Cadernos de História da Educação, v.19, n.1, p.110-148, jan./abr. 2020
e-ISSN: 1982-7806

https://doi.org/10.14393/che-v19n1-2020-9

SPECIAL PAPER

Right to education, Slavery and legal system in the Brazilian Empire[1]

Direito à educação, escravatura e ordenamento jurídico no Brasil Império

Derecho a l´ducación, esclavitud y ordenamento jurídico en el Imperio de Brasil

Carlos Roberto Jamil Cury
Pontifica Universidade Católica de Minas Gerais (Brasil)
Bolsista de Produtividade em Pesquisa do CNPq
https://orcid.org/0000-0001-5555-6602
http://lattes.cnpq.br/2686596980826238
crjcury.bh@terra.com.br

ABSTRACT

This documentary and bibliographical study makes explicit assumptions of the Empire´s legal system regarding primary education and slavery. This was declared a right of the citizenship. But it implicity excluded slaves. Here its intended to further clarify tke specific legal meaning of the terms black, slave, liberated and ingenuous. To achieve the scope of the article, the following databases were consulted and revised: Portal de Periódicos/CAPES, Academic Google em Scielo in articles, book chapter, dissertations and thesis. Campello (2018), by study of legal system and Jellineck (1912), by the discussion of the subjective public right in the State/Subject relation were fundamental to confirm, in the legal system, the negation of the relationship between primary education and slavery.

Keywords: Primary education and slavery. Public instructio and brazilian imperial Constitution.

[1] English version by Mário Viggiano. E-mail: marioviggiano@uol.com.br

RESUMO

Este estudo, documental e bibliográfico, explicita pressupostos do ordenamento jurídico do Império no que se refere à instrução primária e a existência do cativeiro. Aquela era declarada direito da cidadania, mas dela excluía implicitamente os escravos. Aqui se pretende esclarecer melhor o significado jurídico específico dos termos negro, escravo, liberto e ingênuo na abundante literatura sobre a relação educação e escravatura, estabelecendo distinção precisa entre esses termos.Para dar conta desse recorte foram consultadas e revisadas as seguintes bases de dados: Portal de Periódicos, Google Acadêmico e Scielo em artigos, capítulos e dissertações e teses. Campello (2018), pelo estudo do ordenamento jurídico e Jellineck (1912), pela discussão do direito público subjetivo na relação sujeito/Estado foram fundamentais para confirmar, no ordenamento jurídico, a negação da relação positiva entre instrução primária pública e cativeiro.

Palavras-chave: Instrução primária e cativeiro. Instrução primária Pública e Constituição de 1824

RESUMEN

Este estúdio, documental y bibliográfico, hace explícitos los supuestos del sistema legal del Imperio brasileño em relación com la educación primaria y la esclavitud. Esto fue declarado um derecho de ciudadanía, pero los esclavos fueron implicitamente excluídos de él. Esto tiene la intención de aclarar aún más el significado legal de los términos negro, esclavo, liberado e ingênuo. Para tener em cuenta este objeto, se consultaron y revisaron las siguientes bases de datos: Portal de Periódicos, Google Acadêmico e Scielo em artículos, capítulos, másteres y tesis. Campello (2018), por el estúdio del sistema legal y Jellineck, por la discusión del derecho público subjetivo em la relacion Sujeto/Estado, fueron fundamentales para confirmar, em el sistema legal, la negación de relación entre educación primaria y cautiverio.

Palabras clave: Educación primaria y régimen esclavp. Instrucción pública y la Constitución de 1824

Received: 2019/08/30
Aproved: 2019/09/30

Introduction

This study, of documentary and bibliographic character, aims to explain some assumptions of the Brazilian Empire legal system about primary instruction and the existence of slave captivity. The legal system consecrated, in the Constitution of 1824, primary education as a right of citizenship, but implicitly excluded slaves from it. This study aims to make manifest the assumptions of this exclusion.

The already abundant literature on the relationship education and slavery, as it will be seen, can still be expanded, within the scope of the historiographic production in the area, with this specific cutout. This clipping may better clarify the specific legal significance of the terms black people, slave, freed and naïve, based on the legal system.

There are important studies that address this subject as The *slave's son (about the Free Womb Law)[O filho da escrava (em torno da lei do Ventre Livre)]* by Mattoso (1988) and *Black Education and History of Education (Educação dos negros e História da educação)* by Gondra and Schueler (2008). Another is Fonseca's (2002), especially chapter 2 in which the Free Womb Law is treated directly. In the same direction, following the historical and legislative process of the Free Womb Law, there is Oliveira's dissertation (2016). Cunha (2017) also deals with slavery and substantive chapter education on the subject. And there is the *Dossier: Black(people) and the Education* from the Brazilian Journal of History of Education (2002) [*Dossiê: Negro e a Educação* da Revista Brasileira de História da Educação] that also houses the theme, as well as the study by Gonçalves (2000). Important is the book *Black Population, Slavery and Education in Brazil: 19th and 20th centuries (População negra, escravismo e educação no Brasil: séculos XIX e XX)* by Nogueira (org) (2015) which, among others, contains synthesis of studies on slavery in Brazil, obtained at the Law School - SP to obtain the doctor's degree.

To account for this clipping and its value in order to add an advance to the existing literature, a survey of the production of the education area was conducted.

The references identified on Primary education/education, from the Free Womb Law, law no. 2040 of September 28, 1871, the result of a survey conducted, between December 2018 and January 2019, was anchored in the following databases: Capes/MEC Journal Portal, Google Scholar and Scielo. Another process used to search for references on the theme was to review the references of the works identified in the scientific portals. It is important to mention that the articles, chapters, master's dissertations and identified theses are available in digital format.

The following studies and research summaries included in the Annex: Gondra, 2004; Barros, 2005; Shueler, 2005; Marcílio, 2006; Alves, 2007; Castro, 2007; Moraes, 2007; Rocha, 2007; Veiga, 2008; Cruz, 2009; Souza, 2009; Sebrão, 2010; Veiga, 2010; Silva, 2011; Cândido, 2013; Perussatto, 2014; Stocco, 2016; Xenofonte, 2017; Ribeiro, 2018.

Although this literature cites legislation on this subject it does not always distinguish between those terms, especially between *libertus* (freed) and naïve. Sometimes it is even stated that the naïve would be only the free born of the slave mother after the Free Womb Law. It is in what seems to focus on the excellent and instructive Moura's Dictionary (2013) on slavery in the entry "naïve". The same does not occur with the "freed" entry, the content of which is relevant to all legislation. Often, the term "black" becomes synonymous with slave.

On the other hand, in order to make this expansion clear, it is necessary to use the normative, gradual and specific set of the period, which gives us news both Campello (2018 and 2018) and Mendonça (2018). Campelo's study (2018) *Legal Manual* is of an odd vastness not only by the complete signaling of the whole legal system, but also by the contextual bibliographic resources to which the author uses. Mendonça's study (2018) summarizes the planning of the time related to emancipationism within which one can establish bridges with education. Those authors,

including the vast bibliography that give us news, can help in a better understanding of the public authorities' initiatives that occurred before and after the Free Womb Law.

It is also important to bring to consideration a more specific knowledge of the legal order in the Empire, especially the Constitution of the period. It is clear from the Preamble to the Constitution of 1824 that it was bestowed by the Emperor, which shows that it is not a proclaimed Constitution.

The nomenclature of the legal provisions of then differs from that of today. Martins Filho (1999) was then used the study that brings the classification of the legal and normative documents of the period and its nomenclature. According to this enlightening study, all decrees were within the Emperor's elevation. There are *decrees that sanctioned resolutions of the Legislative General Assembly; and Decrees of an executive nature, regulating laws or having on state administration (p. 3).* It is in the Preamble to the text of one and the other that its authorship can be distinguished. The *legislative power was exercised by the "General Assembly" (composed of the House of Representatives – deputies and senators), appreciating the bills that, once approved, were submitted to the Emperor in the form of Decree (art. 62) being then sanctioned as Laws(p. 3).*

It is important to register, as another important point, a study that takes legal system as one of its sources, which was indicated by Martins Filho (1999):

> *During the initial period of the Empire, the decrees had no sequential numbering, being differentiated by date and matter (and as for nature, by the preamble). Only from 1837 does decrees begin to be numbered in two distinct series (p. 3).*

The series refer to the laws and decrees of the sanctioned legislature and the executive's own *decrees.*

Some normative acts from the Colony and United Kingdom of Portugal and Brazil, such as certain provisions of the Philippine Ordinances, however, were valid during the imperial period through the Law of October 20, 1823:

> *Art 1st The Ordinances, Laws, Regiments, Charters, Decrees, and Resolutions promulgated by the Kings of Portugal, and by which* Brazil ruled until *April 25, 1821, in which His Majesty Fidel, current King of Portugal, and Algarves, has distanced from this court; and all those who were promulgated from that date on by Lord Pedro de Alcântara, as Regent of Brazil, in how much Kingdom, and as His Constitutional Emperor, since he erected in empire, are fully in force in the part, in which he does not have been revoked, so that they will regulate the business of the interior of this Empire, until they are organized a new Code, or are not especially altered.*
>
> *Art 2nd All Decrees published by the Courts of Portugal, which are specified in the Table together, are equally valuable, until they are expressly repealed.*

The Free Womb Law, despite the permanent demand of the masters in the compensation of their captives, was also under the impact of what Mendonça (2018) calls *international emancipationism, English pressure and slave rebellion.* The abolition in the United States took place in 1863 and the abolition in Haiti, the product of a revolution,

occurred in 1793, sealed with Independence in 1804. And, according to this researcher, the notion of "free womb" was nothing new:

> *In addition to being suggested by Pimenta Bueno in 1867, in the document he had prepared at the emperor's request, he has been watching since 1870 in Cuba, where the Moret law had established that no child would be born a slave. Long before, in 1763, in the Pombaline period, the measure had already been implemented in Portugal. The precept of the "free womb", had also guided emancipationist policy in various areas of Spanish America. It took effect, for example, in Chile, from 1811, in the Rio da Prata region in 1813; in 1821 it was adopted in Peru and the territories that would become Colombia and Venezuela (p. 279-280).*

In our case, what is now due to civil law in the Empire, whose nature is freedom, was in Chapter IV of the Philippine Ordinations. Only in the publication of Law No. 3,071 of 1916 was born our first Civil Code, which finally repealed the Ordinances.

From the right to education in the Empire

The Right to Education in Brazil, as a right to public and free primary education, attended, for the first time, in our Imperial Constitution of 1824. This Constitution, being Brazil, now, a politically independent country, brought, in its Title 8th, the *Guarantees of Civil and Political Rights of Brazilian Citizens.* Among them was the item XXXII of art. 179. This is art. 179, item XXXII available on Primary and Free Education to all *citizens*[2]. This is the original version taken from the calibrated copy taken from the National Archive (Arquivo Nacional).

It means that *primary education* is civil and political law with the proper consequences and restrictions, as will be seen in the analysis of expression to all *citizens.* It has in gratuity one of its *guarantees.*

It is a fact that, in 1822, before September 7, Brazil, as the United Kingdom to Portugal and the Algarve, was governed by the Provisional Constitution of the Courts of Lisbon[3]. Thus, the Brazilian territory was regarded as belonging to the Portuguese *nation* in America. The future Prince Regent D. Pedro had sworn, along with D. João VI, in February 1821, this Constitution that was still under preparation. And there were, in this Constitution, three articles referred to primary education such as art. 237, *verbis*:

> *Everywhere in the kingdom, where it suits, there will be sufficiently gifted schools, in which Portuguese youth, of both sexes, to read, write and count and the catechism of religious and civil laws is taught.*

In turn, art. 239 said:

[2]There is a pending in relation to the writing of the provision. In the version cited in the body of the text, the enjoyment of civil and political law called primary education is provided to all, as well as the gratuity. The gratuity was entered here as protection of this stage of instruction. The original version of the 1824 Constitution, kept in the Arquivo Nacional is: *Primary and free instruction to all citizens.* The other version, which also appears on official websites, is: Primary education is free to all citizens. In this version, citizens who enroll in primary education will have the prerogative of gratuity. See this version in Di Dio (1982, p. 50).

[3] The definitive promulgation of this Portuguese Monarchy Constitution took place on 23/09/1822.

