

Practising Freedom and Publicness

From Slavery to Citizenship Revisited

Abstract: The acquisition of fundamental rights and the assertion of political participation were two important processes in the transition from slavery to citizenship in eighteenth- and nineteenth-century Brazil. Enslaved people played a leading role in both, demanding justice through individual lawsuits and striving for political belonging through collective practices such as capoeira. While the legal struggles, in which they mostly followed the hegemonic language and institutional logic, had an inclusive effect, the political practices led to repressive reactions from the authorities, thus having an exclusionary effect. Nevertheless, to a certain extent these practices also worked in an inclusive manner because they eventually engendered schemes of formal political representation. Even if unconsciously, enslaved (and formerly enslaved) people played a significant role in the Brazilian state-building process.

Keywords: slavery, citizenship, state building, public spaces, fountains, Rio de Janeiro, Portuguese America, Empire of Brazil

1. Introduction

This article explores two dynamics through which enslaved people of African origin became citizens of the constitutional monarchy established in Brazil in the 1820s, namely a legal one (the acquisition of fundamental rights) and a political one (the assertion of political participation).¹ This momentum was effective over several generations and, by pushing it, the enslaved people contributed to the emergence of the

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liberal state.² While the legal dynamic has generated an abundance of research in recent decades, the political one has been much less explored, and by different historians. Taking a micro-historical approach, this article looks at enslaved people's practices in the eighteenth and early nineteenth century that drove the two dynamics, arguing that each had its own logic and that they culminated in opposing results: while the legal struggles, in which the enslaved mostly followed the hegemonic language and institutional logic, had an inclusive effect, the political practices, which were more autonomous in character, led to repressive reactions by the authorities and thus had an exclusionary effect. Nevertheless, to a certain extent these practices also functioned in an inclusionary manner because they eventually engendered schemes of formal political representation, although these were unsuitable for achieving the original purposes of the enslaved.

More generally, the article contributes to ongoing debates about early modern state-building processes. For much of the twentieth century, historians had traced the origins of modern (European) statehood to rulers' ambitions for warfare and tax collection, bureaucratization, and social disciplining. Since about the turn of the millennium, however, this perspective has been modified by approaches emphasizing the importance of local actors driving the state-building process 'from below'. As André Holenstein explained in a programmatic article:

"As a common denominator – very generally and provisionally speaking – [historians] have identified the articulation of interests, moral concepts and needs by communities, corporate entities, interest groups and subjects from local society as determining forces in the statebuilding process. From this perspective, statebuilding – that is the extension and strengthening of state institutions, courts and authorities and the activity of the state itself – no longer appears to be the exclusive achievement of dynasty members and their ministers, civil servants and generals. It rather seems to be the unin-

2 Until the 1960s, historians used to argue that slavery was incompatible with liberalism. In his famous essay on 'misplaced ideas', Brazilian cultural theorist Roberto Schwarz took up this assumption and argued that the two ideologies were compatible, even if they took on distorted forms, which was inevitable in the periphery of the world system. Maria Sylvia de Carvalho Franco responded that ideas circulating in a given milieu cannot be misplaced – if they were, they would not circulate there. While several historians have since investigated the specific type of liberalism of the Brazilian empire, others, like José Murilo de Carvalho continue to see slavery as a major obstacle to the construction of a liberal nation state. See Sérgio Buarque de Holanda, *Roots of Brazil*, Notre Dame, IN 2012 [1936]; Roberto Schwarz, *Misplaced Ideas. Literature and Society in Late-Nineteenth-Century Brazil*, in: Roberto Schwarz (ed.), *Misplaced Ideas. Essays on Brazilian Culture*, London 1992 [1973], 19–32; Maria Sylvia de Carvalho Franco, *As ideias estão no lugar*, in: *Cadernos de Debate* 1 (1976), 61–64; José Murilo de Carvalho, *Escravidão e razão nacional*, in: *Dados. Revista de ciências sociais* 31/3 (1988), 287–308. For a recent discussion, see Tâmis Parron, *Escravidão e as fundações da ordem constitucional moderna. Representação, cidadania, soberania, c. 1780–c. 1830*, in: *Topoi* 23/51 (2022), 699–740.

tended outcome of interactive processes, which brought about and fostered the emergence of the state.”³

In this spirit, all kinds of locally situated people have been investigated regarding their contribution to the emergence of modern (European) statehood.⁴ Usually they were subjects of a sovereign or members of an urban or rural community, and as such already enjoyed some basic liberties.⁵ But as I show in this article, even enslaved people – who were by definition excluded from the legal and political communities of free men and their respective prerogatives – demanded justice in the courts and asserted political claims in ways that were constitutive for the establishment and consolidation of juridical and political procedures and institutions, and thus for the state-building process in colonial and independent Brazil.

Before I begin, let me briefly outline some of the milestones in Brazil’s history. The Portuguese reached the region in 1500, gradually conquering the territory and, at the cost of many lives, subjugating the Indigenous peoples who stood in their way. To supplement the workforce, about five million Africans were forcibly brought to Brazil (less than two-thirds before 1800, and the rest by the mid-nineteenth century). The city of Rio de Janeiro became the colony’s capital in 1763 and the seat of the royal court in 1808. By the end of the eighteenth century, it was home to about 40,000 people, 55 per cent of whom were African (born in Africa) or Afro-Brazilian (with African ancestors but born in Brazil). At this time, about 40 per cent of the urban population were enslaved. When the colony declared its independence from Portugal in 1822, Rio became the seat of the emperor of Brazil. Although the transatlantic slave trade was formally abolished in 1830, its end was not enforced until

3 André Holenstein, Introduction. Empowering Interactions. Looking at Statebuilding from Below, in: Wim Blockmans/André Holenstein/Jon Mathieu (eds.), *Empowering Interactions. Political Cultures and the Emergence of the State in Europe 1300–1900*, Aldershot 2009, 1–31, 4–5. The article includes a fine discussion of the respective historiography. For critical assessments of this interpretation, see Wolfgang Reinhard, No Statebuilding from Below! A Critical Commentary, in: Blockmans/Holenstein/Mathieu (eds.), *Empowering Interactions*, 299–304, and Ronald G. Asch, Review of: Blockmans/Holenstein/Mathieu (eds.), *Interactions*, in: *H-Soz-Kult*, 29 June 2009, www.hsozkult.de/publicationreview/id/reb-12977 (18 December 2023).

4 Holenstein refers to these interactions as ‘empowering interactions’, by which he means “a specific communicative situation emerging from diverse, but nevertheless reciprocal interests and demands from both the state’s representatives and members of local societies. [...] In a specific sense, both parties became more powerful: the bearers of particular interests received authoritative support, while the state broadened its social acceptance and legitimacy.” Holenstein, Introduction, 2009, 337. As in my case study the enslaved were partly contained by repression, I recede from describing all interactions between people ‘from below’ and the authorities which contributed to the state-building process as ‘empowering’.

