The Threat of Reenslavement: Legal Battles to Maintain Freedom in Seventeenth-Century Mariana, Brazil

O perigo da (re)escravização: disputas judiciais de manutenção da liberdade na Mariana setecentista

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Resumo

Neste artigo examinam-se algumas das ações cíveis de manutenção da liberdade produzidas em Mariana (Minas Gerais) durante o período colonial. Para evitar a redução ao cativeiro, indivíduos ameaçados recorreram à justiça. Os autores dos processos optaram por alcançar uma escritura pública que atestasse seu estatuto jurídico de alforriado (ou livre), ou obter outros instrumentos capazes de resguardar a liberdade que já usufruíam. Na arena pública de embates eles mobilizaram várias estratégias. Ciente disso, busca-se relacionar as informações acerca das ameaças à liberdade e os modos como ela pôde ser defendida em juízo para abordar aspectos das relações escravistas até agora pouco explorados. Em especial, observa-se como as diferentes formas de obtenção da liberdade

Abstract

This article examines civil lawsuits brought to maintain the freedom of former slaves in Mariana, a town in the Captaincy of Minas Gerais, during Brazil's colonial period. To avoid reduction to slavery, threatened individuals took their matters to court. The authors of the lawsuits chose to obtain a public deed that certified their legal status as freed people (*alforriados*), or other instruments capable of safeguarding the freedom they already enjoyed. In the public sphere, they employed several strategies to achieve their goals. Given that, we strive to relate information about threats to freedom and the way by which it was possible to defend it in court, in order to understand aspects of slavery hitherto unexplored. It is of particular concern how the different ways to obtain freedom influenced the

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influenciavam a experiência pós-escravidão e como tais diferenças eram significativas para os egressos do cativeiro.
Palavras-chave: alforria; manutenção da liberdade; justiça.

post-emancipation stage and how these differences proved relevant to the experience of former slaves.
Keywords: Manumission, Maintenance of Freedom, Court of Law.

It was during the early occupation of Minas Gerais, in 1705, that Pedro Alves Nunes freed Maria de Araújo. Her letter of manumission was written by the parish priest and signed "in the presence of many witnesses, since no public notary was then to be found" in the nearby area. Years later, on April 2nd 1721, Maria sought to prove in the Court of Vila do Carmo (the future town of Mariana)[2] "that she had been freed (*forra*) for 16 years."[3] Her request was for the *juiz ordinário* – the oldest councillor in the municipal chamber, frequently a layman – to declare her a free woman and thus order "her Instrument to be issued" – that is, a "public and authentic deed which proves[ed] the truth" (Bluteau, 1728, vol. 4, p. 155). Maria had already been living in possession (*posse*) of her freedom, therefore, the ownership (*domínio*) of which had been certified in a private written document. Yet she had gone to court to obtain a new deed, issued in a public forum, which would confer it greater credibility.

Although not immediately apparent, perhaps, it quickly becomes evident that possession and ownership were not the same thing. According to Pascoal José de Melo Freire, possession meant the faculty to enjoy use of a thing, while ownership meant the faculty to own a thing with a deed. Completing this interpretation, the Portuguese jurisconsult, one of the most renowned of the end of the eighteenth century, affirmed that "the former consists more in the fact." In other words, "possession is only acquired through our will (*ânimo*)" while ownership can be transferred, as in the case of a legacy left to heirs, since it is borne of law, not fact (Freire, 1967). Exploring this difference, I underscore the correspondences between ownership of freedom, legal status, possession of freedom and social condition. Since an individual's legal status was declared in a written document – a deed or instrument – this constituted the attestation of the ownership of freedom by a freed person (*liberto*) or a freed person of colour (*livre de cor*). Such were the letters or deeds of manumission (*alforria*), baptism records, the articles of a will, the sentences of court actions, and so on. The social condition or way of life of a freed man (*forro*) and his children, on the other hand, was related to the enjoyment of freedom and how they presented themselves publicly so as to be recognized – or, as people would say at the time,

to be "taken for, known and reputed" – as free people. For this reason, Maria de Araújo emphasized that she "lived in the possession of freedom" in full view of everyone and that this way of life was based on the liberty granted to her by a letter of manumission. By relating one thing to the other, her life as a freed woman (*alforriada*) to the issuance of this private document, she undertook to demand a public title that would serve as a new deed of freedom.

Recognizing the cost of her initiative, a curiosity remains: what prompted it? Nothing was made explicit in the court records, but the lawsuit seems to have been a protective measure to consolidate her rights and, in so doing, ensure the maintenance of her freedom. Perhaps Maria de Araújo had lost her letter of manumission and did not wish to remain without a document given the vulnerability of her situation. No such information is found in the court records, however. The only indication of a change in her routine is the fact that she had left the parish of Bento Rodrigues where she had been living since she was freed, and had moved, along with Alves Nunes, to Vila de Sabará. Certainly her filing of a civil lawsuit was related to this change of residence. Moving constituted a risk factor for freed persons, even more so when the person remained in the home and company of the same former master (*patrono*). By maintaining this connection, living in a place where she was completely unknown, it is likely that Maria had felt the need to obtain a public deed capable of ratifying (or replacing) the old private letter of manumission and, so armed, thwart any possible threats to reenslave her.

Over the last two decades, this type of preoccupation and agency among freed persons has attracted the attention of specialists in slavery in Brazil, becoming one of the topics of the debate on the experience of freed slaves, the *alforriados*. Along with the considerable emphasis on the viability of economic ascension (Faria, 2000; Oliveira, 1988), historians have shed light on cases in which not just subsistence but the very continuation of freedom was at risk (Russell-Wood, 2005; Lara, 2007). Increasingly, the inherent instability of the years of forced labour and the periods spent negotiating manumission are seen to have defined the ensuing phase too – the struggle to maintain their hard-fought freedom.

