slave ownership "should never be confused with any other [kind of ownership], regarding its legitimacy, its nature and its effects". It was, for him, a *sui generis* property that excluded the power to use and abuse that was at the very core of any other type of property. Hence, "we can continue to immobilize it, restrict it, circumscribe it as much as possible" (CONSELHO DE ESTADO, 1884, p. 11). The highest administrative body of the state accepted "the fact that only a statute creates this right means that by law can it modified, altered according to the principles of eternal justice and the high conveniences of politics". Curiously that the constitution is not even mentioned. Probably the author presupposed special character of slave property excluded the application of art. 179, § 22 of the fundamental charter.

Paranaguá, defended that the new law, when combined with the free womb, meant that slavery would die on its own. But for councilor José Caetano de Andrade Pinto, this was not enough. The only rightful solution was the expropriation of all slaves still existing in the Empire. He claims that the 1871 act had already dealt with the problem by means of "expropriation through compensation". This, however, was not technically true, since expropriation entailed *previous* compensation, which was not the case. The same Pinto, however opposed the automatic liberation of slaves over 60 years old, as this amounted to an attack on property. And, since the Free Womb Act had implicitly recognized the public utility of freeing slaves, it seemed obvious to him that expropriation was the way to abolition. But a very particular expropriation, in which ex-slaves themselves, and not the State, would have to reimburse the masters.

[45] *Jornal do Comércio*, 09/07/1884, http://memoria.bn.br/DocReader/364568_07/10744.

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Cansanção de Sinimbú also opposed emancipation without compensation. He proposes an evaluation procedure with a third arbitrator chosen by the judge and with the definition of maximum and minimum values to avoid abuses. This was remarkably similar to the expropriation procedure prescribed by the legislative decree of 12 July 1845, art. 17, but Sinimbú did not mention this parallelism. Afonso Celso de Assis Figueiredo justified the fixing of this maximum value, even if lower than the slave's real value, with the opposition between natural right and slave property, once again (CONSELHO DE ESTADO, 1884, p. 66). J. J. Teixeira Júnior, in turn, did not believe that the problem was the compensation, but the instability generated by the simultaneous liberation of many captives, some of whom had been mortgaged to banks (CONSELHO DE ESTADO, 1884, p. 78)[46]. Only the Viscount of Muritiba explicitly attacked the project based on the defense of property and the fear of a general emancipation without indemnity[47].

After the rigorous inquiry by the councilors of state, the project was presented to parliament.

Between the filing (15 July 1884) and the approval of the bill, almost a year passed with incessant political battles[48]. The initial project of the president of the council of ministers Manuel Dantas proposed the immediate release of captives over 60 years old; it was naturally fiercely opposed by slaveowners. Even though Dantas belonged to the liberal party, which held a majority in the Chamber, he was targeted by a motion of no confidence, prompting the emperor to dissolve parliament. Even the Liberal Party was infested with slaveholders. A new motion of no confidence led to the fall of government and the presidency being given to another Liberal, José Antônio Saraiva. The new cabinet, seated in 1885, soon filed a more moderate bill, which provided for compensation for the liberation of sexagenarians between 60 and 65 years old. The idea was eventually approved by the deputies, but at high cost. The political capital invested in the dispute and the division of the liberal party made the situation untenable, and a new vote of no confidence overthrew Saraiva. The Baron of Cotegipe, a staunch conservative in a liberal

[46] "Assim que: a libertação simultanea dos escravos de 60 annos não seria conveniente, ainda mesmo sendo feita com indemnização e sem ella, é manifesto o embaraço que resultaria em relação ás dividas hypothecarias garantidas pelo valor dos escravos, além de muitas outras perturbações que necessariamente provocaria a realização de semelhante idéa. Si julgar-se conveniente adoptar essa providencia, penso que se deverá proceder gradualmente, mediante indemnização, e preferindo sempre os escravos mais velhos"

[47] "O acto legislativo desta ordem seria uma violencia à Constituição e ao mesmo passo a quebra da Lei de 28 de setembro em sua promessa de indemnizar o valor dos escravos existentes" (CONSELHO DE ESTADO, 1884, p. 84).

[48] For a deeper analysis of the trajectory of this bill, cf. Joseli Mendonça (1999, pp. 29-36).

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house, was installed in power by the emperor. While the bill was passing through the Senate, a new motion of no confidence propelled the emperor to once again dissolve the chamber and call elections. Still in 1885, the bill was voted and approved, even though under much protest from the Senate (MENDONÇA, 1999, pp. 29-36).