5 Holenstein refers to this fact by using the concept of ‘*societas civilis cum imperio*’, which he considers typical of early modern Europe. *Ibid.*, 5. To my knowledge, even Peter Blickle, whose research focused on popular groups and social conflicts, did not pay attention to the contribution of unfree persons or those belonging to no estate to the state-building process.

1850. Slavery remained legal until 1888, one year before the monarchy was replaced by a republican regime.

In the analysis of the two dynamics that characterize the transition from slavery to citizenship, I will begin with the better studied one: the acquisition of fundamental rights by enslaved people through individual litigation. This was in keeping with the legalistic character of the colonial administration and was intensified after independence, contributing to the establishment of the rule of law. As this aspect has already been well investigated, I will refrain from giving empirical examples and merely outline the current state of research. With regard to political participation, however, I will take up a specific case study to discuss the practices with which Africans reacted to their enslavement: the appropriation of fountains by water carriers in Rio de Janeiro. To do this, I will draw on sources from the royal administration, especially the correspondence between Luís Vaía Monteiro, King João V, and the city council of Rio. Vaía Monteiro was the governor of the captaincy of Rio de Janeiro from 1725 to 1732, shortly after the construction of Rio's first major aqueduct had been completed. For the time after 1808, they are complemented by extracts from foreigners' travelogues. In a third step, I will follow the same case, arguing that although the enslaved water carriers succeeded in entering public space and administrative discourse, and in advancing state formation through the emergence of a public police force, their political concerns were suppressed. In this section, I base my arguments on police records and, again, on travelogues. While the Constitution of 1824 eventually granted civil and political rights to all free men, regardless of their skin colour, this was only an inadvertent side-effect of enslaved people's continuous political struggles to assert their existence. Although they were significant albeit unintentional contributors to the emergence of modern statehood, the political ambitions of the African and Afro-Brazilian water carriers (numerous of whom were now free) found no more support than before.

2. The momentum of slave litigation: asserting fundamental rights

One of the first writers who prominently addressed the challenging transition from slavery to citizenship was Frank Tannenbaum.⁶ For him, the transition in Latin America was easier, quicker, and more complete than in North America. He argued

⁶ Frank Tannenbaum, *Slave and Citizen. The Negro in the Americas*, New York 1947; see also Alejandro de la Fuente, *From Slaves to Citizens? Tannenbaum and the Debates on Slavery, Emancipation, and Race Relations in Latin America*, in: *International Labour and Working-Class History* 77 (2010), 154–173, 156–157. A Brazilian precursor and counterpart to Tannenbaum, albeit with a different orientation, was Gilberto Freyre, *The Masters and the Slaves. A Study in the Development of Brazilian Civilization*, Berkeley 1986 [1933].

that the Iberian legal tradition defined freedom as the natural human condition, encouraged manumission and fostered complaints in cases of abuse. According to him, Ibero-American slavery was a contractual relationship rather than a permanent condition. If a slave had the necessary financial means, he or she could end the status at any time. People freed from slavery, Tannenbaum continued, did not face serious obstacles to their integration into society at large. In line with this tradition, even the final abolition of slavery took place without much resistance. In the United States, by contrast, where enslaved people had had no rights and there had been no individual manumissions, the end of slavery had to be enforced by a brutal war and led to enduring racism.

Initially, this narrative met with great acceptance, especially among Latin American elites; even today, some Brazilians are convinced that their country has a ‘racial democracy’ in which everyone has the same opportunities, regardless of their origins.⁷ But as countless studies have shown, many details in Tannenbaum’s account are wrong, and even his central hypothesis is only partially convincing. In fact, the violence and trauma that grew out of slavery were at least as pronounced in Latin America as they were in British America and the United States, and racism replaced slavery everywhere.⁸ In Brazil in particular, the end of slavery was anything but easy. In no other country in the Americas did slaveholders manage to delay abolition for so long. Although there was in fact a high rate of manumission in Brazil, research has emphasized that freedom remained precarious, that is, it could easily be reversed.⁹ Moreover, if citizenship is understood not only as a legal and political category but also as a social status, the transition from slavery to citizenship in Brazil was a lengthy process that has not been completed to this day. As Sidney Chalhoub has noted, the strict conceptual separation between ‘slavery’ and ‘freedom’ took place only after the abolition, in order to incorporate the Brazilian nation into the common narrative of progress; there had already been “spaces of ambiguity and perhaps freedom” within slavery, while exploitative labour relations continued in freedom long after the formal end of slavery.¹⁰

7 On the evolution of the term ‘racial democracy’ in Brazil, see Antônio Sérgio Guimarães, *Democracia racial. O ideal, o pacto e o mito*, in: *Novos Estudos CEBRAP* 61 (2001), 147–162; *ibid.*, *A democracia racial revisitada*, in: *Afro-Ásia* 60 (2019), 9–44.

8 Racism is often hidden behind ‘racial silence’ or ‘colourblind racism’; see Brodwyn Fischer/Keila Grinberg/Hebe Mattos, *Law, Silence, and Racialized Inequalities in the History of Afro-Brazil*, in: Alejandro de la Fuente/George Reid Andrews (eds.), *Afro-Latin American Studies. An Introduction*, Cambridge 2018, 130–176.

9 Sidney Chalhoub, *The Precariousness of Freedom in a Slave Society (Brazil in the Nineteenth Century)*, in: *International Review of Social History* 56/3 (2011), 405–439.

10 Sidney Chalhoub, *The Politics of Ambiguity. Conditional Manumission, Labor Contracts, and Slave Emancipation in Brazil (1850s–1888)*, in: Andreas Eckert (ed.), *Global Histories of Work*, Berlin 2016, 183–214, 211.

Research on the agency of enslaved people in Latin America has expanded greatly in the last three decades. In line with Tannenbaum, historians emphasize the centrality of legal institutions for enslaved people, who had access to them. Above all, these historians investigate the strategies used by the enslaved in the context of manumission litigation, highlighting the “enormous creativity” with which they sought “to shape their own destinies”.¹¹ In Portuguese America, court cases which involved enslaved people had been conducted occasionally from the early eighteenth century and became quite common in the nineteenth century.¹² In the early days, they were usually initiated by slaveholders who sought to disprove the legitimacy of a freedom claim; it was not until much later that enslaved people themselves began to file lawsuits to enforce informally made promises of manumission, challenge the legality of re-enslavement, or for other purposes. In the absence of a written slave code, they relied on customary rights derived from their daily treatment.¹³ Slaveholders often granted them benefits in return for good services, which helped to keep the peace and stabilize the institution of slavery in the long term. But these benefits also created a sense of entitlement among enslaved people, who sometimes resorted to legal action to enforce them. According to Adriana Chira, the fact that this was a matter of customary law probably even lowered the mental barrier to accessing the courts.¹⁴