> *It is free for every citizen to open classes for public education, as long as they must respond for the abuse of this freedom in cases and the way the law determines.*

This last article corresponds, in a way, to a Decree, March 10, 1821, signed by D. João VI in Portugal and published in Brazil on June 30, 1821 by the Prince Regent. It can be read that, in the impossibility of public finance establishing schools throughout the Kingdom:

> *.... considering the need to facilitate in every way the instruction of youth in the indispensable study of the first letters (...) wanting to ensure the freedom that every citizen has to make the proper use of his talents... the teaching and opening of first-letter schools of this Kingdom is free to any citizen... without reliance on examination or any license.*

Such Constitution and Decree were those of the United Kingdom. The education freedom decree continued to be in practice until Couto Ferraz's Reform of 1854, Brazil being already an autonomous nation, when there were limitations to this franchise.[4] Thus, the validity of this decree combined with one of the rights guaranteed in 1824 in art. 179, incise XXIV of the Constitution of the Empire: *no working, culture, industry or trade genre can be prohibited, since it does not oppose public customs, the safety and health of citizens.*

The grant of the Constitution of 1824 was preceded by a constituent whose members were elected and, after the closing of the Assembly, the elaboration by a "committee of notables". The number of articles and books on this process is already large[5].

With the Constitution of 1824, in Title 8 above, the relationship between citizenship law and primary education was enshrined there, including under the *aegis* of gratuity. The gratuity articulated to access to primary education was still a ***protection*** of the rights listed for all, because item XIII of art. 179 had that the law will be equal for *all, or* ***protect,*** *either punish, and reward in proportion to the merits of each.* (griffon added)[6]

But who were those all *the citizens* of item XXXII? and who are the "all" of the item XIII placed in the constitutional body of Art. 179?

From the point of view of enrollment in the Major Law, they are listed in art. 6th in its five items. The focus here will be that of item I.

> *They are Brazilian citizens:*
> *I. those who have been born in Brazil, whether naïve or freed…*[7]

[4] Home education was accepted, even as a distinction, through housekeepers or the "uncle-priest". The Couto Ferraz Reform, Decree No. 1331-A of 17/02/1854, admits it on account of art. 18 and art.64. Provincial laws, such as Rio de Janeiro and Minas Gerais, enrolled it in their articles. In this regard, cf. Mendonça and Vasconcelos (2005) and Vasconcelos (2014).

[5] According to Mello, 1996; Chizzotti, 1975 and 1996.

[6] This expression: *whether to protect or punish* is the same as the Declaration of Human Rights of France of August 6, 1789 whose art. 6 has: *La loi est l´expression de la volonté générale. Tous les citoyens ont droit de concourir personnellement, ou par leurs répresentants, à sa formation. Elle doit être la même pour tous, soit qu´elle protège, soit qu´elle punisse.*

[7] The Political Constitution of the Portuguese Monarchy of 1822 had *slaves who reached the charter as citizens*, depending on art. 21, IV. Freed men *born in foreign countries* were ineligible, according to Art. 34, VII. Strictly speaking, the abolition of slavery in Portugal took place in 1761.

The *all*, for which the law will be *equal*, are the *naïve* and the *freed.* To those subjects, who enjoy the *status libertatis* are assigned the guarantees listed in Art. 179, in this case, civil and political rights.

Therefore, the concept of naïve is subsumed in the concept of citizenship, prerogative of the free.[8]

The freed, on the other hand, enjoying *the status libertatis*, was under the concept of passive citizenship.

We must also refer to art. 8 of the same Constitution by which political rights to people with *physical or moral disabilities* are suspended. Certainly, what we call people with disabilities today, many of them would be included in this impediment to exercising a right.
It was up to the political authorities to effect citizens' rights with the guarantees proper to public policies. It's the commandment of art. 9 of this Constitution:

> *Art, art. 9. The Division, and harmony of the Powers* of The European *Union is the* conservative principle *of citizens' rights, and the safest means of making effective guarantees, which the Constitution offers.*

If it was for institutional powers, depending on art. 9 of the Constitution, to carry out the guarantees of citizens' rights, within the structural framework of society in the Empire, then it will be necessary to understand the extent of that right, including under the education law from October 15,1827.

The extension of the right to instruction

For the purpose of understanding the scope of applicability of those *all*, it is important to bring some concepts that connect with the civil and political rights of citizenship. It will be used by Georg Jellineck's theory of subjective public rights (1912), seconded by other authors. The theory of citizenship *status* in Jellineck (1912), it is reiterated, contains a typology that may be important in clarifying those rights and, in this case, serve for the purpose of understanding this *all*.

According to the jurist Austro-German (1851-1911), who lived precisely at the end of the 19th and early twentieth century, it was important to bring to reflection the sense of subjective public *law* as a founding expression of civil and political rights. The firm he, in his book *Sistema dei diritti publici subbietivi* (1912), which, in the individual/state relationship proper to Modernity, the first is a subject of rights so he has the recognized power to act or not act (subjective right) guaranteed by the legal system and ensured by the State (objective right).

Jellineck (1912) thus defines the subjective right:

> *La volontà è però un mezzo, non un scopo per le finalità, tanto dell`individuo, quanto dell`ordinamento giurídico. Il* diritto subbietivo, *pertanto è* la potestà de volere che ha l´uomo, riconosciuta e protetta dell´ordinamento giuridico, in quanto sia rivolta ad un bene e ad un interesse. ... Volontà ed interesse o bene *sono quindi compresi entrambi necessariamente nel concetto del diritto* (p. 49) (griffon added)

[8] I hypothesize that the *term naïve,* born in Brazil, endowed with citizenship, is thus to distinguish itself from the *indigenous term,* which is the native originating of the land, also called *gentile* because it is supposedly *savage* and as such not *civilized* and, often, synonymous with *pagan,* that is, not *baptized*. Thus, the citizenship of *naïve*, supposedly born in a civilized community, is a legal attribution, positive in legal order.

> *The will is, however, a means, not a scope for the purpose of both the individual and the legal system. Subjective* public law, *therefore, is* the power to want man to *have, in a recognized and protected way* in the legal *system,* while *addressed to a good and an interest ...* Will and interest or well *are therefore* necessarily understood in the concept *of law. (free translation)*

Once subject to law, member of a State and community, before state power, the subject enters into relation to the State under various modalities, including to mobilize the in favor of its interest. Thus, the legal norm contained in the law, general norm (objective norm), can become something specific to the subject (subjective), making use of legal tools for this. Thus, the subject may take his subjective right as a form of enforceability before the State for the satisfaction of that right, given as its personal interest seen as a good for itself.

Norberto Bobbio (1992) helps to understand this formulation of the Austrian insigne when he teaches about the reversal that occurred in the state/individual relationship with the arrival of Modernity. For him, with the Modern State:

> *... it has shifted from the priority of the duties of subjects to the priority of the rights of the citizen, emerging a different way of facing the political relationship, no more predominantly from the angle of the sovereign, but from that of the citizen in correspondence with the affirmation of the theory individualist of society in contrast to traditional organicist design (p. 3).*

Within this reversal, Jellineck (1912) points out four modalities of legal relationship between the individual and the State.

The first, called *status subjectionis* or *status passivus,* is that by which the subject subordinates himself/herself to public authorities through *duties,* respecting the laws. For example, the subject must pay taxes. Still with Bobbio (1992):

> *The singular individual is essentially an object of power or, at most, a taxable person. More than their rights, political treatment speaks of its duties, among which it emphasizes, as main, that of obeying the laws. To the subject of command power, corresponds -- on the other side of the relationship -- the theme of political obligation, which is precisely the obligation, considered primary for the citizen, to* observe *the laws. (p. 58).*

When this relationship of subjection became dominant in history, it was on the Despotic State in which individuals possessed only duties. In Modernity, when the Absolute State or Absolutism, there is only the recognition of private rights. In any case, the tendency of authoritarian forms of government is to strengthen the dimension of duties to the detriment of rights.[9]

The emersion of civil rights was historically the way the subjects sought to limit the state's despotic or absolutistic claims and won the registration of rights. An example of this was the French Revolution.

[9] Comparato (2004), referring to the seventeenth century, *teaches: During the two centuries that followed the era that was called the Middle Ages, Europe experienced an extraordinary resurgence of the concentration of powers. It was the time when the theory of absolute monarchy was elaborated, with Jean Bodin and Thomas Hobbes, and when the ultracentralizing Iberian colonial empires were founded. (p. 47).*

The second modality marked by Jellineck, called *status libertatis,* or state of freedom, is the enjoyment that the person, free from the chains of servitude, owns the holder of civil rights. It is that prerogative of action that the subject holds, in the face of the State, through individual freedoms such as expression, belief, cult, property, locomotion, among others. It is also called *status negativus.* The expression *negativus* means that the State *should not* interfere in the subject's own actions. This is the duty to abstain from the State to interfere in the areas of freedoms and the subject's ability to resist undue impositions and for the State to protect such rights, such as by the *habeas corpus.*[10]

It is in this sense that, historically, there has been the conquest of civil rights. As Jellineck says (1912):

> *...gli Stati costituzionali europei, uno dopo l´altro, senza eccezione, hanno intrapeso la ennumerazione di un catalogo di tali diritti.*
> *(...)*
>
> *Lo scopo legislativo de questa ennumerazione di diritti fondamentali era duplice: essa doveva servire per tutelare la libertá individuale, in quelle determinate sue manifestazione, non solamente contro l´amministrazione dello Stato, e cioe contro costrizione giudiziaria e specialmente contro quella medesima volontà legislativa dello Stato, dalla quale la enumerazione emanava. (p. 106/107)*
>
> *... European constitutional states, one after the other, without exception, have committed themselves to the listing of a catalogue of such rights.*
> *(...)*
> *The legislative purpose of this list of fundamental rights was fold-up: it should serve to protect individual freedom in those demonstrations, not only against the administration of the State, that is, against the judicial constrictions and especially against that same legislative will of the State, from which the enumeration emanated. (free translation)*

Once again, Bobbio (1992) explains some of the trajectory of this process. According to him:

> *... human rights, however fundamental they may be, are historical rights, that is, born in certain circumstances, characterized by struggles in defense of new freedoms against old powers, and born gradually, not all at once or at once for all. (p. 5)*

Those fundamental rights received a first positive when the Liberal State was emerged.[11] Therefore, the affirmation of freedom (status *libertatis)* is the proper modality by which the

[10] *Habeas corpus* ("you *have your body")* is a legal instrument by which the freedom of movement of the subject in a threatening or injury situation is protected. It can be preventive when the case is threatening and suspensive in case of detention. It is one of the main provisions of civil rights and is present in our current Constitution in art. 5th, item LXVIII, LXIX, LXXII and LXXVII, among others.

[11] Here it is possible to make an approximation with the civil rights dimension of the eighteenth century in Marshall's classic work (1967). Another author to be referred to, in this sense, is Rémond (1981).

statement of the individual *ut singulus* was made, that is, as a singular individual, in the Liberal State that is, that conception of state that is based on the individual. Again, Bobbio (1992):

> *Individualistic conception means that first comes the singular individual (the singular individual, one should observe), who has value in himself, and then comes the State, and does not vice versa, since the State is made by the individual and this is not done by the State ... In this reversal of the individual relationship and state, the traditional relationship between law and duty is also reversed. In relation to individuals, from now on, the rights first come, then duties; in relation to the State, first duties, then the rights. (p. 60)*

Following this individualistic conception as a phenomenon that was historicized with the Jus naturalist model, Bobbio (1986, p. 45), comparing the state of nature with the marital status, exposed by classics such as Hobbes and Locke, says that such a model is *trace the conception of the world and bourgeois ethics.*

The historical denial of this *status* is slavery, called *capitis diminutio maxima*. In the history of humanity, there were situations by which free groups were reduced to slavery, such as a criminal conviction or as losers in the war. In this case, it is the *forced* loss of this *status libertatis*, a kind of "civil death". Slavery conflicts directly with the principle of the liberal term *itself.* After all, this term, from latin *liber = free,* is defined as the one who is lord of his acts. Slavery is a phenomenon contrary to natural law since freedom is presumed, connatural that is every human being. As Kant says (2007):

> *Man, and, in general, every rational being exists as an end in himself, not only as a means for arbitrary use of this or that will. On the contrary, in all his actions, both those who address himself and those who address other rational* beings, he must always be considered simultaneously as an *end. (p. 68)*

From the same author (2007):

> *In the realm of ends everything has either a price or a dignity. When one thing has a price, one can put any other as equivalent instead; but when one thing is above all price, and therefore does not allow equivalent, then it has dignity. (p. 77)*

When a State proclaims itself Liberal and adopts, in its social structure, the *capitis di minutio maxima (maximum* loss of legal capacity), it opposes, within itself, the principle and practice of freedom. More than a contradiction of terms, it is a real contradiction of concept and practice. Proclaiming itself a Liberal State and reducing a person*(persona)* to the condition of thing (*res*) a contradiction, as a hateful violence. This is the case of our Imperial Constitution which by Paragraph 22 of Art. 179 enshrined the right of ownership by whose content the slavery postulated compensation whenever the projects, even if partial, came to the fore, of abolition.[12]) *(thing)* it's both to the factual reality of slavery in Brazil, we can make

[12] Already in 1550, in Valladolid, with the "discovery" of the Indians and with the possibility of them becoming (or not) becoming Christians, the Catholic Church affirmed the premise for the assumption of Christianity: the Indians hold the fullness of humanity. Valladolid's proclamation did not hit enslaved black people, and Christianity, a religion of the children of the same father, would have to justify this barbarism! The justifications, despite their even theological improcedence, went from people who, by nature, should take care of

a illation and point a symbol of this antagonism with the principle of freedom. If the Brazilian nation, as the Constitution said, was the result of the political association of all citizens *(art. 1)*, then slaves, despite being the workforce that generates most of the country's wealth, did not belong to this *political association.*

Symbolizing this exclusion (hateful), slaves had only the first name. The surname, or was so-so-called, or, when baptized, So-and-so Jesus, of Mary, of the Holy Spirit, for example[13]. The slave put as *res (thing)* was a practice sustained by assumptions (abnormal, hateful and violent) proper to a premodern era.[14]
In turn, concludes Campello (2018):

> *... the slave could not be considered "Brazilian citizen", because, if so, could not, on the soil of the Empire, be reduced to the condition of captive, under penalty of violation of art. 179, caput, the Constitution of 1824, as well as the provisions of the Criminal Code of the Empire of 1830... (position 1159)*

Indeed, this Code, in its art. 179, had:

> *Art, art. 179. To reduce slavery the free person, who finds himself/herself in possession of his/her freedom.*
> *Penalties – imprisonment for three years, and a fine corresponding to the third part of the time; never but the prison time will be shorter than that of unfair captivity, and another third part.*

The same Campello (2018), commenting on the thought of Joaquim Nabuco, thus expresses itself:

> *Hence some questions arise: if the slave was not a Citizen of the Empire, would he be a foreigner or a stateless man? What legal regime applies to them? What is the legal basis for the Empire of Brazil to tolerate such individuals being reduced to the condition of captive? (position 1172)*[15].