It is impossible not to admit that this instability influenced the choices of former slaves. Indeed the fear that they felt was justified given the widespread practice of reduction to slavery – a fact that helps explain Maria de Araújo's decision to seek the intermediation of the courts to produce an irrefutable deed of freedom. Avoiding reenslavement was a widespread concern. Taking this factor into account, the classical dualism between slavery and freedom needs

to be reassessed. Instead of a rigid opposition, we are faced with zones of intersection and a nebulous border that no longer allows for the assertion that the legal status of a freed person or free person of colour remained unchanged or that reenslavement was an exception.

In recent research, Grinberg emphasized that the transition between slavery and liberty happened in both directions – in other words, just as slaves could be freed, so freed persons could indeed be pulled back into slavery (Grinberg, 2006). Chalhoub, in turn, focused on the examination of what he calls the "structural precariousness of freedom," underscoring the difficulties men and women faced in remaining in a free state given the custom of granting conditional manumissions (whose obligations limited the enjoyment of freedom), revoking them and selling free people of colour (*livres de cor*) as slaves. In this author's view, freedom became an even more hazardous experience after promulgation of the law of November 7th 1831 banning the entry of African slaves, derived from the Atlantic slave trade, into the country. The continuation of slave trafficking, in disregard of the legislation, transformed much of the slave system into an illegal enterprise, loosening the criteria for proving slave ownership and, consequently, creating an atmosphere of insecurity and favourable conditions for usurping the freedom of subjects of colour in Brazilian society (Chalhoub, 2012).

As a whole, these new approaches contributed significantly to historiography by examining the effective constraints on the reenslavement of freed persons and on the illegal enslavement of the free. However, these analyses continue to limit the scope of such occurrences to a specific context: namely, the crisis of the slavery system. In other settings where slavery remained an undeniably structuring element of society, further studies are needed. This article looks to contribute to such an undertaking. Over the course of the eighteenth century and during the first decades of the nineteenth, the life of former slaves was marked by frequent threats of return to slavery (*cativeiro*) in Mariana, an important centre of slavery in the interior of Portuguese America.

The liberation agreements (*acordos de libertação*) did not guarantee that their beneficiaries would remain free.[4] But a trustworthy deed of freedom could apparently provide a greater chance of a freed person resisting the intimidations of the boss and former master (*patrono*), his heirs and third parties. This explains its importance, as attested by the story of Maria de Araújo. For many of her contemporaries, the issuance and safekeeping – as well as the concealment and absence – of this document were critical matters, including for the

coartados, the released slaves who enjoyed autonomy but had yet to pay their predetermined instalments in full and timely fashion and thus fulfil their *corte*.[5] What happened when a freed person with a letter of manumission registered in a notary's office discovered that he was being hunted by *capitães do mato* ('captains of the forest,' runaway slave hunters) at the orders of his former owner? Or when a *coartada*, rather than receiving a freedom paper, was threatened with reenslavement after having lived beyond the slave owner's control for many years? Or when a woman, daughter of a slave, after being treated as free by her father, discovered that she had been about to be sold but that other family members had negotiated her manumission on her behalf? As we shall see below, in these situations of vulnerability, affirming the ownership of freedom, or at least guaranteeing its continued enjoyment by other means, were alternatives pursued in the General Court (*Juízo Geral*) of the town of Mariana.

In this court, dozens of civil lawsuits were submitted by freed persons and *coartados* (who were already living in freedom) threatened with reduction to slavery. They petitioned the public forum "so that they would no longer be bothered." All of them sought, therefore, to neutralize the risks of falling back under slaveowner control. Given these common characteristics, such cases are henceforth referred to as *civil lawsuits to maintain freedom*. The fear of returning to slavery drove the recourse to public mediation as a preventative measure capable of blocking attempts to reenslave freed persons when it loomed on their horizon as a terrible omen. In the Mariana court, besides the existence or absence of the deed of freedom, other guarantees and risk factors figured prominently in the choice of the resources mobilized to defend the claimants' interests. Along with their attorneys, they knew how to mobilize and manipulate the instruments then available to demand what they considered to be their right: to stay free. It remains for us to comprehend their experiences in light of their strategies.

For a long time now, the use of civil lawsuits as a source for the history of slavery has enabled us to obtain a clearer insight into the lives of slaves and freed persons, revealing their identities, desires, values and life projects. Continuing along the same course, I consider it more advantageous, in methodological terms, for the different versions of a conflict that so strongly draws our attention to be analysed dialectically with regard to the types of lawsuits, legal devices and arguments invoked by the claimants. In parallel to the attempt to gather, select and highlight information recorded in different parts of the court records (petitions, supporting documents, charges, defence responses and witness statements), we need to comprehend how these are

associated with the procedures established or solicited by the courts agents (in judicial orders, public hearings, notes, arguments made by the attorneys, embargos, etc.). This is the challenge posed to historians, which can be tackled by establishing a dialogue with the legal discipline. In taking up this challenge, I intend to relate information about threats to freedom and the ways in which it could be protected in the courts as a means to examine various aspects of slavery seldom explored until now. In particular, we shall analyse how the different forms of obtaining freedom influenced the post-slavery experience and how these differences were significant for former slaves. Let us turn to the cases, then.