11 Fischer/Grinberg/Mattos, *Law*, 2018, 140.

12 There is a clear difference between the Spanish and Portuguese legal traditions: the codification of slavery was much less developed in the Portuguese than in the Spanish, and until 1830, slavery rather than freedom – as Tannenbaum suggested – seems to have been considered the ‘normal’ status of enslaved people. This may be one of the reasons why court cases which involved enslaved people began much later in the Portuguese jurisdiction than in Spanish America. In the Spanish dominions, they started in the sixteenth century and seem to have been quite common in the seventeenth century. In Portuguese America, the earliest trial cited by Pinheiro took place in 1718 in the gold region of Minas Gerais. Indigenous people had taken legal action against their enslavement from at least the late seventeenth century, but they had a more favourable legal basis for doing so. On Spanish America, see Ricardo Salazar Rey, *Mastering the Law. Slavery & Freedom in the Legal Ecology of the Spanish Empire*, Tuscaloosa, AL 2020; on Portuguese America, see Brodwyn Fischer/Keila Grinberg, Introduction. *Slavery and Freedom in Nineteenth-Century Brazil*, in: Brodwyn Fischer/Keila Grinberg (eds.), *The Boundaries of Freedom. Slavery, Abolition, and the Making of Modern Brazil*, Cambridge 2022, 35–56, 39–40; Beatriz Mamigonian/Keila Grinberg, *The Crime of Illegal Enslavement and the Precariousness of Freedom in Nineteenth-Century Brazil*, in: Fischer/Grinberg (eds.), *Boundaries*, 2022, 1–32, 11; Pedro Jimenez Cantisano/Mariana Dias Paes, *Legal Reasoning in a Slave Society (Brazil, 1860–88)*, in: *Law and History Review* 36/3 (2018), 471–510, 477, 479; Fernanda Domingos Pinheiro, *Em defesa da liberdade. Libertos e livres de cor nos tribunais do Antigo Regime português (Mariana e Lisboa, 1720–1819)*, PhD thesis, UNICAMP, Campinas, SP 2013, 16–17; John Manuel Monteiro, *Negros da terra. Índios e bandeirantes nas origens de São Paulo*, São Paulo 1994, 216; Sidney Chalhoub, *Visões da liberdade. Uma história das últimas décadas da escravidão na corte*, São Paulo 1990.

13 It included, for example, the right to have a family, the right to free time, the right of self-purchase, and the right to save.

14 Adriana Chira, *Manumission, Custom, and the Laws of Slavery and Freedom in Latin America*, in: *History Compass* 19/2 (2021), 2.

More than 30 years ago, Sidney Chalhoub argued that the Free Womb Act of 1871 grew out of such claims. It freed all children born to enslaved mothers, but more importantly, it also transformed several customary rights into positive law.¹⁵ Chalhoub attributed to enslaved people an instrumental role in bringing about the law that gave them legal capacity and eventually led to the abolition of slavery; their massive individual, but similarly timed, legal actions had structural consequences. As mentioned in the introduction, many current early modernists who study the emergence of statehood would probably agree with this line of argument; among them, it is common sense that the continuous demand for law and justice ‘from below’ produced a functional judicial system and ultimately contributed substantially to the emergence of the rule of law.¹⁶ Taking Chalhoub’s argument one step further, it could be argued that enslaved people were to a significant degree responsible not only for legal advancement, but even for the development of modern statehood in Brazil.

But Chalhoub’s interpretation has also met with criticism. According to his opponents, he overestimated the agency of the enslaved. They argue that emancipation cannot be attributed to the individual dissatisfaction of the urban enslaved; not least because otherwise abolition would have taken place much earlier. Rather, the economic situation, combined with the abolitionist movement of the late 1860s to 1880s, brought about a decisive change in the mentality of bureaucrats, lawyers, judges, journalists, and politicians. In this view, enslaved people were able to assert their often successful role in litigation only because they received increasing support and protection from public institutions.¹⁷ This change in the mentality of white professionals had its roots in Enlightenment ideas, gained strength during the Atlantic Revolutions, and was strongly promoted by British and other European abolitionists. In fact, it was due to British pressure that the transatlantic slave trade to Brazil was banned and eventually abolished. From the late 1860s, due to the end of new arrivals from Africa and the very low birth rates among enslaved people in Brazil, there was an increasing shortage of labour. Ownership of enslaved people

15 Chalhoub, *Visões*, 1990.

16 E.g. Griet Vermeesch/Manon van der Heijden/Jaco Zuiderduijn (eds.), *The Uses of Justice in Global Perspective, 1600–1900*, London 2019.

17 For a structuralist criticism on Chalhoub, see Emilia Viotti da Costa, Review of: Chalhoub, *Visões*, 1990, in: *Hispanic American Historical Review* 72/2 (1992), 295–296; and more recently Rafael de Bivar Marquese, *As desventuras de um conceito. Capitalismo histórico e a historiografia sobre a escravidão brasileira*, in: *Revista de História* 169 (2013), 223–253. Angela Alonso, for her part, emphasized the importance of the elites in organizing the powerful social movement to abolish slavery; Angela Alonso, *The Last Abolition. The Brazilian Antislavery Movement, 1868–1888*, Cambridge 2021 [2015]. On the general tendency to overestimate slave agency, see Walter Johnson, *Agency. A Ghost Story*, in: Richard Follett/Eric Foner/Walter Johnson (eds.), *Slavery’s Ghost. The Problem of Freedom in the Age of Emancipation*, Baltimore, MD 2011, 8–30.

became concentrated in the hands of the largest landowners, effectively ending the complicity of the rest of the Brazilian population. Furthermore, the US Civil War (1861–1865) not only heralded the end of slavery in the hemisphere, but its extreme violence also provided a cautionary tale of what not to do. All of this, combined with the fact that by the end of the nineteenth century slavery had outlived most of its economic usefulness and could be cost-efficiently replaced by wage labour, led many white Brazilians to eventually support its abolition.

And yet, long before the drafting of the Constitution of 1824, let alone the abolition of slavery in 1888, enslaved people influenced the conceptualization of slavery, freedom, and citizenship, including the gradual granting of civil and political rights. They did this through litigation but also, as I will argue, through public practice. In many cases, enslaved people used the institutions, language, and logic of the established hierarchical order to leave their assigned place permanently. By anticipating their roles as free citizens, they contributed significantly to the transition from a slaveholding society to a liberal state that tended towards the rule of law and claimed to be representative. However, I do not suggest that enslaved people shared the liberal ideology, and they rarely struggled directly for legal equality or formal political inclusion.¹⁸ Rather, they had their own interests, ambitions, and worldviews, which usually went unrecognized by the dominant groups of society.