Still in this sense, the Code imposed *penalties* to crimes against individual *freedom* (Title I of the Third Part of the Criminal Code where it is art. 179). In it it is possible to read the concept of *unjust captivity.* Now, this presupposes the notion of *fair captivity.*[16] From the point of

---

hard work, having to occupy their "natural place", to the theory of "necessary evil", in order to "free" themselves from "barbarism", from "savagery" of the "uncivilized gentiles", passing through the right of master's property over the slave, regarded as naturally unequal. Another justification was to prevent the death of a war caught. On this subject, according to Symonides, 2003.

[13] According to Schwarcz and Gomes (2018), Images and comments of images113 – 116, p.331 and p. 324.

[14] It is evident an antagonism with art. 1st of the Declaration of Human and Citizen Rights of August 26, 1789 of the French Revolution: *les hommes naissent et demeurent libres et égaux.* Already the one of 1793, in his art. 3 declares: *Tous les hommes sont égaux par la nature et devant la loi.*

[15] In this regard, Campello (2018) signals: *Such a legal regime of the captive was so contradictory that the Empire Council of State had to speak out about the legal situation of the nation's slaves who took up arms to fight Paraguay. Now, if the slave was not a citizen, he could not take up arms to* defend a nation of which he was not a *member. (Position 1193)* It was up to the *Brazilian* people to take up arms to defend the nation. For that's how I predicted art. 145 of the Constitution. In this way, the Council of State attributed the alforria to the slave who had fought in the Paraguayan War.

[16] For more information, according to Taylor IN: Libby and Furtado, 2006, p. 43-44; Mattos and Grinberg, 2018, p. 148; Casimiro, 2018.

view of legal planning, *unfair captivity* is hurt by the Treaty with England in 1826, ratified in 1827, prohibiting the trafficking of black Africans to become slaves in Brazil, law coming into force in 1830. To these applied, in the factual existence of slavery, the concept of *unjust captivity* of the law, since the people found under trafficking were free. Article 1 from November 1831 law provides:

> *Art. 1º All slaves, who enter the land* or ports *of Brazil, coming from abroad, are free.*

To make effective this commandment, the Empire exuded the Law[17] of November 7, 1831, also called Feijó Law, including becoming criminal who became involved in this type of trafficking. It is worth saying that people reduced to slavery and trafficked and brought to Brazil regained *the status libertatis,* even if there were cunning actions to defraud this condition. To this end, article according to the law imposes:

> *Art. 2º Slave importers in Brazil will incur the body sentence of Article one hundred and seventy-nine of the* Criminal *Code,* imposed on those who reduce free persons from *slavery, and the fine of two hundred thousand reis per head of each of the imported slaves, in addition to paying the scraps of re-export to any part of Africa; re-export, which the Government will make effective with as much brevity as possible, contrasting with the African authorities to give them asylum. Offenders will each answer for themselves, and for everyone.*

The concept of unjust captivity was applied to those situations.[18] As Campello comments (2018):

> *As we know, this law was never put in place, because Brazilian Government could not fight traffickers; but it does not fail to be the letter of freedom of all imported after that date.*[19]
> *(...)*
> *... the law of 1831 did not create a transitional provision; it was not limited to abolishing trafficking; it went beyond – declared free all slaves imported from then on. Such a provision is, in its nature, irrevocable; freedom, once acquired, can never be lost again. Those imported after 1831 acquired it, by express provision of law, were never slaves in Brazil ... (p.9).*

In another excerpt from this author, it can be deduced that the children of those free people were equally free.

---

[17] About the law of 1831, according to Mamigonian and Grinberg, 2018.

[18] The opposite notion, that of righteous captivity, applied to the acceptance of slavery as "lesser evil" or "necessary evil" and, as such, should this statute be submitted to the rules of Christian charity. To those rules, gradually, the intervening presence of the imperial public power introduced new ones that imposed some limits on the actions of the masters, that is, slavery began to have greater regulation of the State. About this regulation, according to Mendonça, 2018.

[19] About Letters of Freedom, Moura (2013) explains their categories in Minas Gerais: *a) those achieved by gratitude; b) those granted on condition; c) those sold to slaves or paid for by some association; d) those granted to children, children of slave with the master and father of the child; e) those granted in favor of a particular slave, to be given to him after the death of the master. (p.89)*

> *... if from 1831, any slave who, after the advent of this law was imported and landed in Brazil would be considered as a free man, so it can be concluded that only captives could be considered in Brazilian territory, the children of mothers and fathers who had arrived in Brazilian territory, prior to this legislative diploma. (p. 10)*

So, those people were free and not freed and contrasted with black Africans who were forcibly brought to Brazil to become slaves. However, it is important to retain Mamigonian and Grinberg's (2018) observation:

> *The intention was that Africans thus emancipated would be "re-exported" or be sent back to Africa at the expense of importers. (p. 286)*

The decree of April 12, 1832 was exarated to regulate the 1831 law, in the supervision of ships suspected of being trafficking[20]. According to Campello (2018), a "civil status" of slaves would only come with the Free Womb Law of 1871:

> *Over the years, the regulation of civil life has undergone changes, with the advent of the Free Womb Law (Law No. 2,040 of September 28, 1871), which established a Civil Statute for the servile element, repealing the previous legislation. Even so, it is a legal diploma that only granted "civil rights" in order to maintain an exploratory regime that has lasted for more than 300 years on Brazilian soil. (position 3523-3524)*

Mamigonian (2011) points to another dimension implicit in the Free Womb Law. According to her:

> *Government and owners avoided, at all costs, advertising Africans' right to freedom based on the 1831 law, and when the Christie Issue and the political unrest of the 1860s made it they embraced the graduate proposal as a solution to avoid the immediate emancipation and give, once again, survival to slavery. (p. 37)*

The third relationship established by Jellineck (2012) is the *status activae civitatis* or activus *status.* It indicates the citizen status by which he can participate in the political decisions of his community, such as the right to elect and to be elected. Here is the exercise of the vote for political rights since the subject is recognized as belonging to the State. Jellineck (2012) says:

[20] In the chapter written by Mamigonian and Grinberg (2018), it is realized that there were initiatives in Parliament to repeal the law of 1831. Although this goal was not achieved, law no. 581 of 1850, better known as the Eusebium of Queirós Law, reiterates the repression of trafficking, although slavery remained. The import of slaves was declared *piracy*, according to Article 4. The outside traffic was practically extinguished. But internal trafficking grew until 1881. Law no. 581 was regulated by Decree No. 731 of November 1850. Law No. 3,270 of 1885 prohibited the home change of slaves, putting a legal end to internal trafficking. Add to this the process of colonization for which the foreign workforce was used as soon as the Land Law, law no. 601 of the same year of 1850... after law no. 581. There is a clear of how gradual the Abolition process was and the continuity of an exclusion in other parameters.

> *Ogni azione statale è azione nel publico interesse. L´interesse generale non è assolutamente necessario che coincida, ma può coincidere con l´interesse individuale. In quanto tale ultima ipotesi si verifica e la coindidenza è riconosciuta dallo Stato, questo accorda all´individuo pretese giuridiche (Ausprüche) all´attività statale e mette a dispozione de lui remedi giuridici per realizzarla. In questa manera lo Stato eleva l´individuo alla condizione di membro della comunità statale dotato di facoltà aventi carattere positivo, gli confirisce lo status di cittadinanza...(p. 127)*
>
> *Every state action is an action for the public interest. The general interest is not absolutely necessary to coincide, but it may coincide with individual interest. While this is the last hypothesis and the coincidence is recognized by the State, it consents to the individual legal claims (Ausprüche) to state activity and makes available to it legal remedies to satisfy it. Thus, the State elevates the individual to the status of member of the state community endowed with the faculty of having a positive character, conferring on him the status of citizenship. (free translation)*

In other words, according to the same author:

> *...all´individuo viene attribuito un nuovo status, che è lo* status activae civitatis, o, più brevemente, *status attivo. (p. 154)*
>
> ... to the individual has assigned a new status, which is the *status activae civitatis,* or, sooner, *active status.(free translation)*

Here we are in the field of the Democratic State whose support is participation, political participation as a voter, as postulant to be elected and as a member of other collective associations[21]. Bobbio (1986) points out the sixth unfulfilled promise regarding citizenship:

> *In the last two centuries, the argument that the only way to make a subject become a citizen has ever been absent is to attribute to him those rights that writers of public law of the last century had called* activae civitatis*; with this, education for democracy would arise in the very exercise of democratic practice.(p.31)*

The loss of this *status* is called *diminutio media capitis.* That is, freedom is retained, but if it is excluded from political life. As Bovero says (2002):

> *From it we could deduce -- as some did -- a true independence between the condition of the free man and the condition of the citizen, or at least the effective possibility of separation between* the status libertatis, *defined by certain rights not linked to the integration of the individual into* civitas, *and the* status civitatis, *defined by other rights properly* linked to the *individual's membership of a community. (p. 124)*

[21] Active *status* approaches the concept of 19th-century political rights as developed by Marshall (1967).

This is the case of the freed men, in the Imperial Constitution, among other restrictions, prevented from voting[22] beyond municipal elections. The other state/subject relationship occurs by *status civitatis.* As Jellineck says (1912):

> *La uguaglianza di diritto consiste perciò essenzialmente nela uguaglianza, per lo meno in massima, dello* status positivo. (p. 150).
>
> *Equality of law is therefore essentially equality, at least as a standard of conduct,* of positive *status.(p.150) (free translation)*

This is the field of the Social State in which it goes beyond legal equality. It is the provision due by the public authorities to the subjects in completing certain needs and access to certain goods so that those same subjects can make choices, reducing the needs, expanding their freedom by the capacity of choices. Those are social rights by which a positive role of the State is postulated in reducing inequalities and expanding equality. Here is postulated an active role of the State in the provision of those goods[23].

One of those assets is access to education by the principle of equal opportunities.
It is evident that the imperial legal system is clear with respect to *status subjectionis,* since the duties make up the legal system. But the other statuses are conditioned by the statute of slavery. It antagonizes with *status libertatis* and its consequences. At the same time, it represents a limitation to the freed men, due to their condition of passive citizenship. In the case of public primary education, despite gratuity, it cannot be brought as its principle of equal opportunities.

For the above, it is possible to understand the status of those two categories of persons, those thus classified as *naïve and freed,* and their respective distinctions. As a gender, that is, as a general category that encompasses both subjects, are contemplated in the term *all* of Article 179 of the Imperial Constitution. In this sense, they enjoy the *status libertatis* and, like all others, are subject to duties. But as categories, distinct in the species, as it will be pointed out later, they will have different rights about *status activus.* As said by Campello (2018):
Having on slavery in a liberal constitution would be a contradiction, however, the constituent legislature found a way out: implicitly, referred to freed Brazilian citizens, that is, those who emerged from the capitis diminutio maxima, *going on to enjoy its* status libertatis, but without *achieving the same* status civitatis of *naïve Brazilian citizens. (position 1124-1125).*

In addition to naïve and liberated, the social structure prevailed after Independence encompassed the lords, bureaucrats, whites and half-breeds not owners, slaves and indigenous peoples[24].