Maintaining Freedom with or without the Deed of Manumission

After negotiating his freedom, exchanged for an adolescent boy and money, Francisco Ferreira da Costa received his letter of manumission in 1753. Once in possession of the document, he sought to obtain recognition of his handwriting and signature in March 1756 and, soon after, in July that same year, the *crioulo* (child of African parents born in the colony) registered the letter in a notary office. He thus took the precaution of confirming the validity of a private written document and ensuring its perpetuity by having it recorded in the registration book of Mariana's public notary, allowing him to request a copy were the original letter of manumission to be lost, stolen or destroyed. Despite these precautions, Francisco still felt the need, in 1758, to establish proof of his freedom and have it recognized legally in order to produce a public deed. For this purpose he submitted a justification.[6] Like Maria de Araújo, introduced to the reader earlier, he wanted the judge to declare him "exempt from slavery" and give him "his instrument in an authentic form for his deed." He believed that he could thus ensure that "no *capitão do mato* [runaway slave hunter], nor the foremen of [Dona Maria Alves da Cunha, his *patrona* or mistress], nor anyone else" could bother him.

To remain in possession of his freedom and make it more difficult for him to be reduced to slavery, Francisco Ferreira da Costa appealed to the court to produce a new deed, this time public. Once in possession of this document, Francisco hoped to be able to once again "walk wherever he felt, going about his life without anyone disturbing him." Moreover, he also made use of this recourse to prevent his reenslavement by order and force of the former slaveholder. To

compel him back into slavery now, Dona Maria Alves da Cunha would have to file a civil lawsuit in which the *crioulo* would need to be "heard and convinced" that he had lost his right to freedom. This claim can be understood, therefore, as Francisco's attempt to widen his margin of protection. He intended to guarantee his enjoyment of freedom and transfer the requirement to legally contend ownership to his former owner. In other words, any dispute over the legal status of the *crioulo* and, consequently, his reenslavement would have to be treated as the subject of another proceeding which would have to be brought by Dona Maria with the latter facing the burden of proof.

For the same purpose, Antônio Rodrigues had submitted a justification in July 1752.[7] It was his lawyer, Dr. Paulo de Souza Magalhães, who stated that this type of action was not a "means of taking anyone's right away from them," with the opposing party being reserved the right to submit a legal appeal for the return of the young man to her control. But pending any sentence in favour of reenslavement, Antônio should be allowed to remain free, as he had been living for four years, safe from the violence of reduction to slavery. This was how he sought to defend himself when he learnt that the sergeant major Rodrigo da Rocha e Souza wanted "to capture him, seeking him out to take to his house for him to serve [him] as a slave." Here it is worth emphasizing that the young man was in a more vulnerable situation than Francisco since he lacked any documental proof of his legal status to show in court. He recounted that he had been freed following a payment made by his godfather but that he had lost the letter of manumission when he was child since he "had no one to keep it" for him. Perhaps this was why he had not requested the issuance of a public deed of freedom. Antônio merely wished that, after proving that he lived in freedom, the judge would order that "nobody would be able to harass the Claimant [himself], [neither] court officials nor *capitães do mato*."

Years later, in January 1772, it was Josefa Maria's turn to go to the Mariana court to ask the judge to "order that a court official summon the Defendant [Antônio Carvalho da Silva] not to harass the Claimant [herself]".[8] Having heard that she was being procured in order to be taken back into the house and company of her former masters, the *Preta Mina* (a name specifying her identity as a black woman from the Gold Coast in Africa) brought a lawsuit before ending up reenslaved. In the petition that launched the court proceedings, she requested not to be reduced to slavery "without first [being] convicted by sentence" – or, in other words, without this action being the result of legal proceedings. She had been *coartada* by the mother-in-law of Carvalho da Silva and, as such, was "in her freedom going about her life" and in such a state she

wished to remain, contrary to the wishes of the relative of her deceased mistress. To support her plea and dispel any suspicion that she was a runaway slave, Josefa Maria attached to the court records a certificate of the article of a will in which she had been *coartada*. By so doing she hoped to provide further backing to her plea for protection so that, remaining free, she could "show that she had paid in full her *coartamento* [or *coartação,* the price agreed to purchase her own freedom in instalments under an agreed period]."

At that moment, no receipt was shown, which elicits the hypothesis that she did not possess them. It is likely, therefore, that Josefa Maria had been unable to demand the production of an instrument testifying to her ownership of freedom. Like Antônio Rodrigues (who did not possess documental proof that he had been freed), what Josefa Maria aimed for was to obtain a *mandado de citação*, a writ of summons. What mattered in both these cases was convincing the judge that a freed man without a freedom paper and a *cortada* woman without receipts proving quittance of the *corte* (the sum agreed for her freedom) should be allowed to continue to possess their freedom while there were doubts over their legal status. For them, an order from the magistrate or a court official would suffice, warning the opposing parties that they could not be coerced. In addition, of course, to the proviso that the decision to take them back into slavery could only be made in court and not by force at the hands of a *capitão do mato*, at the behest of the former owner.

In another lawsuit, Manuel Rodrigues provided proof that he had already paid the price of his *coartação* to continue enjoying his freedom, just as had been doing since the beginning of the *coartação*. Differently from Josefa Maria, he sought to receive a freedom paper through the courts. What he obtained, however, was a *mandado de manutenção*, a court order of maintenance of freedom.[9] Despite the outcome, history to some extent repeated itself: on being 'vexed' by the 'terrible threats' made by the heir of the grantor of the *coartação*, Manuel resisted. In order to be free of such worries, he asked the governor of the captaincy, in light of the documents attached to the application, to order Mariana's *juiz de fora* (a magistrate appointed as an impartial outsider by the Portuguese crown) to quickly approve the request. He presented his *papel de corte* (written record of the *coartação*) – issued on 16th September 1797 – followed by the eighteen receipts of payment (registered on different dates between 1800 and 1806), the total of which was 16 oitavas and 25 vinténs in excess of the amount of 100 oitavas of gold, the price set in his release agreement.