3. Appropriating the fountains: informal political participation

The political demands of Africans and Afro-Brazilians are much more difficult to decipher than their legal strategies, and the consequences of actions that can be called political are much less in keeping with their original intentions. Due to the lack of documentation from the perspective of the enslaved, we know very little about the actual experience of enslavement. According to Igor Kopytoff and Suzanne Miers, African notions of ‘freedom’, and hence of its loss, differed substantially from European understandings.¹⁹ In most traditional African societies, ‘freedom’ did not consist in individual autonomy but, on the contrary, in attachment to a kin group or other social network that provided all kinds of protection. The fundamental trauma of transatlantic slavery was the violent uprooting of people from these communities, causing them to lose their status, their sense of belonging, and their collective

18 For this reason, I prefer to use terms such as ‘dynamics’ and ‘momentum’ rather than ‘agency’ with regard to the contribution of enslaved people to the two developments under study.

19 Igor Kopytoff/Suzanne Miers, African “Slavery” as an Institution of Marginality, in: Igor Kopytoff/Suzanne Miers (eds.), *Slavery in Africa. Historical and Anthropological Perspectives*, Madison, WI 1979 [1977], 3–81, 17.

memory. In 1982 Orlando Patterson introduced the concept of 'social death' as a fundamental characteristic of slavery, which seemed to imply that enslavement was tantamount to the severance of all social relationships, the erasure of one's former personality, and total absorption into the world of the slaveholders.²⁰ But as Vincent Brown has convincingly explained, Patterson's description was meant to be only an ideal-typical abstraction, stripped of any individual experience. It is not suitable for approaching the realities of the enslaved people's lives because their continuous struggle for dignity and meaningful action, which despite everything took place and brought about historical changes, cannot be explained in the case of social death.²¹ Rather, according to Brown, social death existed as a constant threat to the enslaved, taking the form of a 'receding horizon.'²² In fact, even Patterson himself acknowledged that it was precisely because the enslaved people's kinship relations were destroyed that they cultivated them all the more; and that because they were denied personal dignity, they fought for it all the more. Even if their community building was always fleeting and provisional, slaves constantly sought to establish and maintain meaningful relationships with their living comrades and with their ancestors.²³ Slavery was dispossession, but it was also continuous resistance against it.

According to Vincent Brown, the constant struggles to remake social life and define the terms of social existence, the fights against the threat of alienation, and the practices of social reconnection with the African past and of positioning within the American present can be understood as 'political' acts. Of course, this concept of the political is completely incompatible with the slaveholders' ideas of political organization, and even for today's understanding it is, as Brown himself admits, a very comprehensive one.²⁴ The actions of the enslaved, which he considers to be political, were not necessarily part of an open conflict; in particular, he emphasizes that they were not directly targeted at the slaveholders. Instead, they were generally limited to assertions of social belonging, mourning, reckoning, and commemoration. The development of a shared social understanding was an arduous task because the enslaved people who met on or across the Atlantic often did not come from the same region in Africa and therefore had different ancestors, different beliefs, different rites, and often did not even speak the same language. To be sure, there were some similarities among the Central African societies that belonged to the Bantu language family from which most of the enslaved people in Central-South Brazil

20 Orlando Patterson, *Slavery and Social Death. A Comparative Study*, Cambridge, MA 1982.

21 Vincent Brown, *Social Death and Political Life in the Study of Slavery*, in: *American Historical Review* 114/5 (2009), 1231–1249, 1233–1234.

22 *Ibid.*, 1241.

23 Patterson, *Slavery*, 1982, 337.

24 Brown, *Social Death*, 2009, 1246.

were recruited. But there was also a significant minority of non-Bantu-speaking West Africans, the so-called Minas. At any rate, the process of community building at their destination was anything but easy, and was complicated by the constant arrival of new people to integrate and the departure of established members. Thus, the emerging groups were fragile but dynamic, shaped by the experience of slavery but also by the painful absence of their ancestors.²⁵

Brown's understanding of enslaved people's politics is at least to some extent compatible with Michel de Certeau's concept of resistance, which consists of "apparently meaningless" acts that "infiltrate" the established system and leave "imprints" that can, in the long run, change the system without being intended to do so.²⁶ Precisely because slave politics in Brown's sense was not directed against slavery as such and was not perceived as resistance, it had more lasting, and also more pluralistic and productive effects than more overt forms of resistance.²⁷ However, not every social practice had a transformative effect on society. Other factors were necessary, and a central one was 'publicness.' As I will show, the publicness of certain social practices set in motion a chain of reactions that triggered the integration of Africans and Afro-Brazilians into the dominant social order and, at the same time, contributed to the transformation of that same order. Gradually, the latently resistant, but per se only marginally consequential, everyday actions of the enslaved became emancipatory acts. As I will argue, they mainly met with repression, but they also played their part in the adoption of a relatively inclusive constitution.

Publicness is not meant here in the normative sense of enlightened civic participation, as is Habermas's public sphere.²⁸ Rather, it consists of practices and discourses in spaces characterized by general accessibility, that is, in concrete or abstract locations endowed with centrality, in which various people can communicate and gain visibility, and which are therefore predestined as stages for political action. In Rio de Janeiro, as in many other cities, the public water supply generated such spaces

25 Social anthropologists Sidney W. Mintz and Richard Price refer to this process, in which people from different African cultures were suddenly brought together under conditions of slavery and out of necessity created new social institutions, status systems, and religious orders, as 'creolization'; Sidney Mintz/Richard Price, *The Birth of African American Culture. An Anthropological Perspective*, 1992 [1973]; Richard Price, *The Concept of Creolization*, in: David Eltis/Stanley Engerman (eds.), *The Cambridge World History of Slavery*, vol. 3 (AD 1420–AD 1804), Cambridge 2011, 513–537.

26 Michel de Certeau, *The Practice of Everyday Life*, vol. 1, Berkeley, CA 2013 [1980], 21, 34. There were also organized revolts in Brazil, as well as forms of resistance that served primarily to secure the physical and psychological existence of the slaves, such as working more slowly, deliberately damaging tools, or negotiating small improvements in living and working conditions.

27 Mikael Baaz et al., *Defining and Analyzing "Resistance". Possible Entrances to the Study of Subversive Practices*, in: *Alternatives. Global, Local, Political* 4/3 (2016), 137–153, 138.

28 Jürgen Habermas, *The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society*, Cambridge 1989 [1962].

of publicness. Significantly, in 1730 Rio's city council referred to the Carioca aqueduct, which had been completed only a few years earlier, as the "most public work that exists in this city" (*mais pública obra que há nessa cidade*).²⁹ Although enslaved people were exclusively subject to individual households and did not fall within the dominion of the city administration, they served – and took advantage of – the public infrastructure. However, they did not always behave as expected, but appropriated it according to their own ideas.³⁰ The Africans and Afro-Brazilians, enslaved and, in increasing numbers, freed and free, who carried the water to the households, performed a number of practices at the fountains whose specific meanings we can only guess at. Our knowledge of them is limited to the descriptions of bystanders or government officials, but most likely they fall into the category of practices that Brown would probably accept as political and Certeau would call resistant.

