

## **Under the Realm of Precariousness: slavery and the meaning of freedom of labour in the nineteenth century**

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### **ABSTRACT**

This article examines the ambiguities raised by the concept of “labor freedom” in the XIXth century, through a comparative perspective of not only the history and historiography of slavery, but also the social, economic, and institutional history of labor. It considers that this approach will allow a better understanding of the collective experience of free laborers as well as slaves, in order to criticize the “transition” model that is still used – often without any criticism – by the historiography on slavery and free labor in Brazil and in the Americas to explain the relationship between freedom and bondage in labor history. Some of the questions raised in the first part of the article will be used to analyze a sample of labor contracts between formal slaves and their formal masters or new bosses, notarized in the city of Desterro, in Southern Brazil, between the 1840s and the 1880s.

**Keywords:** slavery, freedom, labor, wage contracts.

### **1. The market society utopia**

The society that was built in the nineteenth century was based on ideological principles established by political economy in the eighteenth century: namely the belief that social relations should be organised to express the ‘natural’ impulse of man to seek his material interests freely and individually<sup>1</sup>. The model of this society is commerce, the market: the place where individuals operate according to a rationality defined by the maximisation of gain. The impulse for exchange and bargaining, which constitutes a

central part of human nature, is in the origin of society and defines it. Political economy – its ideological foundation – consolidates the idea of a society governed by the individual search for material interests and points to the construction of a social order that legitimates and makes space for this fundamental ‘nature’ of man. ‘Market society’, born with the utopia constructed by political economy, was based on the conception that the dynamics of production and exchange should be “an economic system controlled, regulated, and directed by markets alone”, where “order in the production and distribution of goods is entrusted to [a] self-regulating mechanism”<sup>ii</sup>

In pre-industrial societies, markets and economic exchange were embedded in society, frequently playing only a marginal role in relation to social ordering and even the allocation of resources. The industrial revolution and its impact on mercantile capitalism, opened the possibility for envisaging economic organisation as disarticulated from social organisation, disembedding economy from society and, at the limit, inverting the process, subordinating society to the logic of the market and in turn the economy<sup>iii</sup>.

These are the terms that define in a very general way the model of socio-economic organisation that guided a large part of the political decisions of elites linked to industrial production and *haute finance* from the end of the eighteenth century onwards, especially in Western Europe and in America. The intellectual origins of this model, political economy and liberalism (political and economic), go back much early and have a fundamental place in the intellectual and political history of the modern and contemporary epochs, but they are not the object of this work<sup>iv</sup>. On the other hand, it is worth noting that the implementation of a market society entirely corresponding to the ideal-type sketched out above, never occurred fully anywhere. The reasons of this might be found, as suggested by Polanyi, in the fact that a utopia with these characteristics – for reasons that I will deal with below – could not be fully implemented without completely destroying the social fabric of the society in which it is being attempted<sup>v</sup>. Nevertheless, it is undeniable that this model constitutes a central element in the comprehension and the interpretation of social and economic reality in this period<sup>vi</sup>.

Since the beginning of the nineteenth century in the field of disputes over what sort of society should be constructed the preponderant role of classical economic models

has been undeniable. It also true that workers felt the real impact of this model more strongly than any other social group.

## **2. Freedom of contracts and precariousness**

In England, the cradle of industry and political economy, the initial impact of liberal ideas occurred in relation to access to land and the dynamics of agricultural product prices. The influence of liberal measures on the forms of organisation of society and the economy of the subaltern classes was intense and discussed by a historiography attentive to the political meaning of the struggles of workers in the period<sup>vii</sup>. Its reverberation on the organisation of work was equally felt and was present in the concerns of contemporaries.

Before the industrial revolution, regulated and forced labour were the two principal modes of organisation of work<sup>viii</sup>. The regulation of professions in the *Ancien Regime*, especially in cities, impeded the “existence of a market in which goods freely circulated: there was neither competition nor freedom to increase production. But it also impeded the existence of a labour market: there was neither freedom to hire nor freedom of circulation for workers”<sup>ix</sup>. This organisation of labour enveloped labour relations and the rigidity of its rules impeded the development of a capitalist accumulation process, hindering the flow of raw material and labour to industry, blocking the expansion of production<sup>x</sup>.

Not by chance the de-articulation of this system of labour based on regulation, coercion and protection was the fundamental task of the reformulation of the relations of production imposed by the market ideology. The imperative of ‘freedom’ as a fundamental parameter to guide the reorganisation of the world of work forcefully imposed on the discussions of the relations between society and work from the end of the eighteenth century onwards. Robert Castel suggests that the institution of “free access to work” had a revolutionary impact in the legal field, analogous to that of the industrial revolution (of which it is considered a ‘counterpart’): “In fact, it had a fundamental importance in relation to everything that preceded it. It broke the secular forms of

organising trades and made forced labour a barbarous hangover from the past”<sup>xi</sup>. Thus, the creation of a free market imposed itself as a central task. The form and attributes of this market, however, were not obvious.