Given the above, the magistrate was tasked with approving the case "briefly and summarily," which he did on 8th May 1806 by issuing a notice in which

the defendant was summoned to execute what had been demanded by the claimant: the issuance and delivery of the letter of manumission (*alforria*). In response, João Nogueira de Carvalho persisted in refusing to issue the deed, he declared to be false some of the receipts and illegitimate the other heirs to whom the *coartado* had effected part of the payments. By alleging the claimant's failure to meet the *coartação*, the defendant sought to argue that "while the debt or settlement of the 100 oitavas was outstanding, the manumission or freedom of the aforementioned Manuel Rodrigues would remain pending." In other words, he cast doubt on the payment of the *corte* and, consequently, any change in legal status of the *crioulo* and his condition of continuing to live as a freed man (*liberto*). The heir's objection to issue the manumission was refuted by the lawyer of the *black boy* (*"pretinho")* who reiterated "that the *corte* [had] included a requirement to issue a letter of freedom upon payment of the price" as it had been. Consequently, Manuel Rodrigues's lawyer refused to discuss the quittance of the *corte* and any subsequent change in legal status. He merely emphasized the need for the *crioulo* to have in his possession a writ of manumission, given that the *papel de corte* along with his receipts and final tally had been of no use to him to avoid the intimidation that "left [him] crushed and troubled."

Arguing in his favour, Dr. Manuel Pedro Gomes judged it appropriate that Manuel should be "kept in possession of his freedom." This decision ensured the maintenance of the enjoyment of freedom, but not its ownership, given that the issuance of the demanded letter of manumission was not ordered. Instead the judge safeguarded the right of the defendant to file another civil lawsuit, requesting "either the reduction to slavery … or the remainder of the price that he says is owed to him, either because the Claimant [Manuel Rodrigues] had paid who he should not have, or because some of the receipts are false." In other words, the magistrate did not arbitrate on the legal status of Manuel Rodrigues, especially because, as already mentioned, the *crioulo* did not attempt to dispute it. As an alternative, Dr. Gomes provided him with a legal instrument for him to live freely while his freedom paper and thus the definition of his legal status remained a matter of contestations and disputes.

The need to avert the serious risk of a return to the master's possession leaves no doubt that release agreements made on condition of payment in instalments, as well as manumissions (*alforrias*) paid up front in full, could be disregarded or contested. Be it because slaveholders took advantage of the vulnerability of a private letter of release, or because it had been lost, deliberately or due to a disagreement over the terms for quittance with relatives of the

deceased masters (*senhores*), the fact is that letters of manumission (disregarding their registration in a notary office), certificates testifying to the granting of the *coartação*, *corte* papers and receipts for the paid instalments (including those issued by the grantor and his or her family members) did not shield their beneficiaries from entanglements and threats of reenslavement. However, these many different papers were still endowed with great importance.[10] They enabled these individuals to seek judicial protection, resulting in the production of new documents that kept them out of slavery, even when a definitive decision had not been taken concerning the person's legal status.

To protect the freedom he was enjoying, Francisco Ferreira da Costa requested the issuance of a new freedom paper, this time a public deed; Antônio Rodrigues and Josefa Maria, who lived in possession of their freedom without proof of their ownership, opted to obtain a writ of summons; while Manuel Rodrigues, on presenting the receipts of payment of the *coartação*, requested the issuance of his letter of manumission and succeeded in obtaining a writ of maintenance of freedom after this payment was questioned. Beyond the hypotheses already listed, it is impossible to define precisely what determined the different claims that they made. In any case, analysis of the court proceedings as a whole confirms the relevance attributed to the production and possession of any and all documents capable of offering some protection against the threats of reenslavement. It is even more interesting to observe that those freed from slavery could even make use of summons (*mandados de citação*) and writs of maintenance of freedom in the absence of a freedom paper and given the difficulty of requesting or disputing its production.

Living without a record of manumission that testified to the ownership of freedom seems to have been something much more commonplace than we usually imagine. Based on this impression, the idea emerges that the release from slavery recorded on registrations books and attestations was restricted to a portion of those who left slavery. As the lawsuits filed by Antônio Rodrigues and Josefa Maria tell us, some of the subjects "taken for, known and reputed" as freed and released slaves (*libertos* and *coartados*) could stay for long periods without a freedom paper and it is not absurd to suppose that many never received any such document. Perhaps this had been the fate of the aforementioned Manuel Rodrigues, who, instead of the desired manumission, obtained a writ of maintenance of freedom. Thus able to live as such, it may be that he gave up on claiming recognition of his status as a freed person. To reach this decision, he must have considered the risks that he would take for not possessing a manumission letter or deed, as well as devised strategies for

consolidating his social position as a freed person and surviving without needing, for example, to move away from the place where he was recognized as such. Given the insight provided by this understanding, it is important to emphasize here that obtaining a writ of maintenance of possession of freedom by the courts proved to be a viable alternative for Manuel and even desirable for some of his contemporaries, as it proved to be for Jacinta Vieira da Costa.

The latter case is also worth examining in order to underscore both the fragility of the release agreements and, at the same time, the possibility of those who felt under threat to make use of a legal recourse in order to continue living in freedom without a deed of manumission. I should emphasize from the outset that Jacinta had already been reenslaved and that she went to court for the first time so as to be set free. In his ruling, the *juiz de fora* stated that the *crioula* "should not, *without being ordinarily convicted*, suffer slavery in possession" of Manuel Vieira da Costa. Jacinta's release was rapidly ordered on November 4th after the magistrate had evaluated the content of the supplication sent by her to the governor with documental proofs in attachment: a *papel de corte* and several receipts of the instalments paid to the father of Vieira da Costa (who had granted her *corte*), to the latter's widow and to the aforementioned son and heir. Through the intervention of the acting judge – who received the complaint on behalf of the governor and investigated the situation – Jacinta managed to regain her freedom. A few days later, on November 14th 1811, she submitted a new claim to court. This time, the *crioula* spinner asked for the petition to be included in the court records along with other documents relating to the prior episode, thereby seeking to obtain a writ of maintenance of freedom, because "still she feared being disturbed in the possession of her freedom".[11]