The indigenous, although they are not the object of this clipping, were not mentioned in the Constitution of 1824, although they were the subject of debates in the Constituent[25]. There was, however, a lot of legislation on the "civilization and catechesis" of the indigenous people during the Colony and the Empire. Those had already been considered free by the Directory of the Indians of 1755, by which D. José I and the Marquis of Pombal regulate the

---

[22] This is the case today of the convicts whose process has already passed trial. Art. 15 of the 1988 Constitution prevents them from voting while serving the sentence.

[23] Again, it becomes possible to approach the notion of social rights worked by Marshall (1967).

[24] Souza (2017) reflects on the constitution of a white or non-proprietary mixed layer. For him: *it operates a new nascent social code, a new "social hierarchy" that will stipulate the criteria that allow and legitimize some to be seen as superior and worthy of privileges, and others are seen as inferior and deserving of their marginal and humiliating position... the possession, real or supposed, of individualist European values will thus justify the privileges of one over the other, silence the injustice the conscience of injustice by rationalizing it and allowing the prehistory of the naturalization of inequality... (p. 71-72)* On the same subject, according to Weffort, 2005.

[25] The Political Constitution of the Portuguese Monarchy of 1822 had on the *Indians* in art. 243.

indigenous villagers. Thus, despite the *status liberatis*, coming from the Pombaline era, the proposal of *civilization* and taking them as living in barbarism state, places them within a "civilizing scale" in which they would not yet have to the point of being considered "civilized". On this scale, a point of inflection would be the conversion of the "gentile" (pagan) to Catholicism. The Directory's number 10 rule prohibits calling the Indians black, because it is an *infamy, vileness and abhorrent abuse.* Moreover, depending on the same order, are terms harmful *to the civility of the Indians.*

And there were, in Brazil's population composition, slaves. The Empire brought slavery *as an inheritance (*Title of Chapter 1of Campello, 2018):

> *... Title XVII, Book IV of the Philippine Ordinations, granted the African slave the nature of a marketable thing, reducing it to a mere good, which could be transferred from one owner to another... (position 602)*

Taking art item I. 179, it is, then, through implicit reasoning, that the Constitution admits the existence of slaves. They represented another way of being and comporting with *all* without enjoying the proper nature of citizenship. Ribas, in 1880, even if affirming the contrary character to the nature of the slave's existence, notes:

> *We do not deal now with the case in which, contrary to nature, we have sprained for this sphere the entire personality of other free entities, and we have established on them our absolute imperative, because then they will be* impersonalized, *reduced to the state of things, and are called slaves. (p. 327) (gryphons added)*

As Campello says (2018):

> *It can be concluded that, if the imperial Constitution itself attributed the condition of citizens only to those individuals who presented themselves as naïve or freed, it was because that diploma admitted, at least tacitly, the possibility that in the territory of the Empire, other individuals could not be citizens because they did not possess this* status liberatis*, that is, because they were slaves The Imperial Constitution did not explicitly declare the existence of slavery in the national territory, but it could be inferred that it was part of the Brazilian legal structure. (Position 1135)*

Another indication of the permanence of slavery can be read in article 179, item XIX of the Imperial Constitution of 1824.

> *Nineteenth, whips, torture, hot iron mark, and all the cruelest punishments.*

It is true that such cruelties were part of punishments applied to slaves. Despite this, art. 60 of the Criminal Code of the Empire of 1830 provided for the penalty of whips as well as law no. 4 of 1835 and paragraph 2 of title LX of book V of the Philippine Ordenations. Campello (2018) comments on this situation:

> *To solve such antinomy, the legal doctrine of the period harmonized those objectives by claiming that art. 179 of the Imperial Constitution ensured fundamental rights and public freedoms only to "Brazilian Citizens"... (p. 17)*[26]

It is therefore important to clarify, even by implicit opposition to *slaves,* which at the time meant *naïve and freed.*

They were declared *naïve* those born free. They are declared in Article 6 of the Constitution.

The etymological origin of naïve comes from Latin: *in = inside* and *genuus = born.* Etymology converges with Bueno (1988, p. 1929) which indicates to us that *naïve* is that born in the *country, born in the country in which* he/she lives. Apart from the correlation of citizenship/nation, proper to the Constitution of National States, *naïve,* according to Roman law, covered those who were born free, that is, of parents (father and mother) free. This is one of the meanings brought by Houaiss (2009, p. 1083) in the entering: *in Roman law,* which or who was born *free.*

According to this law, the maximum *partus sequitur ventrem* means that the offspring follows the condition of the mother. According to Moura (2013), in the case of the slave mother:

> *This took the mother's right to his son, whether he was generated by a relationship with a free man or not. The same didn't happen when a slave made a son a free woman. (p. 237)*

Thus, given the real existence of slavery in the country, by this principle, the *slave's son is born a slave,* even if the father is free. How Santos asserts (2016):

> *The Roman principle of* partus sequitur ventrem *had a longstanding tradition in Portuguese America and Brazil. Yet, it was precisely when the hereditary reproduction of slavery through enslaved women's bodies became a focal point of debate that slaveholders deployed this notion as the fundamental validation of the right of slave owners to hold people of African descent and their offspring as human property. (n.p)*

Mattos and Gringberg (2018) also claim:

> *Both empires, Portuguese and Spanish, had unified legal codes, based on Roman law, which both regulated slavery and favored the alforria (freedom). During the Islamic and medieval period, the Spanish and the Portuguese maintained a small number of slaves in their populations. Consequently, the rule of law regulated slaves as both property and as people. Those laws have been transplanted -- often also adapted to specific contexts -- for Portuguese and Spanish colonies in the Americas. (p. 163)*

Thus, not being considered free (because slaves) and, consequently, not considered citizens, those born under the principle *partus sequitur ventrem (slave* womb *generates slave descent*) are not part of *civitas.* Returning to Bovero *(2002):*

[26] This hateful article was repealed by law no. 3,310 of 1886, as well as Law No. 4 of 1835. The latter also regulated the application of the death penalty and whips to slaves.

> *... for slaves there is no* polis*, that is, citizen can be only the free man; and reversing the terms, free man can be only the citizen, integrated into some* civitas*, "belonging" to a community. (p. 125)*

And, thus, they were also not admitted to the public primary education of the General Education Law of October 15, 1827.

This is confirmed by both Couto Ferraz Reform of Decree No. 1331-A of 1854, and by various provincial laws of primary education[27]. Couto Ferraz Reform has:

> *Art, art. 69. Schools will not be admitted to enrolment, nor may* they attend *schools:*
> *§ 1 - Boys suffering contagious diseases.*
> *§ 2 - Those who have not been vaccinated.*
> *§ 3rd The slaves*[28].

It is also the case of the provincial law of Minas Gerais, law no. 13 of March 28, 1835 that thus had:

> *Only free persons can attend the Public Schools, being subject to their regulations.*

It is important to register the adjective *public* that accompanies the noun *schools*. Other forms of education, therefore, were not prohibited. Veiga (2008) brings an important observation in this regard in Minas Gerais:

> *... it is possible to find records of students' color and slave frequency; I did not identify any later documents with such data. My interpretation is that only from provincial law No. 13 of 1835, is that it is really official in Minas Gerais the impediment of slaves to attend a public class, although there are no restrictions on private lessons, even with a law that allowed such access. (p. 510)*

An indication of this possibility is given by Salles (2007) pointing out the function of confraternities in Minas Gerais as plumbers of the desires and aspirations of its members:

> *However, in Minas Gerais in the eighteenth century, although preserving this initial purpose, the confraternities project into a much broader activity, almost transforming the religious corporation into a certain formal or organic structure, whose main content is expressed in the formulation of social and security assistance appropriate to the environment and at the time. (p. 119)*

[27] Decree No. 7,247 of 1879, Leôncio de Carvalho Reform, after the Free Womb Law of 1871, does not reproduce the prohibition of access of slaves to public schools.

[28] Art. 62 of this Decree also had another vector: *If in any of the districts they roam under the age of 12 in such a state of poverty that, in addition to the lack of decent clothing to attend schools live in begging, the Government will make them collect to one of the asylum homes that must be created for this purpose...* The Decree also had, in art. 63, that those children, once having received primary education, should be forwarded *to the companies of apprentices of the arsenals...*

Meanwhile, in the case of other provincial legislation, it is by Barros (2016) a broad survey on such a prohibition imposed by the provincial law of Minas Gerais. According to the author's survey, the ban applies to Goiás, Espírito Santo, Rio Grande do Norte, Mato Grosso, Paraíba, Pernambuco, Rio Grande do Sul, Maranhão and Paraná.

Provincial law No. 8 of Rio de Janeiro, dated May 2, 1837, establishing the regulation of primary public education in the Province, established in its art. 39:

> *Only free people can attend public schools and are subject to their regulations.*

Indeed, as has been seen, the Imperial Constitution does not directly deal with slavery and the general law of 1827 does not refer to slaves and is also not explicit about a ban on slaves attending public schools. This (implicit) ban had a broader and paradoxical spectrum, as Mattos and Grinberg (2018) express:

> *The paradox of slaves being, legally, thing and person at the same time persisted throughout the validity of Brazilian slavery. In fact, according to Portuguese colonial law, the slave was considered a moving asset, defined in legal terms as a thing, deprived of rights, prevented from possessing property and unable to maintain any obligation. However, the same legislative corpus that allowed one man to possess and property on the other, denied the lords the right of life and death over his slaves, punished those who punished them too much, and considered that the slave should respond personally for the crimes I might commit. (p. 164)*

Therefore, the slave was a "thing", an animated "object", without rights, an absent being, (because he/she was not considered a subject of rights) but, in the event of a crime he/she became a *person* in order to answer for his/her act. Commenting on imperial legislation on criminal conduct[29] in criminal proceedings, says Campello (2008):

> *... for imperial law,* servus, *despite not being a Brazilian citizen, could be inserted into some legal relations. It is concluded that, for Brazilian law, the slave was a subject of law whose legal capacity was diminished, ... the slave could be subject to criminal legal relationship, especially as an agent. (p. 13)*

Thus, it is strengthened the maintenance of the Philippine Ordinances as substitutes for a Civil Code, had slaves as "things", already the Penal Code of the period, replacing Chapter IV of the Ordenations, had them as "person", in the face of inscribed conducts criminals in order to answer for their acts. This reality expresses the violence of slavery in the face of a formally liberal regime. This violence not only preceded independence and the liberal status provided in 1824, but it conditioned this status by the economic bases that sustained it. To such an extent that the slave could be sold, donated, rented, mortgaged, pawned and given as inheritance. Violence and brutality prevailed at the heart of relations between *dominus* and *servus.*

In 1869, Decree No. 1,695 prohibited the sale of captives, in auctions, with public display, under penalty of nullity. Depending on art. 2nd:

[29] According to Law of November 29, 1832 promulgating the Code of Criminal Procedure.

> *In all slave sales, that is private or judicial, it is forbidden, under penalty of nullity, to separate the husband of the wife, the son of the father or mother, except for children over 15 years.*

However, this is not to say that, in the dialectics of the lord and the slave, the latter was a passive being, despite being considered res, owned by another. As Silva (2000) teaches, slaves never became things:

> *Neither were passive and conformed to the undeniable sufferings to which they were subjected, nor were they extreme rebels. They used the elements and strategies foreseen and available in slave society, forcing the creation of spaces of freedom during captivity, building various* "visions of freedom"... (p. 103) (gryphons added)

It should be noted that, alongside the religious brotherhoods of white people, there were those of black and brown ones[30]. Thus, in order not to confuse the terms, it is necessary to bring important Veiga' s (2008) annotation:

> *By taking black people as slaves, scholars end up limiting the discussion about the place of public school in the organization of modern nations and constitutional states. (...) Regarding the schooling of black people and half-breeds throughout the 19th century, few studies were conducted in such a way that they gave visibility to another possibility of life of Afrodescendants who are not associated with the world of slavery or marginality. (p.503)*

Stratified by the racial dimension, a characteristic explored by Salles (2007) in Colonial Brazil, religious brotherhoods maintained this profile in the imperial period. For this period, the scholar's conclusions are also valid:

> *As the crown interested in the foundation of the brotherhoods, the social layers coalesced within them, using them as associations of group interest. That doesn't mean that the brotherhood loses or reduces its religious functions or godly calls. (p. 72)*

In this sense, Salles (2007) completes by saying that the confraternities:

> *... provided the humble and poor layers of time a means of struggle, revealing to those groups the legal possibility of this struggle and the relativity of this legal, that is, relativity of justice and its temporal or historical nature;*
> *... if there is no educational system, the brotherhoods educated through a disciplined conviviality, in the body itself, by sermons and direct contact with priests, large number of workers, slaves and free. They showed those oppressed groups that solutions to their problems were in their structural organization... (p. 178)*

[30] About brotherhoods and confraternities in Minas Gerais, according to Boschi, 1986

This dimension is corroborated by Wissenbach (2018):