A characteristic of Rio's fountains, especially noted by nineteenth-century travellers, but presumably also true of earlier periods, was the noise and chaos that prevailed there.³¹ To this was added the quarrels that often erupted at the fountains. After the aqueduct was inaugurated in 1723, the city government felt compelled to take action against the bickering (*bulhas*) and feuds (*pendências*) at the Carioca fountain, which was fed by the aqueduct.³² Soon, documents began to mention injuries and deaths that would occur without the presence of a guard.³³ There was no physical danger to the white population, but rather the fear that the Black water carriers would attack each other in a dispute over the order in which they filled their vessels. The authorities also worried that the fountain and the aqueduct might be damaged.³⁴ The violent clashes at the fountains remained a constant topos in descriptions of the city well into the nineteenth century.

There were several possible reasons for these disputes. Many water carriers probably worked under great pressure; this applied to household slaves, but may have been particularly true of those employed as so-called 'earning slaves' (*escravos de ganho*), who sold the water on their own account and delivered a certain amount of money per day or week to their owners. Since many wanted to set aside additional money for their personal ransom or the ransom of a fellow slave, the pressure

29 City council to João V, 18 February 1730, in: Arquivo Histórico Ultramarino (=AHU), Lisboa, ACL, CU, 017, cx. 22, d. 2454.

30 I understand appropriation in the sense of Certeau, that is, as a creative way of dealing with the space imposed by the dominant order by those who do not have spaces of their own; Certeau, *Practice*, 2013, xii, 39.

31 E.g. Thomas Ewbank, *Life in Brazil*, New York 1856, 114.

32 Luís Vaia Monteiro to João V, 9 July 1728, in: Publicações [Históricas] do Arquivo Nacional (=PH) 15 (1918), 254–255.

33 Royal provision, 4 February 1729, in: Arquivo Nacional do Rio de Janeiro, Secretaria de Estado do Brasil, cód. 952, vol. 24, f. 254.

34 City council to João V, 18 February 1730.

mounted. As there were only a few fountains in the city and waiting times were often long, this led to impatience, pushing, and shoving, which could erupt into open fight.³⁵ In addition, there were simmering ethnic conflicts that had already existed in Africa and flared up again in America, often deliberately stirred up by slaveholders who brought people of rival groups together. As the governor of Rio de Janeiro pointed out in 1726, experience had shown that “the differences of nations” were the most effective means of preventing insurrection (‘nation’ being the term used for the ethnic groups as perceived by the Portuguese).³⁶ According to the Irish clergyman Robert Walsh, the Black population of Rio in 1828–29 consisted of eight or nine different ethnic groups, united neither by a common language nor by mutual goodwill, and this led to feuds and fights involving “one, or even two hundred of a nation on each side”.³⁷ This was probably an exaggeration, if only because most of the Africans imported to Rio belonged to the same ethnolinguistic group of Bantu speakers, as already mentioned. Yet this group was far from homogeneous, being composed of a myriad of sub-groups. Apart from this, many of the fountain disputes were probably over rank in the nascent diaspora communities and often seem to have taken on a very fundamental character. While statements such as those of the governor and the clergyman tend to confirm that the creolization process was quite demanding for the enslaved, they also indicate that the spaces at the fountains were highly political.

But the political character was not limited to the confrontational, even if it often seems so in the sources. There was also a peaceful exchange at the fountains. Many water carriers probably met once or even several times a day at the fountains, some of which had benches for resting.³⁸ The English traveller James Hardy Vaux, who visited in Rio in 1807, reported:

“[The Black water carriers] seat themselves in a row on a long bench fixed on purpose, where they are obliged to wait for their turn to fill. It is a curious and interesting sight to observe these harmless and industrious creatures con-

35 According to the British mineralogist John Mawe, who visited Rio around 1809, waiting times could last for hours in dry weather; John Mawe, *Travels in the Interior of Brazil, Particularly in the Gold and Diamond Districts of that Country*, Philadelphia, PA 1816, 100. About twenty years earlier, the chancellor of the Court of Appeal had voiced similar concerns; Sebastião Xavier de Vasconcelos Coutinho to Maria I, 20 April 1794, in: AHU, ACL, CU, 017, cx. 143, d. 11162.

36 “Division (*divisão*)”, the governor continued, was “the best antidote to such mechanisms (*o maior antídoto de semelhantes máquinas*)”; apud Silvia Hunold Lara, *Do singular ao plural. Palmares, capitães-do-mato e o governo dos escravos*, in: João José Reis/Flávio dos Santos Gomes (eds.), *Liberdade por um fio. História dos quilombos no Brasil*, São Paulo 1996, 81–109, 88.

37 Robert Walsh, *Notices of Brazil in 1828 and 1829*, vol. 2, London 1830, 330.

38 Such benches are documented for the Marrecas, Carioca, Carmo, and Catumbi fountains; John Luccock, *Notes on Rio de Janeiro and the Southern Parts of Brazil*, London 1820, 77; Maria Graham, *Journal of a Voyage to Brazil*, London 1824, 167; Ernst Ebel, *Rio de Janeiro und seine Umgebungen im Jahr 1824*, Sankt Petersburg 1828, 41.

versing with each other, and smoking their pipes, while they patiently await the sentinel's intimation to approach.”³⁹

Even if not always so harmless, water carriers could exchange news and discuss their work at the fountains. Experienced carriers could share their knowledge with newcomers, earning slaves could exchange information about routes, customer acquisition, or strategies on the road, and those working in households could report on the lives of their masters. Those freed from slavery could offer advice on manumission, litigants on customary rights and strategies, and malcontents could reflect on resistance, escape, and rebellion. The voices of the water carriers resonated at the fountains, which were central sites of socialization and politization for the Black urban subalterns.

An incident in 1728 shows that even the notorious fights were not always as destructive as they were generally portrayed. Governor Luís Vaia Monteiro reported that during a temporary absence of the guard appointed to protect the Carioca fountain, it had suffered no more damage than before. The only thing he had observed during that time was that Black people were gathering on a small earthen ground (*pequeno terreiro*) near the fountain “to play” (*se põem todos a jogar*), and that this distraction (*divertimento*) was causing some feuds (*pendências*).⁴⁰ It is possible that what they ‘played’ was an early form of the *Jogo de Capoeira* (also known as *Jogo de Angola*; *jogo* = game), a precursor of the famous martial dance, performed in a circle and accompanied by the sound of drums, that is today popular all over the world. According to historian Carlos Libano Soares, it was developed by earning slaves in eighteenth-century Rio de Janeiro.⁴¹ T. J. Desch-Obi and others trace its origins to the unarmed fighting tradition of N’golo brought to Rio by Kongo and Njila speakers from the Kunene region in southern Angola.⁴² While it has been described as a popular pastime among enslaved people, allowing its practitioners to exercise techniques of attack and defence, Desch-Obi ascribes much more social and cultural meaning to it. He notes that from at least the second half of the eighteenth century it was adopted by enslaved of all origins, including the non-Bantu-speaking Minas.⁴³ The games, which “could be playful and dancelike” but also “quite agonistic”, offered a sense of belonging and honour for the enslaved male youth.⁴⁴ Based on his read-

39 James Hardy Vaux, *Memoirs*, vol. 1, London 1819, 219.

40 He had therefore ordered the soldiers to arrest any Black people they found playing there and take their money; Luís Vaia Monteiro to João V, 9 July 1728.