It can be clearly seen that the restitution of freedom did not mean, in her view, that remaining in this state was assured. Aware of the risk that she continued to be at, Jacinta did not hesitate and quickly requested issuance of the writ so that she, along with her children (born after her release), "remained in possession of their freedoms without any more perturbation." It is likely that she acted thus at the advice of an attorney, but also possible that the *crioula* knew about the usefulness of such a writ due to living with or hearing about other subjects who had made use of it. Convinced in one form or other, she also wanted and indeed was able to benefit from this safety measure while reenslavement was not arbitrated in any civil lawsuit brought by Vieira da Costa. Without the due course and outcome of this other court case, Jacinta and her children were able to live freely even without obtaining a deed of

manumission. This makes the history of the *crioula* who evaded reenslavement even more impressive. Her own experience and, we can presume, those of other acquaintances taught her the importance of the documents in her possession – the writ and receipts for her *corte* – as well as the need to produce others that would allow her to better resist the threat of being pulled back into slavery – a writ of maintenance of freedom.

When freedom was at stake, any and all precaution was valid. Again I emphasize that in the public arena of disputes there was the possibility for the claimant to obtain a writ of maintenance of possession of freedom, which appeared to provide greater protection than the writ of summons. While the latter written ruling by a judge ensured that a specific person was summoned by the court official not to cause embarrassment to the individual making the request, the former could be presented whenever necessary with the specific objective of preventing, under penalty, sequestrations (among other means of reduction to slavery). There is evidence that the issuance of the latter superseded the former at the beginning of the nineteenth century. Among the court records investigated, the first verdicts ordering the issuance of writs of maintenance of possession of freedom date from 1806. After this, the measure began to be requested by the claimants of the lawsuits themselves and I found no more requests for the production of writs of summons. From this change we can highlight the different options of those who did not wish to be reduced to slavery.

This is an example of the fact that "Law provides subjects with many instruments that can be mobilized by them in their everyday material disputes" (Paes, 2016, p. 355). In the period under analysis, it fell to those involved in the lawsuits to maintain a person's freedom (including the attorneys and magistrates) the choice of instrument that they would ask to obtain in a ruling, based on an assessment of its effectiveness, the specificities of the case, the judge's receptiveness to the petition and their chances of victory. This choice was also linked to another essential one: the filing of different types of legal proceedings. Although it was recognized that the possession of freedom resulted in some kind of right to the possessor – even when ownership had not been proven – its defence did not constitute a specific legal procedure, something that would occur only from 1840 onward (Paes, 2016, p. 347). In the Mariana court, from 1720 to 1819, this matter was dealt with in justification and notification suits, as exemplified by the cases mentioned above. Notwithstanding the diverse rites involved, as summary proceedings all of them were distinct from ordinary proceedings and, consequently, were considered special actions, produced with the objective of debating cases that did not require meticulous

investigation or that had to have quick resolution, thus also reducing their cost.[12] The beginning of one of them, to the detriment of the others, would be granted by the judge on assessing the reason alleged by the claimant, its quality and the 'style' of the court.[13]

Knowing this, the possibility of the claimants (instructed by their attorneys) to opt to bring a given kind of summary procedure, amounted to an important legal strategy, given the prospects of its acceptance. Furthermore, it is no coincidence that the special procedure followed to process cases on the possession of freedom in the Mariana court usually involved the initial approval and decision of the governor of Minas Gerais. By alleging the imminent threat of reenslavement and the misery in which they found themselves, freed blacks and *coartados* appealed for help from this authority and, backed by his extraordinary intervention, these plaintiffs could succeed in having their claim judged summarily. Consequently, they not only used the legal instruments available to them, they also smartly wielded them, broadening their use and gradually transforming legal practice before the latter became established in works by jurisconsults or enshrined in law. At least in part, the strategies of the subjects involved in this type of dispute contributed to shaping a procedural form that became common some time later, in a more favourable historical context – the crisis of the slavery system and the reform of Brazilian Law.

Still during the colonial period, the lawsuits brought by those threatened by reenslavement had some impact on the relationships between former slaves and former slaveholders. As alluded to earlier, being "maintained in the possession of their freedom" meant preserving the right to enjoy this condition, despite the uncertainty over ownership. The recourse to the courts in response to attempts to reduce individuals to slavery aimed to prevent this practice from taking place by force at the behest of slaveholders. Furthermore, it aimed to shift the burden for disputing the definition of the person's legal status onto his or her persecutors. Consequently, some of the claimants of the civil lawsuits for maintenance of freedom forwent the attempt to obtain a document that would attest to their ownership. What were the implications of this? The person lived in freedom without a paper and, what is more striking, contrary to the master's will. Although the withholding of a letter of manumission increased the risk of reenslavement for some – especially for those who were *coartados* and freed in domestic agreements – its nonexistence did not make the enjoyment of freedom impossible for others, all the more so when a writ of summons or maintenance of freedom was obtained via the courts. Safeguarded in this way, their beneficiaries could keep some distance from their enemies,

or even force a reconciliation privately. At this point, given all the above possibilities, I believe it is no exaggeration to assert that the life of many former slaves was filled with challenges. These lives were sometimes more complex than the content of the freedom papers, where these existed, might suggest.

