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*Slavery, Frontier and the Law in South America's South
(Brazil, Uruguay and Argentina, 19th century)*

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The title of the lecture I am giving today, “Slavery, Frontier and the Law in South America's South”, is related to an on-going research project about the relationship between slavery, emancipation and the process of state building in some 19th century South American countries (mainly Brazil, Argentina, Uruguay, and Peru). In this project, I propose three arguments: (1) I want to argue that slavery, and especially the way slavery ended in Brazil, helped to shape international relations between those countries; (2) slaves, aware of this context, would flee Brazil and argue they became free as soon as they step in “free soil”. Finally, (3) I also want to argue that in South America the action of slaves and the diplomatic tensions it created led to a wide definition of the concept of “free soil”, attached to notions of territory and nationhood, very different from the ones established in United States at the same time.

Up to 1800, almost 1 million enslaved Africans were already brought to Spanish America, while Brazil by that time had received a total of 2.5 million enslaved Africans (1.5 million more would arrive in the 19th century, totalizing about 4 million enslaved Africans, or around 40% of the total of enslaved persons that were brought from Africa to the Americas). Indeed, in early 19th century, slavery was deeply established in Brazil and Spanish America and more enslaved Africans arrived in these places than ever before.

The expansion of the coffee economy in Brazil increased the demand for slaves constantly and planters were willing to pay high prices for African slaves. At the same time, after the Haitian Revolution in the Caribbean in the last decade of 18th century and the closing of the North Atlantic slave trade in 1808, ports of arrival in South America became more important, with more traders willing to sell their slaves in the area. This was the case in ports such as Montevideo and Buenos Aires, entrance of La Plata river, from where African slaves were distributed and sold as far as the mining areas in Peru.

The growing number of African slaves circulating around the borders between Spanish and Portuguese Empires coincided with the movements of independence in South America. Argentina was the first place to establish its independence, in 1811; soon afterwards, in 1812, the country tried to abolish the slave trade, establishing that everyone born in the country would be free, even if they were sons/daughters of enslaved people. Although this decision was reversed later on – the final emancipation of slaves in Argentina was established only in 1853 – it was clear since the beginning of the process of independence in Spanish South America, even with the opposition of planters and merchants, that independence also meant abolition. By 1825,

almost every Spanish American country had banned further imports of slaves from Africa and enacted programs of either gradual or immediate emancipation.

The opposite happened in Brazil. Independence didn't arouse pro-abolition voices. The mainstream political discourse from 1820s to 1840s was that African slaves were needed for the country's development. Slavery played an important role in Brazil's self-image in 19th century. Brazilian civilization, a highly hierarchical society, was based on African slavery and dependant on African slave labor. At least until the 1850s, when the Atlantic slave trade was abolished and slave's prices rose significantly, having a slave was a widespread practice among Brazilian free population, not only among big planters, but also freed Africans and born free afro-Brazilians.

This situation leads us to the borders between independent Brazil and its neighboring countries. With the Free womb laws of the 1820s and the final abolition of slavery in the 1840s and 1850s, the number of slaves rapidly decreased in Spanish American countries. At the same time, 35% of the population of the border province of Rio Grande do Sul (Brazil) was composed by slaves.

This situation means that every proposal or measure towards emancipation of slaves in any border country in Spanish America was seen as a threat by authorities in Brazil, especially local authorities in Rio Grande do Sul. As early as 1813, the issue of slaves crossing the borders had begun to worry Portuguese authorities, as evidenced in a document entitled the "Complaint of the Portuguese Government Urging the Delivery to Brazil of Slaves who have Taken Refuge in the Territory of the United Provinces of the la Plata River (Argentina)." In this document, the

Portuguese government complained about a decree that declared “free any and every slave from a foreign country who sets foot on this territory by virtue of the simple fact of having set foot here.” In the complaint, the Portuguese stated further that they were uneasy about the flights of slaves from Rio Grande do Sul into Argentina, then happening on a large scale. The issue had already provoked an exchange of correspondence between Portugal and Lord Stragford, the British Minister in Rio de Janeiro, as well as letters from Lord Stragford to Argentina, asking for the immediate return of escaped slaves and an “end to the fatal effects” of the decree.