41 Carlos Libano Soares, *A capoeira escrava e outras tradições rebeldes no Rio de Janeiro (1808–1850)*, 2. rev. and exp. ed., Campinas, SP 2004 [2001], 55.

42 M. Thomas Desch-Obi, *Fighting for Honor. The History of African Martial Art Traditions in the Atlantic World*, Columbia, SC 2021 [2008], 152–154. Weapons have been used in capoeira only from the 1820s; *ibid.*, 167, 176–181.

43 *Ibid.*, 155.

44 *Ibid.*, 154, 158.

ings of eighteenth-century Inquisition records, Desch-Obi argues that the characteristic push kicks from an inverted position may have been associated with the ritual crossing of the threshold between the physical and the spiritual worlds of the ancestors.⁴⁵ Earthen grounds (*terreiros*) – the term used by Governor Vaía Monteiro to describe the location of the game – were the sites where enslaved people and their descendants activated their customs, rituals, and cosmovisions. From the early nineteenth century, capoeira practitioners formed so-called *maltas* – communities with a paramilitary character, graded initiations, rituals of protection, and the enforcement of justice – which seem to have evolved from older ethnic-based associations.⁴⁶

The area around the Carioca fountain, and later other public fountains, provided a space for self-empowerment for Africans and Afro-Americans, where they could express themselves culturally and experience community spirit. Enslaved males and their descendants seem not only to have renewed links with their ancestors there but also to have construed new social bonds that provided status and protection to those living in slavery. Capoeira thus fits Vincent Brown's definition of slave politics, notwithstanding the fact that its practitioners do not seem to have ever aimed to fight slavery per se. On the contrary, as Desch-Obi notes, capoeira practitioners were less likely than the average to try to escape.⁴⁷

But let us return to the incident at the Carioca fountain in 1728. Admittedly, the documentation does not name or describe the 'game' in such a way as to allow for a clear identification of capoeira. Nevertheless, it is possible that the quarrels at the fountains, which have been mentioned so often since that date, involved such games. According to Desch-Obi, they could entail "some random violence", but he doubts that attacks were carried out simply "for the love of bloodletting".⁴⁸ The performances attracted large crowds, who showed respect and admiration for talented practitioners rather than fear. Successful participants were seen as "men of distinction" even by people who did not belong to the group. Due to the public nature of the fountains, the water carriers who appropriated them enjoyed high visibility. By attributing new social meanings to the adjacent spaces, they fundamentally changed the character of one of the central surrogates of the *respublica*.

45 Ibid., 163, 197, 173.

46 Ibid., 159–163.

47 Ibid., 198. By the end of the nineteenth century, the *maltas* even entered the stage of formal politics: after the Paraguayan War (1864–1870), in which capoeira practitioners had played an important role as soldiers, the *maltas* organized themselves in two umbrella organizations. One eventually allied itself with the Conservative Party, the other with the Liberals, protecting polling stations, intimidating voters, and attacking rallies of the opposition. However, capoeira practitioners had no representatives in parliament to defend their specific interests; *ibid.*, 171–172.

48 Ibid., 187.

4. The momentum of publicness: repression and the attainment of pruned political participation

As I will show in this section, the appropriation of public spaces by Africans and Afro-Brazilians went hand in hand with their invasion of the administrative sphere. The authorities responded with repression, but in the long run also with the inclusion of a section of the Black population – to which the water carriers did rather not belong – in the formal political process. In fact, the mention of enslaved people in Rio's administrative records increased significantly after the construction of the Carioca aqueduct and fountain was completed in the 1720s. This was the time of the Brazilian gold boom, which not only led to a wave of urbanization in Rio and its hinterland but also to an increase in the importation of African labourers. The documents in which enslaved people were now present are mainly concerned with the "good order" (*boa ordem*) of the city, which they allegedly threatened to disrupt. The documentation refers to the 'quarrels' at the fountains but also to damages caused by Africans and Afro-Brazilians to the water infrastructure. For example, in 1728, the city council complained that this "jewel" (*jóia desta obra*) had been so badly damaged that on most days there was not enough water.⁴⁹ However, it was later discovered that this failure was due to defects in the design of the pipes and a seasonal shortage of rain, rather than mistreatment by the enslaved.

In any case, the administration reacted quickly to regain control of the public space. As soon as the aqueduct was completed, a public disciplinary force was created in the form of the above-mentioned guards (*sentinelas*), whose task it was to prevent quarrels at the fountains and, later, to patrol the aqueduct to ensure that it did not suffer any damage.⁵⁰ Prior to the construction of the aqueduct, there had been no guards. While defence against foreign attacks was provided by the military, internal security was provided by the inhabitants. Regarding aggressions by the enslaved, everyone had to protect themselves individually and was relatively free to choose the means to do so. It was only with the creation of a public infrastructure on the scale and importance of the aqueduct that a public body for surveillance was established. The guards posted at the Carioca fountain, and eventually at all the city's fountains, left a lasting mark on the image of colonial and imperial Rio. Countless Europeans recorded them in their travel accounts and pictorial representations. In 1787, for example, the Irish physician John White noted that the guards who kept the users of the Carmo fountain in check possessed "great

49 City council of Rio to João V, 21 August 1728, in: AHU, ACL, CU, 017, cx. 19, d. 2111.

50 Luís Vaia Monteiro to João V, 9 July 1728.

power” and often acted with “no little severity”.⁵¹ The Marrecas fountain, completed in the late eighteenth century, even had two circular platforms especially for the guards.⁵²

As we have seen, Governor Vaia Monteiro was quick to doubt that the actions of the enslaved at the Carioca fountain were as problematic as the city council implied. In his opinion, the guards were not only expensive, but completely useless (*não é necessária para coisa alguma*). When the royal magistrate (*ouvidor*) said otherwise, he was only trying to maintain the appearance that he cared about the people (*é para conservar as aparentes indústrias com que o ouvidor quer parecer zelador do povo*).⁵³ In doing so, the governor not only denied the aggressiveness of the fountain users but also questioned the functionality of a central authority within the political order. This was one of several points of contention between Vaia Monteiro and the city council that led to a local government crisis and the eventual dismissal of the governor.⁵⁴ The appropriation of the fountain space by the Black population had political repercussions for the entire city. The retention of the guard shows that the authorities felt threatened by what was happening at the fountain – even if it was not so much a physical danger as a loss of control over public space.