The Definition of the Legal Status for the Maintenance of Freedom

Ana Antônia's letter of manumission, for example, does not reveal the details of her conflictual relation with her *pai patrono*, father and former master, which resulted in the destruction of her first release paper (*papel de libertação*). The second paper was only emitted after she had taken the issue to court in Mariana. Finding herself in trouble and fearing reenslavement, she asked the court to declare her a freed woman since the age of eight. To that end, Ana Antônia brought a lawsuit to maintain possession of her freedom based on recognition of her ownership. Unlike the cases examined in the previous section, she disputed the definition of her legal status through an ordinary lawsuit in order to obtain, by this means, the manumission that would assure her the right to continue enjoying her freedom.

She was very young when she launched her civil lawsuit (*libelo civel*) on August 27th 1810.[14] She was living in the house of a former neighbour but feared being taken back into her father and former master's ownership. Ana Antônia recounted that her mother was a slave who still lived in the house of Eusébio Rodrigues Tavares, but she, since birth, had been recognized by him as his daughter. So much so "she was generally taken for and known as *forra* [freed person], living in the company [of her father], providing him with domestic services inside the house and, being more than eight years old, merited that he issued her a letter of freedom with witnesses countersigning with him." Rodrigues Tavares kept this manumission in his possession and continued to treat Ana Antônia as his daughter and freed person (*liberta* or *forra*) – according to her, devoting her "much affection and distinction". The everyday life of the girl only changed when she was around twelve years old: at this time, "the defendant began to hate the claimant, treating her badly, going so far as to beat her." It was then that her *pai patrono* ripped up and burnt the letter of manumission. Subsequently, prompted by the advice she had received, she left him and went to live in another residence to escape the violence that she had been suffering daily.

Rodrigues Tavares, responding in court, denied paternity or ever granting her freedom. He refuted what he called 'false impostures,' claiming that calling her daughter had been a reflection of the 'mildness' and 'simplicity' of his heart, since in order to "fulfil the duties of a good master [*senhor*]," he used to call all his younger slaves children, following the teachings of Christian doctrine. As for releasing her from slavery, that had been no more than a promise, since he had only issued a "*clareza condicional* [conditional agreement] that he [would give] her freedom on his death if she [Ana Antônia] behaved well, if she lived honestly with good behaviour, leading a regular life, and served [him] with complete faithfulness while he was alive", and the *parda* (brown girl) had complied with none of the conditions, Rodrigues Tavares added. Imprudent, she had 'dishonoured herself' by giving birth to a child and fled the house to continue living "an entirely ruined life." For this reason, "the *clareza condicional* lost all its effect" and Rodrigues Tavares hence destroyed it "so it would not remain at his death serving as a matter of doubts and disputes."

These contradicting versions were confirmed by the witnesses. Speaking for the defendant, it was claimed to be customary among the 'family fathers' to call and treat the offspring of their slaves as children. In all these testimonies it was mentioned that the *senhor* had issued a '*clareza condicional*' to his slave, Ana Antônia, and that she had failed these conditions by living dishonestly, giving birth to a child and leaving the company of her benefactor. On the opposing side, the claimant's witnesses confirmed that she had been treated by the *pai patrono* "with the affect and distinction of a daughter" and indeed even ate at the table alongside the legitimate children of Rodrigues Tavares – with whom she shared very similar features. However, they recounted that family harmony had been shattered by a tumultuous event: the 'illicit relation' between Ana Antônia and her brother-in-law, married to one of her sisters (a legitimate daughter of Rodrigues Tavares), from which a boy was born. Unexpectedly, therefore, the motive for the abuses suffered by the *parda* as she entered puberty was revealed in three of the four witness examinations taken in her favour.

It is easy to imagine that these declarations caused a huge commotion in the domestic environment of both parties, amplifying the intensity with which the 'disorders' arising from the relationship between the bastard daughter and the sister's husband were felt. Faced with the exposure of such bad conduct, the patriarch attempted to prevent news of his family drama from spreading to the town of Mariana, so that the lack of order in his own home would not become 'public and notorious' knowledge there. After the witness

examinations were published, he dropped his defence. Looking for a quick way to put an end to the court case, Rodrigues Tavares decided to write a new letter of manumission in which he recognized the kinship and remained silent about the family mayhem and disorder, possibly in an attempt to keep them under his sole and exclusive control. Months later, the manumission was registered in a notary office so as to avoid its destruction in the case of future discord. It is probable that the *parda* had realized the vulnerability of a private letter of manumission and wanted, therefore, to increase her margin of protection. This in mind, she asked for the manumission to be attached to the court proceedings, which indeed occurred and was duly ratified by the *juiz de fora* in his final sentence.

As well as the transcription of the letter recorded in the notes of the public notary, Ana Antônia was able to make use of the copy of the sentence. Now she would have no lack of documents to prove her legal status as a freed person (*liberta*) and preserve her 'reputation' as such. Notwithstanding the success of her endeavour, it is worth highlighting the allegation of her trustee that it was sufficient to prove she was a daughter of her *senhor* in order for Ana Antônia to live in freedom, not as an *alforriada*, freed person, but simply as a free (*livre*) person. According to Dr. Joaquim José da Silva Brandão, "this quality proven, [her status] is equally that of a free person." However, the expert in law admitted that verifying filiation was a difficult task and, moreover, with his experience in the court, he must have foreseen how costly, if not impractical, it would be at that time to sustain a lawsuit for maintaining freedom based on that argument. In assessing the chances of success and considering the fact that Ana Antônia had been "taken for, known and reputed" as a *forra* from childhood and had already received a letter of manumission, he thought the best option was to confirm this form of ownership in order to preserve her possession of freedom. For Ana Antônia, perhaps this was indeed what most mattered, but this was not an idea shared by Sebastiana Josefa da Silva de Almeida, daughter of Joana and sergeant major Luís de Barros Freyre.[15]

Also the child of the concubinage between a slave and her master, she had been recognized as an illegitimate daughter and a free woman. Since her birth on January 5th 1717, Sebastiana Josefa had not performed the work of a servant, she had never gone "to the fountain, nor to the forest, nor to the river, nor [done] any other service of a slave." She and her sisters, Maria Pedrosa de Freitas and Ana Thomásia, also illegitimate daughters of the sergeant major and the slave Joana, were given "the very best treatment": along with his wife and legitimate daughters, they went to mass "or any other function outside"

the home. On these occasions, Sebastiana Josefa used a "silk shawl and the best dresses like any other daughter" of the sergeant major.