> *... there is the dissemination of the same literacy habits between groups of enslaved belonging to religious orders and clergy which, as gentlemen, showed relative concern about the living conditions of enslaved groups, instructing them professionally, insisting on the maintenance of families and religious education. Finally, it is possible to associate written culture with specific situations of urban work, especially to the offices that required autonomous performance from captives. In this case, both writing and the ability to account would be linked not only to perks, but also to the requirements of a competitive labor market in which captives would be required to agency services on their own. (p. 294)*

On the other hand, on access to reading and writing, Wissenbach continues (2018):

> *The practice of writing, when exercised by slaves from both sex, freed, especially in the atmosphere of the social uprisings of the 1870s and 1880s, not only raised suspicion, but denoted an attitude of arrogance, since, in the view of society hegemonic, assumed the use of a code that remained exclusive privilege of the elite and that was not part of the attributes thought for the class of enslaved. (p. 295)*

In a similar direction goes the study by Gondra and Schueler (2008):

> *It is possible, then, to think about the hypothesis that the prohibition of enrolments to so-called* "free and freed black Africans" *was motivated by fear of the manor elites regarding the dangers of the propagation of letters among the free Africans, which could cherish dreams of freedom not only in those individuals submitted to the 1831 law regime, but also arousing inconvenient concerns among* creole slaves *born in Brazil. (p. 242)*

Apart from this internal means of seeking access to writing and reading, it is necessary to point out the leaks, abortions, rebellions, quilombos and even crimes against the masters, as well as collective movements, such as expressions of an *active status* even if not recognized as such[31]. That's what Campello says (2018):

> *Equally distorted is the prospect that slavery was passively accepted by slaves, urban or rural, and that such relations were based on an environment of cordiality between masters and servants, always in a patronizing or respectful manner camaraderie. Far from it, slavery was a social relationship that, through its violence (potential or effective, but always present), brutalized the whole of society, making it almost insensitive to a problem that reached millions of individuals living in captivity, many times unlawfully. (Position 248-249)*

[31] According to Algranti, 1988; Azevedo, 1987, Cardoso, 2002, Gonçalves, 2000 and Albuquerque, 2018.

In another passage, Campello (2018) gives an indication of how criminal law saw captives:

> *For this reason, the best way to interpret the criminal legislation applied in the face of crimes perpetrated by the captives is to see it, in fact, as an evident Criminal Law of the Enemy.* (position 4878)[32].

Elsewhere, the prohibition of access to public schools can thus be dealt with that this ban had a sense of safeguarding against possible demands, pressures and other modalities of claims[33]. How to assert Silva (2000):

> ***Learning to read and write,*** *in short, could allow African and creole slaves (Brazilian slaves) to pass as freed or exercise offices that brought them closer to the experience of freedom. Add to those possibilities, yet another: the possibility of having contact with the letters of men of color who, from 1830, in court, created specific newspapers in which they discussed issues related to race, identity and social mobility... (p. 112 –gryphon added)*[34]

For Albuquerque (2018), writing about typography professionals:

Those professionals criticized the lack of commitment of the imperial government to ensure instruction to the "naïve" provided for in the law of 1871. (p. 330)

Silva (2000) concludes:

> *... slaves fit the arduous task of opening the paths of freedom amid slavery, seeking to keep them under their control and at risk of losing them at any time. And for the freed men it was about, in achieving the legal* status of "free", to seek to *move, as much as possible, from the captive past, in which this removal was, and is to this day, limited by the stigma of color. (p. 141)*

Without a significant change in the Socioeconomic structure, it can be said that, in Independence, there was a "revolution coming from above", under Moore Jr (1975), or a "passive revolution" in Gramsci's words. The previously dominant groups were as such, occupying the center of state power. It is in this sense that there has been a denial of rights to a significant part of *all* that has derived an odious process of exclusion. It follows that the universality of the whole of *the Imperial* Constitution cannot be affirmed.

---

[32] The theory of the Criminal Law of the Enemy, elaborated by the German jurist Gunter Jakobs in 1985, extremely controversially, would apply to criminals regarded as enemies of the State or society, who should not be treated by criminal law common to citizens, but by a differentiated criminal law suitable for enemies, since they would not offer guarantees that they will behave in accordance with the legal system. Law No. 4 of June 1835, a law of terror in defense of slavery, which in summary rite, brought captives to capital punishment, approaches this version defended by Jakobs.

[33] On the distinction between slaves, blacks and half-breeds in imperial education, cf. Veiga, 2008, 2010.

[34] Silva (2000) brings to light a very enlightening situation of this awareness of the importance of school education as if seeking to effect, due to a *vision of freedom,* under Castro (1995) a practice of freedom. This is the demand of a black teacher, named Pretextate of Passos and Silva, addressed to the General Inspectorate of Public Education of the Court, the opening of "a school for black and brown boys" so that they could "learn perfectly and without coernarship". According to Silva's interpretation (2000): *... there is a real possibility that the pretextatus school was an expression of the struggle of the freed men and their descendants for access to formal education, schooled ... (p. 141)*

The principle of *partus,* according to Santos (2016), was widely disseminated after 1830, when the prohibition of slave trade after the International Treaty signed between Brazil and England on November 26, 1826. Under this treaty, black Africans found on trafficking ships were *ipso facto* emancipated, it is worth saying, free. The same applies to those who, on national territory, were coming on trafficking vessels and identified as such. Under the law of November 7, 1831, all slaves from outside *the Empire* regain their status of freedom. The character of this device is expressed in such a way that such people were never slaves and therefore, if there was (clandestine) trafficking after this law (and there were), those here arrived as if slaves were, *free* were.

The *freed men* were those who, having born *slaves,* obtained freedom, by alforria or another process of manumission. Thus, at the disposal of those who could acquire the status *libertatis,* the Constitution tacitly admits the existence of slaves.

The freed, however, already enjoying *the status libertatis,* did not have the *status activus civitatis,* that is, the political law typical of the voter, depending on art. 94 of the Constitution:

> *Art, art. 94: They may be voters, and vote in the election of members, Senators, and Members of the Provincial Councils, those who can vote in Parish Assembly. Exceptions:*
> *I. Those who do not have annual net income two hundred thousand reis for root goods, industry, commerce, or employment.*
> *II. The freed men.*

The freed, then, as already said, would be those endowed with passive citizenship by which a person, although free, but dependent on others, has civil rights, but not all political rights. The concept of passive citizenship was thus described by Kant (1988):

> "*Cette dernière qualité rend nécessaire la distinction entre citoyen actif et passif, même si cette dernière notion peut sembler contradictoire avec celle de citoyen tout court. Les exemples suivants peuvent faire lever cette difficulté : le compagnon chez un marchand ou un artisan ; le domestique (sauf celui qui est au service de l´État) ; le mineur (naturaliter vel civiliter) ; toute espèce de gent féminine, ainsi que, de manière générale, tous ceux qui sont contraints de faire dériver leur existence (nourriture et assistance) non de leur propre activité, mais de la disposition d´autrui, sont dépourvus de personnalité civile et leur existence n´est, pour ainsi dire, qu´une simple inhérence (§ 46).*
>
> *This last quality makes it necessary to distinguish between active and passive citizens, even if that latter notion may seem contradictory to that of the citizen as such. The following examples may put an end to this difficulty: the companion (apprentice) of a merchant or craftsman; the domestic (unless he is in the service of the State); the minor (by nature or by civil condition); all sorts of female people, so in general all who are obliged to derive their existence (food and assistance) not from their own activity, but from the disposition of another, are devoid of civil personality and their existence is not , so to speak, if not a simple inherence. (§46) (free translation)*

The freed men, as seen, by the whole legal order, could vote only in the primary elections (parish ions). The ban on the vote after that of the primaries, apparently not conformed with item XIV of art. 179 by which every citizen can be admitted to *public, civil, political and military offices, without any difference other than that of his talents and virtues,* falls apart from the validity of an order coming from the times of the Colony[35].

The Law of October 20, 1823 determined, in its art. 1st, the continued application of the Philippine Ordinations of 1603 since the Civil Code was only drafted in 1916, after numerous projects, since the Empire.

In this case, the ban on the freed as a voter came from a device of the Philippine Ordinations, which is largely in force during the Empire, for which a former slave, now freed, could be enslaved by the status of *ingratitude.* § 7 of Title 67, book 4 of the Philippine Ordenations had:

> *If someone forms his slave, freeing him from all servitude, and after he is lining, commit against those who have forged him some personal ingratitude in his presence or in absence, whether verbal or of doing and real, can this patron revoke the freedom, which gave him to this freed, and reduce it to servitude, in which I was before. And so, for each of the other causes of ingratitude, because the donor can revoke the donation made to the donor*[36].

This means, therefore, an alforria granted, with the possibility of any return to the slave condition, that is, the *capitis diminutio maxima*. With this, there is an induction of the freedman to be obedient *to his donor.* Thus, to the freed, it does not apply the fullness of the *inviolability of the civil and political rights of Brazilian citizens, which is based on freedom...* put in the caput of the art. 179. Any *talents and virtues* of art. 179's item XIV would mean little in the face of the loss of *status civitatis.* As Gondra and Schueler (2008) point out:

> *Thus, from a legal point of view,* the freed men, *although Brazilians, suffered a series of restrictions on political rights. As regards the exercise of other legal capacities, such as civil and compulsory rights, access to public education, the legal condition of the freed remained ambiguous and indefinite due to the multiplicity of forms assumed by the experience of slavery in Brazil. (p. 236)*

The Free Womb Law, law no. 2040 of 1871, in its art. 2nd, §9o revoked this possibility of returning to the condition of slave, *in verbis:*
§ 9 - It is derogated to Ord. liv. 4, titl 63, in the part that revokes the alforrias for ingratitude.
The Free Womb Law allowed the slave to purchase the letter of alforria. The arrival at *status libertatis* from now on was a legal positive that gave the slaves, having resources, access to freedom and, in this case, you could not oppose.

This law, however, did not alter the provision that excluded the freed men from political rights. The possibility of the fullness of *status activus civitatis* would only come with the Golden Law in 1888, because Decree No. 3,209 of January 1881, better known as the

---

[35] The expression of art incisum XIV. 179 is equal to the continuation of the art. 6th of the Declaration of 1789: *Tous les citoyens étant égaux à ses yeux sont également admissibles à toutes dignités, places et emplois publics selon leur capacité, et sans autre distinction que celle de leurs vertus et de leurs talents...*

[36] The Civil Code of 2002, law no. 10,406, maintains, in art. 555-557, the revocation of the donation (defection) in the donor-donor relationship, where there is *ingratitude* or an indignity on the part of the second to the first. This can occur in case of succession in family inheritance.

Saraiva[37] Law, remained restrictive since, in its art. 8, it had, to effect of *revising the general enlistment of voters, across the Empire:*

> *II - Citizens who apply and prove in having acquired the voter qualities of compliance with this law and can read and write.*
> *§ 1 - Proof that the citizen has reached the legal age shall be made through the competent certificate; and that of knowing how to read and write by the letter and signature of the citizen who requires their inclusion in the enlistment, since the letter and firm are recognized by notary in the application which to do so.*

Given the enormous difficulties in accessing *free primary education* by freed men, it is not surprising that this *status activus civitatis* would not take place anytime soon.

Thus, it can be affirmed that, from a legal point of view, the Imperial Constitution classified[38] the inhabitants of the country in naïve, freed, and foreign. On the other hand, the infraconstitutional laws adopted, together with this classification, also slaves, Africans, liners, creole and indigenous[39].

The naïve and freed were still subdivided into active and passive citizens, according to the caput device of art. 90 of the Constitution. The free ones, depending on age and income, could enjoy the *status activus civitatis,* for which they could be voters and elected, since they watch the census vote. Freed men, on the other hand, became free (after the Free Womb Law) and passive citizens in order not to be able to act either as voters or as elected officials.

The millions of slaves, therefore, who built much of the country's wealth, were not part of the political community. Arising from this classification and conditions, the slave, - not being a citizen, (violently) defined as *res*(thing), *proprietas domini (property* of the master), being only *persona (person)* when committed an illicit, - access to official free public instruction was not allowed.

Meanwhile, law no. 2,040 of September 28, 1871, Free Womb Law, will also be *naïve* those born from the slave woman, but whose womb, from now on only it declared free, will generate free children. That is, from now on *partus sequitur ventrem* becomes a peculiar sense. We are therefore faced with an anomaly: the person's womb is free, but her persona is still raped by the *res,* although the fruit of her womb is free. This is the other meaning of the *naïve* entry (Houaiss, 2009, p. 1083): *it is said of* or *son of a free born slave.*

Access to education would come to free (new) through Decree no. 5,135 of 1872, the content of which mentions the term *primary instruction* in its art. 67.