In 1807 the Portuguese royal court fled the Napoleonic army and moved to Brazil. After settlement in Rio in 1808, the police intendancy was upgraded, following the Lisbon model. Contrary to what one might have expected, however, according to its new mandate, it was not to deal with the danger posed by the enslaved population, but rather to keep a watchful eye on foreigners from Europe and Spanish America.⁵⁵ The revolutionary events in France and the emerging Spanish American republics, and in particular the ‘Jacobin danger’, were understood as a cross-border phenomenon that could easily lead to revolution in Brazil, too. But that enslaved people could overthrow the social order, and that a public police force could prevent this, seems to have been beyond the imagination of the responsible lawmakers. Despite the similarities between the societies of Portuguese America and Saint Domingue, the

51 John White, *Journal of a Voyage to New South Wales*, London 1790, 60. Violent confrontations and police intervention were also common at fountains in Europe, for example in Paris; Daniel Roche, *A History of Everyday Things. The Birth of Consumption in France, 1600–1800*, Cambridge 2000, 152.

52 Luccock, *Notes*, 1820, 76.

53 Luís Vaia Monteiro to Diogo de Mendonça Corte-Real, 7 August 1729, in: PH 15 (1918), 412–413.

54 Vaia Monteiro was a governor who tried to run the office entrusted to him very meticulously; he was concerned above all with cost-efficient administration. In particular, he did not agree that the guard was paid from the funds of the royal treasury and not by the city council. As a result, he fell out violently with the local elite until he was finally declared insane; Ernst Pijning, *Dores de crescimento do Rio de Janeiro. O estabelecimento da ordem na capital pelo governador Luís Vahia Monteiro*, in: Stuart Schwartz/Erik Myrup (eds.), *O Brasil no império marítimo português*, Bauru, SP 2009, 179–193.

55 *Imprensa Nacional do Brasil* (ed.), *Collecção das leis do Brasil*, part 2 (*Decisões de 1808*), Rio de Janeiro 1891, 11–16, 26–27.

Haitian Revolution had not yet entered the political discourse in the way that the French Revolution had.⁵⁶

Once again, it was the practices of the enslaved and their descendants in public spaces that made them the subject of the administrative discourse. In fact, the reformed police intendancy did very rarely act against foreigners, but almost exclusively repressed enslaved and freed people. It had the power to arrest, but also to pass sentences and impose penalties for minor offences. A quantitative analysis of the arrests made between 1810 and 1821 shows that about 80 per cent of those convicted were enslaved people, and almost all the rest were former slaves.⁵⁷ They were mostly arrested for petty theft, 'disorderly conduct', carrying weapons, fighting, and drunkenness.⁵⁸ As early as the end of the eighteenth century, the practice of capoeira had been described as "the gravest of crimes", and between 1810 and 1821 it was one of the most common causes for imprisonment.⁵⁹ Practitioners were usually punished with 50 to 300 lashes and forced labour in public works, in addition to jail time.⁶⁰

The authorities tried to suppress not only capoeira and related forms of social and cultural expression but also the political demands attached to them. Nevertheless, the resistant acts of enslaved people helped consolidate the emerging statehood because repression was carried out by public institutions rather than individuals. The guards and the police intendancy not only interfered with the slave owners' hitherto almost exclusive power of disposal over the enslaved, but could even harm the owners by punishing their slaves, rendering them at least temporarily incapable of work and, in the case of permanent injury, reducing their value.⁶¹ Enslaved people were mainly confronted with the repressive side of public power, but it was above the individual interests of their owners. Public punishment may have had a deterrent effect, but it also allowed for a certain degree of accountability. Without the appro-

56 I elaborate on this in Jorun Poettering, *Schweigen über Differenz. Schwarze im kolonialen und post-kolonialen Sicherheitsdiskurs Brasiliens*, in: Sigrid Ruby/Anja Krause (eds.), *Sicherheit und Differenz in historischer Perspektive*, Baden-Baden 2022, 75–94. On the phenomenon of Brazilian 'haitianism', see also Rafael de Bivar Marquese/Tâmis Parron, *Revolta escrava e política da escravidão. Brasil e Cuba, 1791–1825*, in: *Revista de Indias* 71/251 (2011), 19–52; Marco Morel, *A revolução do Haiti e o Brasil escravista. O que não deve ser dito*, Jundiaí, SP 2017.

57 Only 0.4% were neither enslaved nor freed; Leila Mezan Algranti, *Slave Crimes. The Use of Police Power to Control the Slave Population of Rio de Janeiro*, in: *Luso-Brazilian Review* 25/1 (1988), 27–48, 40.

58 *Ibid.*, 31.

59 Desch-Obi, *Fighting*, 2021, 156; Algranti, *Slave Crimes*, 1988, 32, 48.

60 Carlos Líbano Soares, *A negregada instituição. Os capoeiras no Rio de Janeiro 1850–1890*, Rio de Janeiro 1994, 29.

61 For this reason, in one of the first detailed judicial records on capoeira from 1789, the owner of a slave found guilty was reported to have "petitioned the king, in the name of Christ's mercy, to wave [part] of the penalty, arguing that he was a poor man and dependent on the income that his slave brought him"; quoted in Desch-Obi, *Fighting*, 2021, 157, see also 168–169.

priation of the fountains and similar public structures by enslaved and other Black people, there would have been much less occasion for institutional surveillance and punishment – because the guards, and later the police, rarely took action against white people. The British merchant John Luccock observed this quite explicitly during his stay in Rio between 1808 and 1818, noting that

“white people seemed to have been gradually confirmed in the persuasion, that they were above [the] influence [of the laws]. Few of that class had, I believe, been recently apprehended for crimes, except those committed against the State; and Mulattoes enjoyed like exemptions, in proportion as their colour approached the dingy or the fair.”⁶²

The publicness given to the offences of the enslaved led to a public form of repression. This resulted in their integration into the emerging state; although this was predominantly through ‘negative’ experiences, it also meant the creation of institutions that could foster the rule of law even to their advantage. To the best of my knowledge, no research has been carried out to determine whether and in what form the contact with the police intendancy had an impact on slave trials. There may well have been overlaps between the two phenomena. After all, the publicness of the repression may have motivated fountain users and others to use the judicial system to set the record straight and seek justice.