Two points were more controversial: liberation of sexagenarians with or without compensation, and the table of fixed values for the compulsory sale of slaves. Again, the torn issue was the protection of property.

On 25 May 1885, deputies once again discussed the nature of slave property: Slaveowners tried to defend that human property was both legal and recognized, entailing protection (MENDONÇA, 1999, p. 159-168). Eufrásio Correia, for instance argued that the government's bill was incoherent for determining compensation for the owners of some slaves - between 60 and 65 years old - and not for others - over 65 years old. If slavery was recognized by law, its extinction should lead to compensation in all circumstances (BRASIL, 1885a, p. 120). Prudente de Morais, on the other hand, defended the liberation of sexagenarians for two reasons: first on the grounds that they included those illegally imported after the 1831 law; second, once again, because the property of man over man was contrary to natural law (BRASIL, 1885a, p. 252).

Slaveowners were clearly on the defensive. They argued that they were not responsible for the creation of slavery, and that this "error of the past" should be suppressed in an orderly fashion, respecting property (BRASIL, 1885a, p. 134). Slavery was not defended ideologically; slaveowners were in favor of letting it die naturally, respecting "economic reality"[49]. In his quest to attack the supposedly abstract and unreal abolitionist ideas, deputy Valadares railed against the doctrine spread by the press that slave property is *sui generis*. For him, servile property already existed before the Legislator, for it derived from the real needs of the community; parliament merely gave them legal form (BRASIL, 1885a, p. 137-138).

Despite this backlash, the liberation of the sexagenarians was approved.

The discussions then turned to the second nucleus of the project: tables establishing fixed prices for slaves[50]. The masters would be mandated to free their slaves

[49] Deputy Valadares affirms: "o direito é o direito, é um fenômeno social, é o resultado da elaboração histórica, produto do espaço e do tempo, das circunstâncias de cada povo. O Direito, sabe o honrado presidente do conselho, não se improvisa no gabinete, não é, não pode ser o resultado ou o produto das cogitações dos filósofos" (BRASIL, 1885a, p. 133).

[50] This topic is better analysed in chapter 3 of the book of Joseli Mendonça (1999).

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upon payment of a price varying according to the age of the captive. Each year, the price would decrease, so that after thirteen years, the slaves would be considered worthless and automatically freed. For some, an unspeakable attack on property; for others, the long-awaited – though deferred - abolition.

Rodrigues Alves was among those defending that the bill did recognize the legitimacy of slave property, for it simply established a pace of decrease in the value of human property. For some deputies, this meant denying property[51]. For Rodrigues Alves, though, even if the practical result was similar in both situations - at the end of a certain number of years, slaves would be freed -, the legal principle behind each measure differed: in the system of the bill, property was still recognized (BRASIL, 1885a, p. 427). In his view, this solution reconciled the legal scruples of the landowners with the humanitarian wishes of the abolitionists. Deputy Antônio Prado, in turn, defended the table for two other reasons: first, because the right to property is "subject to the limitations that the legislator may establish as a social necessity"; second, because this depreciation was akin to taxation (BRASIL, 1885b, p. 88).

The term expropriation was barely uttered in the debates on the 1885 bill[52]. The legal nature of slave property had already been established by parliament – and was accepted in discussions in the press[53]: violation of natural law disposable by positive law. The more technical issue of expropriation was mostly abandoned.

6 – The blow of mercy: the *lei áurea* (1888)

The road to abolition was wide open. Increasingly fierce attacks were striking from all sides at the legal trenches painstakingly built by slaveowners. But many still did not give up on compensation. They argued that the state recognized the legitimacy of their property by collecting taxes, for instances[54]. But slavery was doomed, nonetheless.

[51] For instance, Bernardo Mendonça Sobrinho (BRASIL, 1885b, p. 67).
[52] A rare exception can be found in (BRASIL, 1885c, p. 39).
[53] "O adquirente da propriedade escrava não podia adquiri-la senão qual ela realmente é: propriedade precária, apenas tolerada, anômala, odiosa e contra a natureza". Por isso, ela não é protegida da mesma forma que a propriedade geral: é "exposta a propriedade escrava ao livre alvedrio do legislador, que a pode alterar ou extinguir, quando e como lhe aprouver". *Jornal do Comércio, 28/03/1885*, O que quer enfim o sr. João Afredo? http://memoria.bn.br/DocReader/364568_07/12560; republicado em: *O liberal do Pará*, 18/04/1885, O que quer enfim o sr. João Alfredo? http://memoria.bn.br/DocReader/704555/16682
[54] *Jornal do Comércio*, 23/02/1888, "Elemento Servil": http://memoria.bn.br/DocReader/364568_07/19769.