According to Ariza (2018), it was only from 1871 that the child, daughter of slaves, became more present in the legal system. Until then, she says:

---

[37] Don't be confused with the Saraiva/Cotegipe Law, law no. 3,270 of 1885, better known as the Law of Sexagenarians that *regulated the gradual extinction of the servil element* and provided freedom to slaves, aged 60 years or older. It was a very complicated law, either by the mandatory registration, or the compensation provided for. According to art. 3rd of this law, there would be compensation: Slaves enrolled in registration *will be released by indemnification of their value by the emancipation fund or any other legal form.* For an analysis, according to Mendonça, 2018.

[38] The Imperial Constitution made a distinction between those born in Portugal and those of other countries. Naturalized foreigners were entitled to vote in the primary elections, but could not be MPs, ministers of state or crown successors. Cf. art. 6, 7, 91, 95, 119, 136. Free Africans who were to be re-exported were considered foreigners. Given the financial difficulties or even obtaining a place for them in Africa, there was Decree No. 1303 of 1853 declaring that *free Africans, who have provided services to individuals for a space of 14 years, are emancipated when they require it; with obligation but* to reside in the place that for by the *designated Government, and to take occupation or services on a salary.*

[39] About an initiative of the Province of Pernambuco opening a boarding school with school for black people, Indians and white people from 1974, according to Arantes, 2009.

> *Being a child in cologne and the Empire was, in general, an inaccurate condition, on which Portuguese laws of medieval origin and religious ideas weighed, and the conception of childhood as a particular moment of life, deserving of special attention only if affirmed throughout the 19th century, yet slowly and incomplete. For slave children, however, childhood time consisted of a brief interval between the first years of life and early entry into the world of work. (p. 171)*

Both the Free Womb Law (art. 3) and the decree that regulated it (chapter II) established an Emancipation Fund to subsidize actions related to the free (naïve). Explaining the mechanics of the fund of resources for the implementation of the law, Moura (2013) points out:

> *The Emancipation Fund consisted of slave fees, general taxes on the transmission of slave property, the product of six annual tax-free lotteries, and the tenth part of those granted from now on to compete in the capital of the Empire, for the fines imposed by virtue of this law, for the quotas that are marked in the General Budget and provincial and municipal, and for the subscriptions, donations and legacies with this destination. (p. 163-164)*

But given the mother's anomalous slave status, there were several conditionalities for the actual enforcement of the Free Womb Law. Thus, it is worth mentioning some articles of the decree:

> *Art, art. 5º the children of the slave woman, free by law, shall be in power and under the authority of the lords of their mother and up to the age of 8 or 21, in accordance with the conditions of the same law*[40].
> *Art, art. 6º Until the age of 8 years complete, the mothers' masters are obliged to create them and to bring them (Law - art. 1 § 1º), otherwise they pay, from the day of abandonment, except the case of poverty, the which, prudent agency, are taxed by the judgment of orphans, until they are delivered to any of the associations mentioned in the law, the houses of the exposed or to the people who are in charge of their education.*[41]

With regard also to the provision of services and the feeding of children of slaves, the content of the decree has:

> *Art, art. 18. The services provision of the slaves' children ceases to be provided before they reach the age of 21 if, by judgment of criminal Justice, it is acknowledged that the masters of the mothers mistreat them, inflicting excessive punishments on them. (Law - art. 1 § 6)*

[40] According to Bobbio (1986a, p. 61-62), there are three grounds of obligations and duties: *Three are the classic types of bond base, as the jurists know:* ex generatione, ex delictu, ex contractu. *The child's obligation to obey the father and mother depends on the fact that it was generated by them... (gryphon added*). In the case on screen, the guardianship by you practically maintains the obligation to obey you as if captive still. It's as if the human obligation from the ex *generatione* moves to you.

[41] About Casa dos Expostos (House of the Exposed), according to Moura (2013), p. 91-92

> *Art. 19. Food deprivation, or subjection to immoral acts, shall have an effect equal to that of the preceding article.*
> ....
> *Art. 22. It is* also up *to the masters to raise and treat the free daughters of their slaves during the period of service. (Law - art. 1 § 3).*

The decree also establishes a financial fund in *Art. 25 so* that governments could support the children of slaves, that is, they would be assumed by public authorities. The fund would also serve to meet the provisions of Art. 64:

> *Art 64. The judges of orphans may deliver to associations authorized by* the government the children of slaves, born from the law that *are ceded or abandoned by the masters, or taken from their power by virtue of the arts. 18 and 19 of this Regulation. (Law-art. 2)*

The associations could also be handed over, according *to law - art. 1 § 3,* the sons of daughters free of slaves and, failing them, children could be handed over *to* the houses of *the exposed, or to particular ones, to which orphan judges will charge their education. (Law - art. 2 § 3)*

In return, however, *associations, the houses of the exposed, or the particular ones* would be entitled to rent free services of minors up to the age of 21 (Art. 65).

The government, for its part, would guarantee a kind of agricultural vocational education for the freed men and provide associations *with the free granting of devoluted land, for the foundation of agricultural colonies or industry establishments, in which the freed persons are employed and cure the education of minors (Art. 74).* Article 67 had on the review:

> *Art, art. 67. The judge of orphans will foresee* the primary education and religious education of *minors*, demanding from *associations, houses of the exposed and of particular ones the obligation, which is* imposing it on the *services in their contracts.*

And finally, the status of ingratitude[42] is repealed:

> *Art, art. 94. It is derogated to Ord. Liv. 4, Tit. 63, in the part which revokes the alforrias for ingratitude. (Law - art. 4 § 2)*

By the content of the decree, some observations can be made. A wider one is given by Campello (2018):

> *Only with the advent of the Free Womb Law (Law No. 2,040 September 28, 1871), the slave began to acquire the right to his/her alforria, regardless of the manifestation of his/her master's will. This legal diploma created minimal civil regulations for slaves, ensuring them a range of rights (...) In general, before the advent of the Free*

[42] In the case of the freed men, ingratitude was regarded as a serious misconduct committed, as an offense. This heritage of Roman law present in the Ordinations allows the lord to make the freed man return to the previous condition of captive. Depending on Bobbio (1986a, p. 62), one of the grounds of the slave's obligation to obey the owner is the principle of *ex delictu.*

> *Womb Law, it was not possible that the slave would build his/her own assets without the consent of his/her* dominus. (position 3819)[43]

Even so, it reminds us Mendonça (2018):

> *The historical archives of the judiciary across the country are filled with such documents, showing that the law, even though it was timely for the masters, has also caused them a lot of apprehension, due to the actions of slaves who were playing in the courts. (p. 282)*[44]

Beside this possibility of alforria by which the slave is no longer subject to the status of (in)gratitude, the children are free. From now on they are *naïve*, born free, as well as the descendants of those. However, due to age and anomalous situation (slave mother/free child), children are free, while guardians, sometimes by the mothers' masters (no longer owners of children), sometimes by emancipation associations, or by the house of exposed or even by private individuals. Moura (2013) brings a critical synthesis with respect to this fund:

> *This fund was nothing more than a tangle of legal, administrative and bureaucratic norms to make it as difficult for the slave to achieve the emancipation of, on the other hand, creating a whole systematic corruption in the distribution of funds raised. (p. 164)*

On access to public education after the Free Womb Law, Schuler (1997, 1999 and 2001) shows that this law provided for the education of "naïve" when they were handed over to the government by slave masters with the referral of the free womb children to the primary education and later to the schools of offices aiming to "discipline the freed". Registration in the boys' asylums was requested by many slave masters as a form of compensation for their expenses with the children released by the law.

In a way, it is what evaluates Salles (2007), when he identifies in the documents studied that, in the managers composition of the brotherhood of "creole" the figure of the treasurer:

> *(...) he was always white, because they needed him to be able to read and write, which did not occur with black ones, almost always illiterate. (p. 78)*

The studies already done on this primary education/instruction, based on the Free Womb Law, seem to confirm that *this concern with the instruction of children,* of those children now free, was precarious.

Thus, Fonseca (2002), investigating period documents finds, in the Reports of the Ministry of Agriculture, no more than 113 naïve, of the 403,827 born until 1884 as such, as being registered and under the care of the Imperial State.

This low number expresses the factual limits of this law.

Analyzing, based on archives of the province of Bahia and the meaning of the Free Womb Law, Mattoso (1988) points out its ambiguities:

---

[43] With this article, the maintenance, by which a slave obtained the alforria, ceased to be a customary "right" and becomes regulated by the State through a written positive. But be aware that the formation of this savings before that law was done *by your consent. However, the* slave acquired the right to purchase his freedom.

[44] The actions of Luiz Gama (1830-1882) were guided by this tireless struggle for freedom for those who abolish, in fact and law, should guarantee equal rights, agrarian reform and education for children.

> *For the writers of the law September 28, behind the "minor" to protect the good worker, useful to his master. In this regard, paragraph 6 of Article 1 of the law is very instructive, because it intends to limit the abuses exercised by the masters who harshly punish children-naïve-slaves and future releases: "if by judgment of the criminal judgment it is recognized that the gentlemen of mothers mistreat them..." benefits of these services! (p. 18)*

This is what Ariza (2018) highlights:

> *The mothers' masters of the "naïve" sought at all costs to defraud mandatory birth records that proved their condition of free persons, omitting or distorting dates. Moreover, the promised freedom was at least doubtful: until the age of eight, they should remain under the tutelage of the owners of their mothers; he/she could then choose to offer them to public asylums in exchange for 600,000-reis compensation, or to keep them and enjoy their services until they are 21. Rare were those who chose the indemnities and handed the little ones over to the state... (p. 174)*

Even so, according to Ariza (2018)

> *Education did not constitute an item that would meet them - at least not school education, even if precarious, in calculations and first letters. The theme of public education, it is fact, only integrated into the political agenda in the mid-nineteenth century. Slowly, the concern with the instruction of children never included small slaves, for whom education was synonymous with violent discipline, learning of work and lessons on how to survive slavery received from parents, relatives and in the circles of solidarity between captives in which they were created. (p. 173)*

It is important to register Decree no. 7031 7031 A, 1878 which, creating evening courses for male adults focused on primary education had in their art. 5th:

> *Art 5º in evening courses, all male, free or freed persons, over 14 years old, may be enrolled at any time. The enrolments will be made by the teachers of the courses in view of guides passed by the respective delegates, which will make in them the declarations of the naturalness, affiliation, age, profession and residence of the enrollers.*

Despite this, Gonçalves (2000), scholar of the subject, expresses himself:

> *The fact that there are initiatives aimed at the inclusion of slaves and free black people in primary and professional education courses does not authorize us to infer that this was a universal experience. (...) Although initiatives of this nature have existed, records on the effective participation of black people are incipient. As many of those courses continued to exist after abolition, the barriers that the slave mentality had created were expected to make it difficult for black*

> *people to attend night classes to decrease or disappear. But that's not what happened. The Republic did not expand political rights immediately after its proclamation, nor has it guaranteed everyone's access to education for decades. The situation of black people, which after abolition, was very aggravated. (p. 327-328)*

If this situation was already so, we can imagine how much in the future there should be educational policy initiatives aimed at repairing this secular oppression.

Conclusion

As expected, to have been demonstrated in this study, the exclusion of the slave was implicitly placed in the imperial legal system, which resulted in a contradiction with the liberal statute of the Constitution of the Empire. Despite the odious factual reality of slavery, denying the slave *status libertatis*, it represented a contradictory situation in the face of a state that was intended liberal.

How could human beings be part of a relationship in which some would be free*(liberi)* and other slaves *(servi)?* There is a radical antinomy between the assumptions of freedom and equality inherent to liberalism and the existence of the slave as a well-moving (*res*) whose forced labor was much built as heritage in the country. Strictly excluded *from* the goods produced by them, they were rightly *included* as producers of the riches generated by the compelled work. The unsustainability of this antinomy was the factor by which the legal system of the Empire, in its internal and external dynamics, was pressured, even if gradually, to accept modifications to abolition, in all its laws. Thus, as we know, on the one hand external factors such as the abolition of slavery in the USA, Haiti and other countries colonized by Spain, the pressure exerted by England to the extinction of slave trade and, on the other, internal factors such as the struggles of slaves and abolitionists in the face of the resistance of slave masters to give up their "property", determined the abolition, in the form of law, in 1888. Golden law, however, excluded the time of the colony, and if we refer to the arrival of the royal family, it took long 80 years to be signed. The study of the Imperial legal system reveals the gradualism of this process with severe consequences for the descendants of the captives, of which the exclusion of primary education is one of its faces.

Public and free primary education, in the constitutional legal system of the Empire, was part of the prerogatives of the citizen, considered as holder of civil and political rights. In a slave society, the fourteen would be excluded from those prerogatives, although they were not prohibited from becoming literate through institutions other than public school, as can be in the bibliography analyzed.