Richly attired and highly esteemed, the *parda* lived for more than two decades in the parish of Guarapiranga. After this time, however, her experience suddenly transformed. On May 22nd 1739, her father declared his intention to sell her as a slave, since he had acquired "something of a passion" against her. Although there is no clue to explain the change in treatment, we know that in order to avoid her reduction to slavery, Rodrigo Gomes de Oliveira and Pedro Gomes de Azevedo interceded in her favour, white men married to her two sisters Maria Pedrosa and Ana Thomásia, respectively. They "agreed to pay 275$000 réis as the price of her freedom." In exchange for this sum, which they promised to pay through the issuance of two allowances, they thus obtained Sebastiana Josefa's letter of manumission, granted by the sergeant major and his wife. At this time, the *parda* was living in the house of Ana Thomásia and, perhaps for this reason, would only learn about the settlement two years later.

Surprisingly, on discovering what had happened, she immediately challenged the validity of her own deed of freedom. In May 1741, Sebastiana Josefa launched a civil lawsuit and, in this legal battle, once again received the support of her brothers-in-law and the advice of an attorney. The Reverend Doctor José de Andrade e Moraes made an extensive intervention in the court proceedings on the case. He was concerned to explain why Sebastiana Josefa had sought to legally challenge the authority of Sergeant Major Freyre. He alleged that the lawsuit's applicability was based on the fact that the *parda* was a free woman, in accordance with her condition of birth, in view of which she rejected the freedom that had been granted later by means of a paper of manumission. Based on the maxim that *o parto seguia o ventre*, 'delivery followed the womb,' the lawyer argued that "the defendant took the said mother of the claimant as a concubine for ten or twelve years, during which time he kept her in his house, being already a slave of the same defendant and esteemed as his concubine, and thus taken for and publicly known as such." He continued, "according to the law, every slave that sleeps with her master being his concubine, becomes freed [*liberta e forra*], and as such gives birth to free and innocent [*ingênuos*] children." For this reason, Sebastiana Josefa was born "free and innocent," the master having immediately recognized her "as his daughter, and admitted her to be such many times publicly."

Reluctant to accept the manumission, what she desired was to be legally recognized in the form that she had previously been accepted by neighbours and within her nuclear family. To this end, her advocate swore that "the said

[manumission] should be judged null and void as unnecessary for the freedom that the claimant already possessed, not due to the referred deed, [but rather due to the] good faith, patience and consensus of the defendants and due to the upbringing [they gave to the] claimant." On this he insisted, declaring emphatically that Sebastiana Josefa "did not want to use the freedom that [she had] due to the said letter of manumission but due to the legitimate possession she had enjoyed for twenty-two years, four months and seventeen days." This choice is impressive since the document of freedom was shunned in favour of the defence of "legitimate possession." By preferring to argue for possession as the origin of the right to freedom, it was recognized that these grounds, at that time, could grant her some benefit in the struggle to restore her status as a free woman.

Still on the case of Sebastiana Josefa, we can observe that it reveals a clear distinction between the fact of her being either *alforriada*, a freed woman, or a woman born from a free womb – and it is this distinction that explains her decision to bring suit, given that the *parda* was no longer at immediate risk of being reduced to slavery. Even though the enjoyment of freedom was made possible in both situations, being a freed woman was not the same thing as being free or innocent (*ingênua*). The difference that emerges in the declarations registered in the court proceedings is the relation established with slavery. When the person is *alforriada*, freed, the past experience as a slave cannot be ignored. A free woman, on the other hand, was never bound in slavery and, therefore, ownership by a master is not part of her life course. Hence the importance of affirming that she had never undertaken the service of a slave, emphasizing the good treatment received inside and outside the house where she was born and raised, and her refined appearance. This condition was repeatedly mentioned in the interventions made by the *parda*'s attorney and seems to have held sway on her life as a free woman.

This impression can be confirmed by the affirmation of Dr. Andrade e Moraes himself, who immediately took pains to emphasize what was expected with the annulment of the manumission: "being [judged] null and void, the *claimant should also be judged exempt of all bondage of liberty, and the defendants without entitlement as her former masters*" (my italics). Hence the sentence in favour of the legitimacy of her status as a free woman would result in the end of the relation of patronage – that is, a bond of dependency that kept a former slave bound to the individual who had granted the manumission. In summary, the endeavour to bring the lawsuit was due, in part, to the difference in status between being a freed person (*liberta*) and being a free coloured woman (even more so being *parda*, brown, and the illegitimate daughter of a

white master) and, in part, to the admission that this difference represented a greater or lesser chance of self-determination and, consequently, a greater or lesser probability of being led back into slavery. In other words, life in freedom – in one or other situation – would be marked by distinct expectations and experiences and this was known to the characters presented here. It was by setting out from this perception, combined with the specialized knowledge of their attorneys, that they designed their legal strategies.