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On 7 May 1888, the inexorable march of freedom began to take its last steps toward the zenith of the emancipationist project when the bill that would become the *Lei Áurea* (golden law) was filed in parliament. The sexagenarians' law had finally settled that, from the legal point of view, slavery was illegitimate (BRASIL, 1888, p. 30). Deputy Andrade Figueira said that the São Paulo landowners felt intimidated by the insubordination of slaves, combined with the inaction of the public force. Frightened, they preferred to "capitulate before the disorder" (BRASIL, 1888, p. 23) and grant manumissions: for him, slavery was dissolving on its own, and, therefore, it was not necessary for the government to meddle in and accelerate the natural march of society. Some deputies still asked for compensation based on the values of the 1885 table (BRASIL, 1888, p. 51): even the slave-owners no longer dared to resist abolition; they only tried to collect the crumbs of their shattered right. The Baron of Cotegipe was perhaps the main representative of this ashamed insubordination. He speaks of the risk that banks that had granted loans guaranteed by mortgaged slaves would be left with nothing[55], and plays on fear: once slave property was taken, no form of ownership would be safe from expropriation without compensation (BRASIL, 1888, p. 68). Paulino de Souza, son of the Viscount of Uruguay and imperial senator, even classified the bill as an unconstitutional "spoliation" that violated article 179, XXII of the Empire's fundamental law (BRASIL, 1888, p. 81-82).

Although the word *expropriation* was hardly mentioned in parliament, it was claimed a few times in the press by landowners after the abolition. They argued that both the constitution[56] and the Free Womb law recognized their property and, therefore, the law of 13 May 1888 had effectively been an illegitimate expropriation without compensation[57]. Some seemed even to imply that, if the emperor did not compensate

[55] Barão de Cotegipe: "A propriedade sobro o escravo, como sobre os objetos inanimados, é uma creação do direito civil. A Constituição do Importo, as leis civis, as leis eleitoraes, as leis de fazenda, os impostos, etc., tudo reconhece como propriedade e matéria tributavel o escravo, assim como a terra. Dessas relações sociaes, da incarnação, por assim dizer, da escravidão no seio da familia e no seio da sociedade resultaram relações multiplas e obrigações diversas. O proprietario que hypothecou a fazenda com escravos, porque a lei assim o permitia, delibera de seu motu-proprio alforriá-los, o quo pela nossa lei constitue um crime, e é por isso remunerado! Os bancos, os particulares adiantaram somas imensas para o desenvolvimento da lavoura das fazendas. Que percam!" (BRASIL, 1888, p. 68).

[56] *Jornal do Comércio*, 21/06/1888, "A montanha parindo ratinho": http://memoria.bn.br/DocReader/364568_07/20542. "se os nossos escravos eram propriedade garantida em toda a sua plenitude pela constituição política, devem ser-nos indenizados a dinheiro como a tratar-se de qualquer outra desapropriação".

[57] *Jornal do Comércio*, 18/04/1888, "A emancipação dos escravos": http://memoria.bn.br/DocReader/364568_07/20123.

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them, republican sentiments would grow[58]. As one article claimed, "The law of 13 May was, and can only be, because an ordinary law does not repeal the constitution, merely a law of expropriation. Now, the fundamental law prescribes that the public power can only expropriate with compensation; and, therefore, there is nothing more logical than to demand this compensation, a fateful corollary of the first law"[59]. Eduardo Silva (1988 p. 43) claims that at least 79 petitions of slaveowners asking for compensation using art. 179, XXII of the constitution were filed before congress. A debate on the issue was born, with several abolitionists having to write against compensation[60], arguing, for instance, that the slaves themselves had already paid for their freedom many times over[61]. This controversy famously prompted Ruy Barbosa, then Minister of the Treasury, in 1890, to order all official registers relating to the slave trade to be burned in a public square (CHAZKEL, 2013).

7 – Changing legal concepts and political labels: final remarks

An indissoluble bond unites expropriation and property. Art. 179, XXII of the constitution stated that only expropriation with prior compensation could void private property: one can find no sign of occupation, military servitude, *tombamento* and the myriad of legal instruments today grouped as Intervention of the State on Property in Brazilian legal doctrine. Expropriation, therefore, was a label: anything that violated property would be embraced by its broad conceptual mantle. But if the constitution treated our institute as little more than the dark side of property, in ordinary legislation we found a completely different world. Statutes, decrees, court decisions established a very precise meaning for expropriation. Procedure, criteria for compensation and specific requirements were set up. Expropriation meant therefore two different things: first, anny nullification of property; second a very specific procedure by which the state could take private property.