This study sought to show that, under the Free Womb Law, there was the incorporation of new naïve ones, such as free and holders of *the status libertatis* under civil rights and potentially political rights. However, the prerogatives still maintained by the masters, in fact limited the scope of the exercise of this *status* and gave scope to numerous subterfuge responsible for maintaining, even if covert, of the situation of slavery protected or, as expressed by Campello (2008) a *masked servitude (Position 6724).*

In the gradualism that characterized the legislative process, therefore, slaves could purchase their form as well as to the masters the granting of freedom to the former. We are then faced with the figure of the freed men, arranged in the Imperial Constitution itself. Unlike naïve ones, the freed men assumed civil rights, but were excluded from political rights. They enjoyed the *status libertatis*, but not the *status activae civitatis*, except restrictively in the parish elections. Moreover, even the Free Womb Law, they were conditioned by the status of gratitude.

The term *all* present in the Constitution would only formally cover all slaves, henceforth free or naïve under the Major Law, from the Golden Law of 13/05/ 1888. This means that, from the point of view of the legal order, with the *declaration of* the extinction of this hateful institute, the Imperial Constitution housed *everyone* in a dimension of citizenship, advocated by some constituents of 1823 and especially by the abolitionist social movements that never recognized the loss of *status libertatis* as something "natural or a lesser necessary evil". Only then is Schnapper (2000) eroded from the point of view:

> *Ce qui fonde la citoyenneté, c´est l´opposition entre les spécificités de l´homme privé, membre de la société civile, et l´universalisme du citoyen. (p. 27)*
> *What slings citizenship is the opposition between the specificities of private man, a member of civil society and the universalism of the citizen. (free translation)*

The correlation between primary public education open to all and citizenship as *universalism of the citizen* expressed in the criterion of civil, political and social rights, however, would be long, since the end of slavery did not abolish social inequalities, racial discrimination or the culture that sustained them. It would still take long access to the social assets proper to the *status civitatis*, state benefits in the collective and individual interest, including school education as the right of all and *should be given by the family and the public authorities* in accordance with art. 149 of the Federal Constitution of 1934. Art. 205 of the 1988 Constitution, however, was what enhanced education as the right of all and the duty of the *State.*

The fight against racism, the result of those historical discriminations, and prejudices, would only find its greater formalization in this last Constitution, that of 1988, in infraconstitutional laws and in normative regulations. On the one hand, the Constitution made strict condemnation of racism as *an innumerable crime* and, on the other, the deconstruction of stereotypes and prejudices and the affirmation of the need to build an individual and institutional culture of recognition of the debt in relation to the value of the black people in the formation of Brazilian society. After all, it summarizes Schwarcz (2012):

> *... with the vogue of racial theories, influential until the 1930s, a heavy burden fell on those groups, conditioned by deterministic models of social interpretation, which not only established hierarchies between races but also condemned the mixed-race existing in the country. (...) the joint and massive entry of those theories caused the post-Abolition debate to move away from the issue of citizenship and equality in the name of biology reasons and arguments. (p. 61)*

This passage from abolition to the Republic, in the case of ex-captives, therefore, was dramatic, as Souza (2017) asserts:

> *The former slave is thrown within a competitive social order, as Florestan says (*Fernandes - CRJC), *which he did not know and for which he had not been prepared. For the great masters of land, liberation was a gift: not only were they free from any obligation to the former slaves who once exploited, but they could "choose" enter the absorption of former slaves, the use of the foreign labor that arrived so abundant in the country -- whose import you had managed to turn into "state policy" -- and the use of non-slave nationals. The*

> *latter had avoided manual labor as a symbol of degradation when monopolized by slaves. (p. 75)*

This statement by Fernandes is corroborated by Schwarcz (2012):

> *The Golden Law of 1888 not only failed to provide for compensation to the owners (as those so many expected), but did not prioritize a social policy of supporting those social groups that, without the necessary learning or experience in cities, did not have the first tools to compete on equal terms with free national workers, or even with immigrant populations that brought with them their specializations and urban habits. (p. 61)*

Turning to those situations related to a context distanced in time allows the understanding of new legal systems, especially those related to education, which sought to repair, always incomplete and imperfectly, violence of a past that insists on remaining. Reparation is a way of compensating damage caused by a situation historically marked by exclusion and its consequences on descendants. Slavery, by its unnatural character, is a damage whose effects are present in our society. Those orderings mean a reparative direction of which recognition policies are part. As put by Calvès (2005):

> *Dans cette première configuration où le groupe cible de la discrimination positive est un groupe historiquement opprimé, les mesures préférentielles dont il se bénéficie revêtent une dimension* réparatrice *ou* compensatrice. *Dans la mesure toutefois où la sujétion passée, une fois acquise l´égalité des droits se survit bien souvent à ele-même dans les faits, elles affichent également (dans leur intitulé même...) une dimension* contre-discriminatoire *qu´il est parfois jugé opportun de présenter de manière plus voilée, en invoquant um objectif d´´intégration", de "mixité" ou encore de "diversité". (p. 12-13) (gryphons added)*

> *In this first configuration in which the target group of positive discrimination is a historically oppressed group, the preferred measures from which it benefits are a restorative or rewarding dimension. However, to the extent that past subjection, once equal rights is acquired, survives many in the facts, the measures also show (in its own statement...) a counter-discriminatory dimension which is sometimes judged to present it more veiledly, invoking an object of "integration", of "cohabitation between different" or also of "diversity" (p. 12-13) (free translation – gryphons added)*

One case of this explicit search for redress was the sanction of Law no. 10,639/2003 which, in the light of art. 242, § 1 of the Constitution, includes, in the official curriculum of the teaching systems, the mandatory theme of Afro-Brazilian History and Culture. This device was standardized by the Full Council of the National Council of Education through Opinion no.03/2004 and CNE/CP Resolution n.01/2004. This standardization was reinforced by target 7, strategy 7.25 of Law No. 13005/2014, that of the National Education Plan. And Law no. 12,711/2012 and Decree No. 7,824/2012, under a socio-economic criterion, cover a percentage of vacancies in federal higher education institutions for *black, brown and*

indigenous people. This form of reparation is one of the ways that allows the transition from a formalized citizenship into law to a substantive citizenship.

This cut out seeking to broaden the literature on the subject, in the light of the legal clipping, associated with the set of works analyzed, is another way in which the odious yoke to which the captives were submitted. Gramsci wrote that one of the intellectual's functions would be, after "knowing *yourself"*, to socialize well-known truths and make them everyone's heritage. This commitment *is often more important than discovering a new truth.* It is in this sense that the heritage left by captivity in our country deserves to be continuously understood. Mastering, by knowledge, such an inheritance, is not to allow yourself to be mastered by it, on the contrary, dominating it can seek ways of overcoming. In a reality, like ours, which still lives with a precarious schooling, access to more solid and more complete information opens spaces the knowledge and the requirement of rights to realize citizenship. In Clementina de Jesus' expression:

> *Black people are no longer minions/black people have no more masters.*

References

Brasil, Ipea. Documento Base. Primeira Conferência Nacional de Política Indigenista. www.ipea.gov.br/participacao/images/documento-base-online. pdf acesso em 19 de outubro de 2018.

Brasil - Reino. Decreto de 30 de junho de 1821. Permite a qualquer cidadão o ensino, e abertura de escola de primeiras letras, independente de exame e licença. Coleção das Leis do Brasil de 1821 - Parte I. Rio de Janeiro: Imprensa Nacional, 1889.

Brasil - Reino. Lei de 20 de outubro de 1823. Declara em vigor a legislação pela qual se regia o Brasil até 25 de abril de 1821 e bem assim as leis promulgadas pelo senhor D. Pedro, como Regente e imperador daquela data em diante, e os decretos das Cortes portuguesas que são especificados. Leis da Assembléia Geral Constituinte e Legislativa de 1823. Coleção das Decisões do Governo do Império do Brasil de 1823 - Parte II. Rio de Janeiro: Imprensa Nacional, 1887.

Ordenações Filipinas. www1.ci.uc.pt/ihti/proj/filipinas/ordenacoes/htm acesso em 04 de setembro de 2018.

Albuquerque, Wlamyra. Movimentos Sociais Abolicionistas. In: Schwarcz Lilia M. e Gomes Flávio. (org) Dicionário da Escravidão e Liberdade. São Paulo: Cia das Letras, 2018, p. 328-333.

Algranti, Leila Mezan. O feitor ausente: estudo sobre a escravidão urbana no Rio de Janeiro, 1808 - 1822. Petrópolis: Vozes, 1988.

Alves, Silvana Rodrigues Leite. A instrução pública em Indaiatuba: 1854-1930. Contribuição para a história da educação brasileira. Dissertação de Mestrado. Campinas, SP, Faculdade de Educação, Universidade Estadual de Campinas, 2007, 180 p.

Arantes, Adlene Silva. Colônia Orfanológica Isabel: uma escola para negros, índios e brancos (Pernambuco 1874 -1889) Revista Brasileira de História da Educação. Vol. 20, maio/ago, 2009, p.105-136.

Ariza, Marilia. B. A. Crianças/Ventre Livre. In: Schwarcz Lilia M. e Gomes Flávio. (org) Dicionário da Escravidão e Liberdade. São Paulo: Cia das Letras, 2018, p. 169-175.

Assis, Machado. Obra Completa de Machado de Assis. Crônicas: Bons Dias. 19 de maio de 1888. Rio de Janeiro: Nova Aguilar, vol. 3, 1994.

Azevedo, Célia Maria Marinho de. Onda negra, medo branco: o negro no imaginário das elites - século XIX. São Paulo: Paz e Terra, 1987.

Barros, Surya Pombo de. Escravos, libertos, filhos de africanos livres, não livres, pretos, ingênuos: negros nas legislações educacionais do XIX. Educação e Pesquisa., São Paulo, v. 42, n. 3, p. 591-605, jul./set. 2016. https://doi.org/10.1590/S1517-9702201609141039

Barros, Surya Aaronovich Pombo de. Negrinhos que por ahi andão: a escolarização da população negra em São Paulo (1870-1920). Dissertação de Mestrado. São Paulo, SP, Universidade de São Paulo, Faculdade de Educação, 2005, 163 p.

Bobbio, Norberto. O futuro da democracia: uma defesa das regras do jogo. Rio de Janeiro: Paz e Terra. 1986.

Bobbio, Norberto, Bovero, Michelangelo. Sociedade e Estado na Filosofia Política Moderna. São Paulo: Brasiliense, 1986a.

Bobbio, Norberto. A Era dos Direitos. Rio de Janeiro: Campus, 1992.

Boschi, Caio César. Os Leigos e o Poder: irmandades leigas e política colonizadora em Minas Gerais. São Paulo: Editora Ática, 1986.

Bovero, Michelangelo. Contra a democracia dos piores: uma gramática da democracia. Campus, Rio de Janeiro: 2002.

Bueno, Francisco da Silveira. Grande Dicionário Etimológico-Prosódico da Língua Portuguesa. 4o volume, São Paulo: Editora Lisa, 1988.

Calvès, Gwénäele. La discrimination positive. Paris: PUF, 2005.

Campello, André Barreto. Manual Jurídico da Escravidão: Império do Brasil. ebook, Paco e Littera, Jundiaí, 9788546212088, 2018, Edição do Kindle.

Campello, André Emmanuel Batista Barreto. A Escravidão no Império do Brasil: perspectivas jurídicas. Disponível em: https://www.sinprofaz.org.br/artigos/a-escravidao-no-imperio-do-brasil-perspectivas-juridicas/. Acesso em 14 de outubro de 2018.

Cândido, Priscila Mariano; SANTOS, Claudia Rejane Schavarinski Almeida. Educação para escravos e libertos: reflexões sobre a instrução pública no século XIX. VOOS Revista Polidisciplinar Eletrônica da Faculdade Guairacá, vol. 05, ed. 02, 2013, p. 14-30. (Caderno de Ciências Humanas).

Cardoso, Marcos A. O movimento negro. Belo Horizonte: Mazza, 2002.

Carta Régia de 1798. http://lemad.fflch.usp.br/sites/lemad.fflch.usp.br/files/2018-04/A_carta_regia_de_12_de_maio_de_1798B.pdf Acesso em 06 de novembro de 2018.

Casimiro, Ana Palmira Bittencourt Santos. Pensamentos fundadores na educação religiosa do Brasil Colonial. www.histedbr.fae.unicamp.br Acervo de fontes. Acervo navegando na História da Educação Brasileira - Colônia, Período Jesuítico. Acesso em 17 de novembro de 2018.

Castro, Hebe Maria Mattos de. Das cores do silêncio: os significados da liberdade no sudeste escravista do Brasil século XIX. Rio de Janeiro: Arquivo Nacional, 1995.

Chizzotti, Antonio. As origens da instrução pública no Brasil. Dissertação (mestrado) - PUC-SP, São Paulo, 1975.

Chizzotti, Antonio. A Constituinte de 1823 e a Educação. In: Fávero, Osmar (org). A educação nas Constituintes Brasileiras. Campinas: Autores Associados, 1996. p. 31 -54.