Following threats from both governments, Buenos Aires responded by revoking the decree. It made clear, however, that the granting of liberty for all slaves brought in from foreign countries was an internal matter, which, for that reason, could not “give cause for complaint or offense to any foreign government.” In February of the following year, the Buenos Aires government returned again to the subject, emphasizing that, with that decree, they were not referring to slaves that might run away from Brazil (who, in that case, should be returned to their owners), but rather to those who had been “introduced, through commerce or sale, against the dispositions that prohibited slave traffic.”

This example shows that political emancipation and individual emancipation in 19th century South America were being understood by slaves who lived in the borders as a way to achieve personal freedom. Slaves’s flights occurred since the 1810s, and, in growing numbers, between the 1820s and 1860s, due to the various wars that then happened in the region. As happened in many other places in the Americas, such as the United States, slaves would join

armies during independence wars in order to try to get freedom. During Argentina, Uruguayan and Brazil independence wars, the same happened.

After the first attempt to abolish the slave trade in Brazil, in 1831, with the approval of a law known as “law for the English to see” (due to the British pressure to close the South Atlantic slave trade), this movement became more intense. The law established that “All slaves who enter the territory or ports of Brazil, coming from outside, will be free”. How the slaves were aware of the 1831 law, is a question that is difficult to answer. But it’s interesting to note that many Brazilian slaves, after crossing back the border coming from Argentina or Uruguay, would go to the courts to claim their right to be freed basing their arguments on the 1831 law.

In these cases, besides referring to the 1831 law, the slaves’ defenders frequently used the argument of “the principle of liberty,” whereby any slave who stepped on free soil automatically gained the right to freedom. According to this line of reasoning, cases referring to slaves who had crossed the international border involved re-enslavement, as these slaves had achieved their freedom simply by crossing the border and stepping on the territory of those countries. A similar argument was used in France and England to free slaves who had traveled with their masters from the Caribbean in the eighteenth century, as well as in the United States to argue for the freeing of slaves who traveled from slave states to free ones over the course of the 19th century.

Having said that, the question is: is it appropriate to argue that the crossing of slaves and the freedom lawsuits are strong enough evidences to allow us to affirm that slavery affected diplomatic relationship between Brazil and its neighbors in 19th century? I believe so. In the

1830s and 1840s, the number of slaves crossing the borders from Brazil to Uruguay, Argentina was so high, as was the number of Brazilian masters trying to recover them, that it originated a series of complaints from planters from both sides of the borders asking their respective authorities to solve the problem. While Uruguayan and Argentinian authorities were called by their nationals to avoid Brazilians to come pick their slaves up, or to re-enslave the workers that were already working as free people, Brazilians would complain that they should have the right to bring their slaves back, the same way they could do with the cattle that happened to cross the border. The complaints reached the consules from all sides.

The situation grew so difficult that, in 1851 and 1857, Brazil signed a set of treaties with Peru, Uruguay (both in 1851) and Argentina (1857). The treaties were the first ones to be established between those countries, and included topics about free commerce, navigation in the rivers and extradition of prisoners. Besides those treaties, Brazil imposed extradition treaties regarding slaves (the term “imposition” is taken from complaints written by the Uruguayan consul in Rio de Janeiro to his Brazilian counterpart). These treaties emphasized the ease with which the borders of these states were traversed, and established that slaves who crossed the frontier without the consent of their owners, or against their wills, had to be returned to Brazil, so long as the possession and ownership of the captives in question was proven and the returned slave was not punished for the escape.