[58] *Jornal do Comércio*, 22/05/1888, "Cataguases e Leopoldina": http://memoria.bn.br/DocReader/364568_07/20335.
[59] *Jornal do Comércio*, 22/06/1888, "O manifesto": http://memoria.bn.br/DocReader/364568_07/20549.
[60] *Jornal do Comércio*, 21/06/1888, "A indenização": http://memoria.bn.br/DocReader/364568_07/20542. Another article, published the same day and on the same page as the previous one, opposes compensation for the abolition of slavery. After all, slave property was marked by "transitoriedade", and suffered from a "natureza excepcional. He bemoaned "essa enfezada campanha da indenização de propriedade anômala, desumana e maldita, propriedade de tal natureza que jamais será lembrada senão para ser estigmatizada".
[61] Jornal do Comércio, 22/06/1888, "A Antiga Propriedade Servil": http://memoria.bn.br/DocReader/364568_07/20549.

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Debates about expropriation of slaves echoed this tension: many actors propose to expropriate the captives from their owners without grappling with the details of the applying regulations. Sometimes, however, the specific legal concepts were deployed, or proposals paralleled the regulations on expropriation without citing them. But legal considerations were in other opportunities crowded out by political squabbles. After the abolitionist laws were enacted, many of their provisions were interpreted retrospectively as expropriations, also without care for the technical details of the institute. Perhaps because, in a world without judicial review, acts of parliament could not simply be voided by a court: jurists must somehow harmonize them with the existing legal order. Expropriation laws were imported to Brazil from mostly French models, without thorough consideration about how could they make a system. Not that this was specifically Brazilian: administrative law was still little developed in the early 1800s, meaning that any institute was meant to be bent over into quirk uses.

The political meaning of expropriation also changed with time. In the early 1850s, especially with the projects of Caetano Alberto Soares, expropriation was presented a middle-ground ofconservative modernization: expropriating the slaves was a reasonably fast way to achieve abolition while reconciling property and freedom. Isolated cases of forced manumissions were interpreted authoritatively by the Council of State as expropriations, indicating that such measures were in line with the State's project of slow and gradual emancipation. Conservative jurists, however, resisted expropriation based on a liberal mentality that saw every intervention on private property as a menace to liberty.

From the 1860s onwards, most authors recognized that slave property was a special creation of positive law in breach of natural law. But they extracted different legal consequences. For some, it was obvious to conclude that the State, the sole creator of slavery, could also extinguish it at a whim, even without compensation; others thought that, since the law had legitimized captivity, the state must protect the rightful expectations arising from the nefarious institution. An evil created by society should be paid for by society as a whole. From 1871 on, successive laws adopted an intermediate position: slave property is in fact illegitimate and did not entail a right to compensation; equity, however, could allow payment to former slaveowners. This confirms that defenses of slavery in Brazil, contrary to the Southern United States, were usually not ideological, but pragmatic. In these debates, expropriation was seldom mentioned, probably because

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the cause of "humanitarian expropriation" of slaves was absent from the statutes of administrative law.

In the 1870s and 1880s, the political meaning of expropriation shifted. Now that the march of abolition of slavery was accelerating, our institute was deployed as a reactionary defense of slave owners to claim compensation after the abolitionist laws are passed. In less than 40 years, what had been a centris position, turned into a deeply reactionary one. A sign of the changes in the conceptual pair expropriation-property: if in 1850 expropriation was seen essentially as an odious violence to the sacred right to property, in 1888 the expansion of the administrative State had already got the Brazilian legal culture used with state interventionism.

Expropriation was therefore a malleable legal concept. Its distinctive legal core was frequently recognized by politicians, who cited or alluded to the complex normative landscape regulating the institute. But, as Brazilian administrative law was still limited in the early 19th century, the constitution allowed for a broad meaning of “expropriation”, as the contrary of property. This second level was filled with different political meanings as the path to abolition was walked everfaster. The political debate on expropriation demonstrate complex and stimulating relations between law and politics in 19th century public arenas: technical issues are always important for political debates, though they frequently fade into the foreground. Though the law never acts unencumbered by politics, values, morals and religion, it can carve out a specific realm in which it can act. Sometimes this particular logic opens unexpected paths for freedom; sometimes, it closes. But it would be dangerous to ignore the law.

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