Final Considerations

In defence of the freedom already enjoyed, Africans and their descendants were able to resort to the courts in the interior of Portuguese America. This response demonstrates not only the vulnerability of freedom, but also the possibility of imposing limits on the will and authority of former slaveholders, even during the colonial period. In the public arena of disputes, the claimants expected to restore and reaffirm the balance of the hierarchies, defining the social place occupied by each of them, according to the perspective of those who brought lawsuits in the court of the town of Mariana during the eighteenth century and the first decades of the nineteenth century. For the *forros* or *libertos* (freed persons), *coartados* (released slaves) and *livre de cor* (free coloured population), this initiative served to protect their possession of liberty. This aim in mind, they more frequently than not passed on to their adversaries the burden of disputing their legal status – that is, of defining whether they had ownership of freedom or they had lost the right, meaning that they would have to revert to serving as slaves. Now and then, it was those threatened with reduction to slavery who wanted to have their legal status confirmed or ratified in an instrument produced at the end of the court records in order to thereby sustain the maintenance of freedom.

These were choices made in adverse situations and carried out by evaluating the degree of intimidation suffered and the chances of escape. Through them it becomes evident that the claimants of the litigations had a clear awareness of the differences between a letter of manumission, a document registered in a notary office and another resulting from a judgment, just as they knew that a writ of maintenance of freedom did not serve as a deed of freedom, but perpetuated its enjoyment. They also understood the differences between living in freedom due to having been released (*coartado*), having been freed (*alforriado*) or having been treated as a daughter and an innocent (*ingênua*) woman. Consequently, their post-slavery experiences were associated with the

way in which they enjoyed their freedom, and the latter with the documents that they already possessed or wished to obtain in order to continue in a free state. They learnt that a *coartado,* in the event her release payment was contested, as in the case of Manuel Rodrigues, could have his autonomy protected by the ruling of a judge; they were aware that Francisco Ferreira da Costa, for example, was in a less vulnerable position, a *liberto* (freed person) who possessed a letter of manumission registered in a notary office, but nonetheless wanted another public instrument capable of reinforcing this ownership; they understood the fact that Sebastiana Josefa rejected a letter of manumission with the intention of enjoying greater autonomy, breaking the bonds of patronage by confirming in court her status as a free woman.

While such differences may seem slight today, they were highly significant for those who found themselves caught in a 'twilight zone' between slavery and liberty that they wished to escape in order to live with greater stability. This observation also highlights, at this point more clearly, the complexity of the appropriations of social categories. Reacting to the limitations that were imposed on them, some staked on maintaining the condition of "taken for, known and reputed," counting on the visibility of their social condition, while others used it as a springboard to obtain a declaration of their legal status in court. In common, everyone expected, in some form or another, to remain outside slavery. For them, the courts seemed a viable alternative and, even when it failed to provide them with the protection they sought, it is not unlikely that they took advantage of the process to push for a solution in the private sphere so that they were no longer disturbed.

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NOTES

[1] The research on which this article is based received funding from FAPESP (process 2008/50329-0).

[2] Vila do Ribeirão do Carmo was founded in 1711 and raised to the category of a town in 1745, when it became the administrative centre of the diocese.

[3] Arquivo Histórico da Casa Setecentista de Mariana – 2º Ofício, Justificações, Códice 165, Auto 3907.

[4] Reduction to slavery as a consequence of the repeal of manumission is the most well-known aspect of the experiences of reenslavement. This possibility was set out in the Ordenações Filipinas, Livro 4, Título 63 – *Das doações e alforria que se podem revogar por causa da ingratidão*. As for the need to bring a lawsuit to impose reduction to slavery, many doubts emerge, since it was declared mandatory only in the 1840s.

[5] *Coartação* was an agreement to free a slave with payment in instalments in a specified time period. Its concession and the conditions of the settlement – the number of instalments, the time period for settlement, permission to leave the company of the master, the territory in which the *coartado* (released slave) could travel in search of work, and so on – were frequently registered in a private document, that is, a *papel de corte or corte* (release paper) that was usually in the possession of the *coartado*.

[6] AHCSM – 2º Ofício, Justificação, Códice 142, Auto 2904.

[7] AHCSM – 2º Ofício, Justificações, Códice 146, Auto 3088.

[8] AHCSM – 2º Ofício, Ações Cíveis, Códice 611, Auto 23552.

[9] AHCSM – 2º Ofício, Notificações, Códice 178, Auto 4409.

[10] This is what Rebecca Scott and Jean Hébard show through the experience of Rosalie, an African woman from Senegambia who lived in Saint-Domingue (later Haiti) and migrated with her family in search of refuge at the beginning of the nineteenth century. Despite being emancipated, she insisted on obtaining a letter of manumission before arriving in Cuba and, residing in this territory where the slavery system remained in full force, endeavoured to validate the deed of freedom in order to remain outside of slavery. For different reasons, all the documents that she managed to obtain were somewhat insubstantial in legal terms, but were pledged by her as "proofs of freedom." On this history of winning and defending the free state, see SCOTT; HÉBARD, 2014.

[11] AHCSM – 1º Ofício, Ações Cíveis, Códice 468, Auto 10374. Submitting her first request sent to the governor, his order, as well as that of the *juiz de fora* of the Mariana court, her release paper and the receipts of the paid instalments meant gathering all these documents and producing a detailed and authentic document of the legal act of her release.

[12] Comparatively, the total expense at the end of the ordinary lawsuit brought by Ana Antônia (which will be examined later) was 19$167 réis, while the justification of Francisco Ferreira da Costa cost 2$690 réis, which stands out as the most expensive of the summary actions analysed here.

[13] According to the explanation of HESPANHA (2006, pp. 21-24), what was practiced in court was based both on interpretations and appropriations of laws, and on the elaboration of norms and customary procedures. These were the elements that shaped the 'style' of a particular forum, which distinguished it from others, though all of them formed part of the Portuguese Empire.

[14] AHCSM – 2º Ofício, Justificações, Códice 145, Auto 3011. The civil lawsuit (*libelo cível*) was an ordinary legal proceeding.

[15] AHCSM – 2º Ofício, Ações Cíveis, Códice 284, Auto 6936.

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