However, the issue was not quite so simple. In 1856, Eusébio de Queiroz, then the president of Rio de Janeiro’s Appeals Court, consulted with the Council of State, asking if “a slave resident in a foreign country might enter the Empire, and not only remain enslaved, but even be

turned over to his master by his country's judicial authorities." The question was motivated by the Appeals Court's review of the case of a person of color who had committed a crime, escaped to Uruguay and then returned back to Brazil. The Council of State's opinion, which was considered notable at the time and generated a famous official notice on the subject on May 20, 1856, reached the following conclusions:

- I. That the Law of November 7, 1831 intended not only to end the traffic of new blacks, but also to reduce the number of slaves in Brazil;
- II. That its dispositions included, inevitably, the case of a slave who, with his owner's consent, might have gone to a foreign country and then re-entered the Empire.

Despite the protests of the president of the Rio Grande do Sul Province, and despite that the memorandum was rectified by two others in 1858, the Notice of 1856 came to play an important role in all of the freedom suits of slaves who crossed the frontier from Brazil. In most cases, the Appeals Court, following the interpretation of the 1831 law, sided with the slave. This state of affairs left room for rumors about the benevolence with which the Brazilian Imperial authorities viewed the manumission of slaves in such conditions. And not without reason. In 1858, responding to a query from the president of the province of Rio Grande do Sul about the case of slaves mortgaged in Brazil and later brought to Uruguayan territory, the same Eusébio de Queiroz wrote the following opinion, which was approved by the Emperor and countersigned by the minister of Foreign Affairs:

"The slave is unaware of the transactions of which he is the object, he does not, and is never able to, examine them, he simply obeys his master. If that master brings him to the *Estado Oriental* (Uruguay), whatever obligations might be contracted in his regard, whether or not there are

mortgages, by that simple fact, the slave acquires his liberty, he is free in that republic and he is free in Brazil. Both governments are obliged to maintain the rights that were ceded to him, neither can one demand his return, nor can the other grant it.

Here is my first point: we may not know yet the volume of slave movement across the borders, but its importance is proved by the intense exchange of diplomatic correspondence on the subject.

Now, moving to the second point: The 1850s saw an increasing preoccupation with cases of re-enslavement in the borders, as was evidenced in reports from the Brazilian minister of Foreign Relations in 1859 and 1861. In the first report, for instance, the minister alluded to the Uruguay's complaint about the "robbery of persons of color to be sold" in Rio Grande do Sul. In one of the cited cases, a house had been attacked by two Brazilians, who had taken a three-year old child; in another case, the report stated that "two colored minors" had been "stolen near Aceguá and later sold as slaves in Rio Grande;" the children's family now demanded "their rescue and return." The minister said further that "part of this complaint was verified, and one of the minors, who had been sold with the name Domingos and said his name was João Serapio, was judicially deposited." In 1861, the minister reiterated that "the imperial government has alerted the president of the province of Rio Grande do Sul about the theft of minors of color in Uruguay and Argentina, in order to be sold as slaves in Rio Grande do Sul." These practices were becoming increasingly common by that time, with born free Argentinian or Uruguayan children being kidnapped by Brazilians and registered in Rio Grande do Sul as Brazilian born slaves.

Taking those examples, we can also argue that the intense exchange of diplomatic correspondence on the subject of the presence of slaves in the borders shows that, although slavery was not the main cause of the various conflicts that occurred in the area in 19th century (the Brazilian war against Paraguay, 1865-1870, being the most important one), cases of re-enslavement (meaning here kidnapping and theft) and the complaints they generated from planters and authorities brought a permanent tension in the area. In a context when the African frontier was closed, and the Atlantic slave trade could not supply the need for slave labor any more, I want to argue that the Southern borders of the Brazilian empire became borders of enslavement. It's an irony: for the slaves that left Brazil and never came back, or for the ones who successfully claimed their freedom in the courts, frontier meant freedom. For those who were kidnapped and forced to cross the border to Brazil as enslaved persons, frontier and slavery were synonymous.