As mentioned in the introduction, enslaved people’s demands for justice promoted the professionalization of the judiciary and legislation, even though their influence should not be overestimated. Here I have shown that they also promoted the emergence and professionalization of the police intendancy, a public institution designed to enforce the law and ensure public safety through its claimed monopoly on violence. In addition to contributing in multiple ways to the establishment of the rule of law, the enslaved also strengthened their own role as legal subjects, a status that would eventually be transformed into that of citizens. As noted above, the Constitution of 1824 was remarkable for granting citizenship (including the exercise of civil rights and the right to vote) regardless of skin colour. This does not mean, however, that it paved the way for every free person to participate actively in institutional politics.⁶³ Apart from gender and age restrictions, a freed person had to be born in Brazil to become a citizen. Only those already born free also had the right to stand as an elector or a candidate in elections. Although literacy was not required to vote, and although the income requirements to vote were exception-

62 Luccock, Notes, 1820, 137.

63 Miriam Dolhnikoff, *Governo representativo e eleições no século XIX*, in: *Revista do Instituto Histórico e Geográfico Brasileiro* 178/474 (2017), 15–46; José Murilo de Carvalho, *Cidadania no Brasil. O longo caminho*, Rio de Janeiro 2012 [2001], 29–30.

ally low if compared to most other states at the time, water carriers were probably hardly ever among those registered to vote, and it is very doubtful that they were represented by others.

As the deliberations of the Constituent Assembly make clear, the permissive regulations regarding the free population of African descent were motivated by the aim of preserving slavery. The idea was to draw a clear line between the enslaved on the one hand and the free and freed on the other, and to grant citizenship to many of the latter. In so doing, the deputies expected that the free and freed Black people would accept the political system. What was to be avoided at all costs was that they joined forces with the enslaved to campaign for the abolition of slavery, let alone start a revolution along the lines of Haiti.⁶⁴ Thus, the right to vote was understood not so much as a means of choosing between different political offers, but as a means of social distinction. Water carriers, even if free, were in the lowest possible position in society, and capoeira continued to be suppressed until the first decades of the twentieth century. Defending the interests of water carriers and capoeira practitioners would have overridden the distinguishing function of voting. Although voter turnout was high, with an assumed average of around 50 per cent of free male adults, Brazilian politics in the nineteenth century cannot be considered truly representative.⁶⁵ Furthermore, in 1881, when it was clear that slavery could last only a few more years, the Chamber of Deputies raised the income requirement for voting and, even more prohibitively, excluded illiterate people. As a result, voter turnout fell from 13 per cent of the total free population (including women and children) in 1872 to 0.8 per cent in 1886.⁶⁶ If parliament did feel compelled to pass legislation to gradually end slavery, starting with the 1850 ban on the import of further enslaved people from Africa, it was not at the instigation of enslaved or freed people or their descendants. Apart from some leading Afro-Brazilian intellectuals who exerted parliamentary pressure from around 1879, the bulk of the Black population did not join the abolitionist movement until the last very years of slavery's existence.⁶⁷

64 Andréa Slemian, *Sob o império das leis. Constituição e unidade nacional na formação do Brasil (1822–1834)*, PhD thesis, USP, São Paulo 2006, 307–308; Andréa Slemian, *Seriam todos cidadãos? Os impasses na construção da cidadania nos primórdios do constitucionalismo no Brasil (1823–1824)*, in: István Jancsó (ed.), *Independência. História e historiografia*, São Paulo 2005, 829–847; Paron, *Escravidão*, 2022.

65 There were other reasons for this, such as the manipulation of election results through fraud, patronage, or clientelism, and the reserve power of the emperor (*poder moderador*).

66 The literacy rate among men was about 20%, which excluded the overwhelming majority of the population from voting. In addition, it became much more difficult to prove income. In England, by way of contrast, the electorate grew from 3% in 1832 to 7% in 1870 and 15% in 1884; Carvalho, *Cidadania*, 2012, 31, 38–39.

67 Alonso, *Abolition*, 2021.

5. Conclusion

The acquisition of citizenship by those freed from slavery and their descendants implied a nominal but not an effective right to political participation.⁶⁸ Instead, genuine forms of self-assertion and solidarity, such as the capoeira games, which can be characterized as political, were persistently repressed. While law and jurisdiction were universally accessible, the institutional containment of the political, even when it was of a participatory nature, tended to focus on the concerns of the most powerful, namely the white elite. This last point is certainly not a new insight; rather, the article shows that the legal and political struggles were two separate things with different outcomes. Enslaved people's demands and negotiations for individual justice began long before people of African descent were given access to formal political participation; they fought for it in the households and in the courts. Their political struggles, on the other hand, began long before they had acquired civic rights. While they had some success in their legal struggles, the same cannot be said for their political fights – although they admittedly led to a kind of inclusion and the creation of state institutions that became, at least in theory, accountable for their actions.

For the most part, neither legal equality nor political inclusion was intended or fought for by either the enslaved or their owners. They were by-products of a contingent development framed by a liberal conception of politics. As noted above, a sharp distinction between slavery and freedom was illusory, and abolition represented a milestone in the modern narrative of progress rather than a *de facto* end to exploitative working conditions. Even though equal rights were finally guaranteed and slavery abolished, and even though Afro-Brazilians continued and continue to insist that their rights be respected, this does not mean that they had or have the same opportunities as whites, nor that the ruling classes were or are necessarily held accountable for violations of the law.⁶⁹ Thus, the abolition of slavery was more a change in the frame of reference than a change in the actual power relations.

And yet enslaved people played a key role in this process and were able to influence the formation of the modern state. This was partly because they were individually creative in defending their causes in court, and partly because they were collectively creative in their everyday public practices. While the dominant soci-

68 There were a few deputies with slave ancestors, most prominently Antônio Pereira Rebouças; see Keila Grinberg, *A Black Jurist in a Slave Society. Antonio Pereira Rebouças and the Trials of Brazilian Citizenship*, Chapel Hill, NC 2019 [2002].

69 Until the abolition, those guilty of illegal enslavement generally enjoyed impunity; Mamigonian/Grinberg, *Crime*, 2022, 55–56. By contrast, in Spanish America, as early as the seventeenth century, inhabitants of the province of Cartagena “suffered substantial penalties when prosecuted for crimes against enslaved people”; Salazar, *Mastering*, 2020, 119.

ety accepted the demand for individual rights – which could easily be connected to the legalistic values of the colonial regime as well as to the liberal attitudes of the nineteenth century – it rejected the demand for social and cultural respect. Instead, it offered citizenship and voting rights to those who had already left the harshest conditions of existence, and sought to encourage their compliance. By the 1880s, the city had eventually freed itself from the quarrels at the fountains by providing the more prosperous districts with an extensive underground water network. A few years later, the Penal Code of 1890 explicitly banned capoeira. Neither the abolition of slavery in 1888, nor the proclamation of the republic in 1889, paved the way for the formal acceptance of the martial art admired by so many. Nor did they lead to the approval of the demands for honour and community that came with capoeira. Nevertheless, the proscribed population continued to practise it, demonstrating through its obstinacy a kind of disruptive political integration that refused to bow to the disciplinary character of the liberal regime.