Comparato, Fábio Konder. A Afirmação Histórica dos Direitos Humanos. São Paulo: Saraiva, 2004.

Costa, Moacir Lobo da. O direito público subjetivo e a doutrina de Duguit. Revista da Faculdade de Direito da Universidade de São Paulo. n.47, p.409-502, 1951. https://doi.org/10.11606/issn.2318-8235.v47i0p490-502

Cruz, Mariléia dos Santos. Políticas de ações negativas e aspirações de famílias negras pelo acesso à escolarização na província do Maranhão no século XIX. Revista Brasileira de História da Educação, nº. 20, mai./ago. 2009, p. 73-104.

Cunha, Luiz Antônio. A Educação Brasileira na Primeira Onda Laica: do Império à República. Rio de Janeiro: Edição do Autor, 2017. p. 130-139.

Diretório dos índios. https://www.nacaomestica.org/diretorio_dos_indios.htm acesso em 6 de novembro de 2018.

Dossiê: Negros e a Educação. Revista Brasileira de História da Educação. vol, 2, n.2 (4), jul/dez de 2002.

Felicio, Laura Stocco. A instrução dos ingênuos: a Lei do Ventre Livre e a educação dos negros no Brasil Império (1871-1889 Iniciação científica (Graduando em História) - Faculdade de Filosofia, Letras e Ciências Humanas - USP – 2016.

Fonseca, Monica Cristina da. O Debate sobre a educação dos ingênuos na Bahia (1871-1889). Programa de Pós-Graduação Educação da Universidade Federal da Bahia. Dissertação de Mestrado, 2014. 149 pgs.

Fonseca, Marcus Vinicius. As Primeiras Práticas Educacionais com Características Modernas em Relação aos Negros no Brasil. In: Fonseca, Marcus Vinicius et al (Orgs.). Negro e educação: presença do negro no sistema educacional brasileiro. São Paulo: Ação Educação/Anped/Fundação Ford, 2001.

Fonseca, Marcus Vinicius. A educação dos negros: uma nova face do processo de escravidão no Brasil. Bragança Paulista: EDUSF, 2002.

Gonçalves, Luiz Alberto Oliveira. Negros e Educação no Brasil. IN: Lopes, Eliana Martha Teixeira; Faria Filho, Luciano Mendes de e Greive, Cynthia. 500 anos de educação no Brasil. Belo Horizonte: Autêntica, 2000.

Gondra, José Gonçalves e Schueler, Alessandra. Educação, poder e sociedade no Império Brasileiro. São Paulo: Cortez, 2008.

Jellineck, Georg. Sistema dei diritti publici subbietivi. Milano: Società Editrice Libraria, 1912.

Kant Immanuel. La métaphysique des moeurs, doctrine du droit. Paris: PUF, 1988.

Kant Immanuel. Fundamentação Metafísica dos Costumes. Lisboa: Edições 70, 2007.

Houaiss, Antônio e Villar, Mauro de. Dicionário Houaiss da Língua Portuguesa. Rio de Janeiro: Objetiva, 2009.

Libby, Douglas Cole e Furtado, Júnia Ferreira (org). Trabalho Livre e Trabalho Escravo: Brasil e Europa, séculos XVIII e XIX. São Paulo: AnnaBlume, 2006.

Mamigonian, Beatriz Gallotti e Grinberg, Keila. Lei de 1831. In: Schwarcz Lilia M. e Gomes Flávio. (org) Dicionário da Escravidão e Liberdade. São Paulo: Cia das Letras, 2018, p. 285-291.

Mamigonian, Beatriz Gallotti. Estado Nacional e a instabilidade da propriedade escrava: a lei de 1831 e a matrícula dos escravos de 1872. Almanack. Guarulhos, n.02, p.20-37, 2º semestre de 2011. https://doi.org/10.1590/2236-463320110203

Marcílio, Maria Luiza. A roda dos expostos e a criança abandonada na História do Brasil. 1726-1950. In.: FREITAS, Marcos Cezar de (org.). História Social da Infância no Brasil. 6. ed - São Paulo: Cortez, 2006, p. 53-80.

Martinez, Alessandra Frota. Educar e instruir: a instrução popular na Corte imperial. 1870 - 1889. Dissertação de Mestrado, Niterói, Universidade Federal Fluminense, 1997.

Martins Filho, Ives Gandra da Silva. O Ordenamento Jurídico Brasileiro. Revista Jurídica Virtual. Brasília, vol. 1, n. 3, julho, 1999.

Marshall, Thomas Humphrey. Cidadania, Classe Social e Status. Rio de Janeiro: Zahar, 1967.

Mattos, Hebe e Gringberg, Keila. Código Penal escravista e Estado. In: Schwarcz Lilia M. e Gomes Flávio. (org) Dicionário da Escravidão e Liberdade. São Paulo: Cia das Letras, 2018, p.163-168.

Mattoso, Kátia de Queirós. O Filho da Escrava (em torno da Lei do Ventre Livre). Revista Brasileira de História. vol. 8, n. 16, mar/ago, 1988, p. 37-55.

Mello,Francisco Ignacio Marcondes Homem de. A Constituinte perante a História. Brasília: Senado Federal, 1996. (Cópia fac-símile da edição de 1863).

Mendonça, Joseli Maria Nunes. Legislação Emancipacionista, 1871 e 1885. In: Schwarcz Lilia M. e Gomes Flávio. (org) Dicionário da Escravidão e Liberdade. São Paulo: Cia das Letras, 2018, p.277-284.

Mendonça, Ana Waleska Pollo Campos e Vasconcelos, Maria Celi Chaves. A Gênese do Conceito de Educação Pública. In: RAMOS, Lílian (org) Igreja, Estado e Educação no Brasil. Rio de Janeiro: Virtual, 2005.

Moore Jr, Barrington. As origens sociais da ditadura e da democracia. São Paulo: Martins Fontes, 1975.

Moraes, Christianni Cardoso. Ler e escrever: habilidades de escravos forros? Comarca do Rio das Mortes, Minas Gerais, 1731-1850. Revista Brasileira de Educação, v.12, n.36, set./dez. 2007, p. 493-504. https://doi.org/10.1590/S1413-24782007000300008

Moura, Clóvis. Dicionário da Escravidão Negra no Brasil. São Paulo: EDUSP, 2013.

Nogueira, Vera Lúcia. População negra, escravismo e educação no Brasil: séculos XIX e XX. Belo Horizonte: Mazza, 2015.

Oliveira, Ana Guerra Ribeiro de. Pena, Papel e Grilhões: o sinuoso caminho até a aprovação do lei do ventre livre. Faculdade Direito da UFMG, 2016, 160 p.

Perussatto, Melina Kleinert. Filhos livres das escravas: trabalho e instrução no processo emancipacionista - Rio Pardo/RS. Ephis, I Encontro de Pesquisas Históricas - PUC RS, Oficina do Historiador, Porto Alegre, Revista Discente do Programa de Pós-Graduação em História - PUC RS, mai. 2014, p. 1301-1312.

Ribas, Antonio Joaquim. Curso de Direito Civil Brasileiro. Tomo I, Rio de Janeiro: Garnier, 1880.

Ribeiro, Cristiane Maria. Da exclusão a invisibilidade: a educação dos negros goianos 1835-1920. Multi-Science Journal, v.1, n.13, 2018, p.365-373. https://doi.org/10.33837/msj.v1i13.658

Rizzini, Irene. A institucionalização de crianças no Brasil: percurso histórico e desafios do presente. Rio de Janeiro: Ed PUC-Rio; São Paulo: Loyola, 2004.

Rocha, Fernanda Franco. Cultura e educação de crianças negras em Goiás (1871-1889). Dissertação de Mestrado. Goiânia, GO, Universidade Católica de Goiás, 2007, 120 p.

Salles, Fritz Teixeira de. Associações Religiosas no Ciclo do Ouro. São Paulo : Perspectiva, 2007.

Santos, Martha S. "Slave Mothers", Partus Sequitur Ventrem, and the Naturalization of Slave Reproduction in Nineteenth-Century Brazil" Revista Tempo. vol.22 no.41 Niterói Sept./Dec. 2016. On-line version ISSN 1980-542X Acesso em 15 de outubro de 2018. https://doi.org/10.20509/TEM-1980-542X2016v224106

Sebrão, Graciane Daniela. Presença/ausência de africanos e afrodescendentes nos processos de escolarização em Desterro - Santa Catarina (1870-1888). Dissertação de Mestrado. Florianópolis, Universidade do Estado de Santa Catarina, 2010, 136 p.

Schueler, Alessandra F. Martinez de. Crianças e escolas na passagem do Império para a República. Revista Brasileira de História, v.19. n.37, set., 1999. p.59-84. https://doi.org/10.1590/S0102-01881999000100004

Schueler, Alessandra F. Martinez de. A Associação Protetora da Infância Desvalida e as escolas de São Sebastião e São José: educação e instrução no Rio de Janeiro do século XIX. In.: Monarcha, Carlos (org.). Educação da infância brasileira (1875-1983). Campinas, SP: Autores Associados, 2001, p.157-184.

Schueler, Alessandra Frota Martinez de. A imprensa pedagógica e a educação de escravos e libertos na Corte Imperial: impasses e ambigüidades da cidadania na revista Instrução Pública (1872-1889). Cadernos de História da Educação, nº. 4, jan./dez. 2005, p. 13-25.

Schwarcz, Lilia Moritz. População e sociedade. In: SCHWARCZ, Lilia Moritz. História do Brasil Nação (1808-2010): A abertura para o mundo (1889-1930). Volume 3. Rio de Janeiro: Objetiva, 2021.

Schwarcz Lilia M. e Gomes Flávio. (org) Dicionário da Escravidão e Liberdade. São Paulo: Cia das Letras, 2018.

Silva, Adriana Maria de Paula da. Aprender com perfeição e sem coação: uma escola para meninos pretos e pardos na Corte. Brasília: Editora Plano, 2000.

Silva, Noemi Santos da. Aprender a liberdade: reflexões sobre projetos e práticas de escolarização de escravos, libertos e ingênuos no Paraná (1871-1888). Revista Vernáculo, nº. 28, 2º sem./2011, p. 149-185. https://doi.org/10.5380/rv.v0i28.33365

Schnapper, Dominique. Qu'est ce que la citoyenneté ? Paris: Gallimard, 2000.

Souza, Jessé. A elite do atraso: da escravidão à Lava Jato. Rio de Janeiro: Leya, 2017.

Souza, Maria Zélia Maia de. O aprendizado para o trabalho dos meninos desvalidos: nem negros escravos e nem e nem criminosos. IX Congresso Iberoamericano de História da Educação Latino-Americano, 2009, p. 43-60.

Sposito, Fernanda. Nem cidadãos, nem brasileiros: indígenas na formação do Estado nacional brasileiro e conflitos na província de São Paulo (1822-1845). São Paulo: Alameda, 2012.

Sposito, Fernanda. Liberdade para os índios no Império do Brasil. A revogação das guerras justas em 1831. Almanack. n. 1, p. 52-55, 2011 Guarulhos. https://doi.org/10.1590/2236-463320110105

Symonides, Janusz. (Org.). Direitos humanos: novas dimensões e desafios. Brasília: Unesco, 2003.

Taylor, Claire. Da escravidão à falta de liberdade na Europa Ocidental durante a Alta Idade Média. IN: Libby, Douglas Cole e Furtado, Júnia Ferreira (org). Trabalho Livre e Trabalho Escravo: Brasil e Europa, séculos XVIII e XIX. São Paulo: AnnaBlume, 2006.

Vasconcelos, Maria Celi Chaves. A Casa e seus mestres: a educação no Brasil de Oitocentos. Rio de Janeiro: Griphus, 2004.

Veiga, Cynthia Greive. Conflitos e tensões na produção da inclusão escolar de crianças pobres, negras e mestiças, Brasil, século XIX. Educação em Revista, v.26, p.263-286, 2010. https://doi.org/10.1590/S0102-46982010000100013

Veiga, Cynthia. Escola pública para os negros e os pobres no Brasil: uma invenção imperial. Revista Brasileira de Educação, vol. 13, no. 39, 2008, Editorial Associação Nacional de Pós-Graduação e Pesquisa em Educação. pg. 502-516. https://doi.org/10.1590/S1413-24782008000300007

Xenofonte, Mauro Artur Oliveira; Gondim, Cícero Ricardo Grangeiro; Eustáquio, Maria do Carmo Gomes. Da senzala à sala de aula: a condição do negro na história da educação brasileira entre 1871 e 1888. Acta Historia Educere, v.1, n.2, 2017, p. 3-31.

Wissenbach, Maria Cristina Cortez. Letramento e escolas. In: Schwarcz Lilia M. e Gomes Flávio. (org) Dicionário da Escravidão e Liberdade. São Paulo: Cia das Letras, 2018.