Complaints by Uruguayan and Argentinian authorities only ended with the end of slavery in Brazil, in 1888. While slavery existed in Brazil, the borders were a permanent source of tension in a region already full of tensions. These tensions are also important in the way they reveal different concepts of nation and nationhood that were being built in 19th century Americas. The concepts of nation and nationhood, so crucial to the construction of sovereign nation-states over the course of the 19th century, were also involved in the definition of "free soil". After all, and not by chance, the consolidation of these countries' independence occurred during the same period in which they began to define the frontiers between "legitimate" and "illegitimate" slavery, attempting to establish the extent of owners' power over their slaves and

the conditions in which slaves could legitimately change their judicial status. The fact that countries such as Brazil argued for the maintenance of slavery well into the 19th century, when various nations had already rejected it, implied an acceptance that the slave labor regime was circumscribed to a bounded territory, as the institution no longer enjoyed large-scale legitimacy.

The “principle of liberty” and the notion of free soil were not inventions of the 19th century nor were created in the Americas. Ever since 1569, slavery had been held to be inconsistent with the British juridical tradition; in that year, in the so-called Cartwright case, a serf imported from Russia was considered free by the authorities because “England was too pure an air for a slave to breathe in”. Although no details are known about the case, it is known to have created a legal precedent, as it was used as an argument in cases involving slaves taken to England from the British colonies in the Caribbean during the 18th century. At the end of that century, the discussion about the status of James Somerset, a slave who had fled from Jamaica, definitively closed the question in England by establishing that, in the absence of positive laws on slavery, all persons who stepped on English soil had to be considered free. In France, representatives of the French state also had to decide about the status of slaves brought by their owners from the French colonies of the Caribbean. Although they tried various times to restrict slaves’ demands, the maxim that there could be no slave in France – that is, that every slave who stepped on French soil had to be freed – won in the courts and allowed the manumission of many people over the course of the 18th century.

Although national states did not always recognize the validity of the principle of free soil, decisions taken in the courts, in various circumstances, always ended up generating effects far

broader than the legislators' intentions. This was demonstrated in cases that occurred in the United States, where outcomes were based on British decisions, and also in the very use of the 1831 law in Brazil.

The disputes around the principle of free soil, typical of modern transatlantic slavery, are fundamental to understanding the way in which recently independent countries conceptualized their citizenships; to recognize the idea that territory creates rights is also to recognize that one's status is given by one's place of birth and family, not by eternal subjugation to an authority or by immutable attributes, as was believed in the *Ancien Regime*.

And here I want to conclude with the third point: what we can glimpse in the movement of slaves in the frontier region in the extreme South of the Brazilian Empire, in the conflicts that movement generated, and in the various juridical and political decisions made by different authorities over the course of the 19th century, is that an individual's status can change depending on the place where he or she is, the place he or she lives in, or the place where he or she was born. In Brazil, Argentina, Uruguay, even with the occurrence of so many conflicts over the status of a person, those conflicts reveal that the definition of territory was linked to the possibility of the acquisition of rights.

If territory created rights, conceiving of slavery in that period implied recognizing the limits of its juridical legitimacy, which were delimited by the modern, independent State and by the concepts of nation, nationhood, and citizenship attributed to it. For that reason, even with international tensions, even with the fact that the borders had different meanings for each person

that crossed it, in the level of State building the notion of frontier ought to be implicit in our reflections about 19th century South American slavery. Diplomatic relationships, and international tensions originated over the status of slaves in the borders had an implicit recognition that slavery was becoming illegitimate over the course of 19th century, even against the planters will, and that the attachment to a certain territory (which means, in that case, access to citizenship rights) was becoming more important than the status as free or enslaved person. That's how slavery in the Brazilian borders, slowly by slowly (perhaps more slowly than it should have been), became illegitimate, opening the paths to its abolition at the end of the century.