One of the central aspects of this process was the promotion of a type of labour that had not only been marginal and suffocated by the protection regime, but was actually considered degrading: the condition of employee. In other words this ‘revolution’ opened space to put at its centre a type of labour relation based on the idea that the worker should survive solely from the sale or ‘rental’ of their labour power.

“Free access to labour” became, according to Castel, “unanimous” among the “advocates of the Enlightenment”<sup>xii</sup>, bringing results unintended by the formulators of the ideology. ‘Freedom’ from the condition of worker had consequences: alongside an unprecedented increase in abundance and wealth, especially seen at the end of the eighteenth century, was the rise, in the same countries at the forefront of industrial production and who had embraced free trade, of a poverty that was equal and terribly new.

The phenomenon of ‘pauperism’ – which called the attention at the beginning of the nineteenth century of thinkers and reformers as different as the utilitarian Jeremy Bentham, the liberal Alexis de Tocqueville and the socialist Robert Owen<sup>xiii</sup> – revealed this apparently incomprehensible face of market society. The mass destitution that accompanied prosperity differed enormously from the misery and begging of the *Ancien Regime* (which appeared as an exceptional situation, outside the ‘common system’ of poverty). The ‘new element’, which had already appeared much before the nineteenth century but which spread radically during that century, is “en-masse vulnerability”<sup>xiv</sup>, in other words, the precariousness of the conditions of existence is structural in this society, where labour relations, in addition to low salaries, came to be marked by the “instability of employment, the search for provisional occupations, the intermittence of time spent working” and the absence of work<sup>xv</sup>. It is not confined to exceptional or marginal situations, but it is a condition on the horizon of every worker in a society defined by a market principle that requires the precariousness of the relations of work. The vagabond and the indigent in the ‘free’ labour market are not peripheral figures, rather they reveal

the core of the new condition of the worker: an “indigency that is not due to absence from work, but rather to the new organisation or work, in other words ‘freed’ work”<sup>xvi</sup>

However, which elements of this new organisation of work determined the precariousness that marked the beginning of the nineteenth century and defined the contours of the ‘social question’ of the period?

The distinctive characteristic of the organisation of work under the market system is, as has already been stated, its new judicial organisation. Its central principle can be summarised in the idea of ‘contract’. The ‘free contract’ came to be the fundamental model for labour arrangements in a society defined by the rules of ‘free’ competition. The contractual order supposes that labour is a commodity put on sale in “a market that obeys the law of supply and demand”. The relations between worker and employer are no longer defined by dependency, protection or coercion, but become a “simple ‘convention’, in other words a contract between two partners in relation to salary”<sup>xvii</sup>.

As Polanyi has emphasised, the definition of ‘free labour’ in this context, derives from “a market-view of society which equated economic with contractual relationships, and contractual relations with freedom”<sup>xviii</sup>. The immediate meaning of the new contractual order was to think of society as being fragmented into individuals, who were defined as ‘producers’ and ‘consumers’ operating in the market. Therefore, to actually implement a contractual ordering of ‘free’ labour, workers were asked to understand that their ‘true’ interests did not signify a guarantee “against misery through a safe salary, but rather to espouse the liberal ideology that put them in the situation of competition, rewarded ‘abilities’ and ‘talents’, penalising the mediocre and weak”<sup>xix</sup>.

The ‘freedom’ was obviously not exempt from ambiguity. Its meaning could – and did – vary according to the position that each ‘individual’ occupied in a contractual relationship which, despite its ideal description, was absolutely unequal. The demand for free access to labour in these terms was not a demand of the workers themselves (who certainly did not understand ‘freedom’ in the same way as economists), but of the political reformers who seem to have imposed the ‘free labour contract’ in a “relationship of political domination”<sup>xx</sup>.

The central question here is that the implementation of a labour market revealed the actual destructive character of the market society utopia that sustained it. The

principal mistake that justified this utopia was taking land, work and money to be commodities. As Polanyi showed, the empirical definition of commodity does not include any of these elements of industry<sup>xxi</sup>: ‘labour force’ defined in abstract terms means the human life of workers that “cannot be shoved about, used indiscriminately, or even left unused, without affecting also the human individual who happens to be the bearer of this peculiar commodity.”<sup>xxii</sup>

What was ultimately at play was the actual viability of the social cohesion of society. As Castel states, the implementation of market society associated at the same time ‘political voluntarism’ – which separates the problem of assistance to the poor from the organisation of the economy – and *laissez-faire* in the organisation of work. By doing this it released ‘social antagonisms’ which the promoters of this utopia were not able to predict, let alone control<sup>xxiii</sup>.

What the savage liberalisation of work at the beginning of the nineteenth century reveals is precisely this. The deregulated market model says that the ‘free’ dynamics of hiring will make a rational ordering of work emerge naturally. What the reality of the new relations of work reveals is completely different:

“Eliminating traditional protection runs the risk of instead allowing the flowering not of the rationality of natural laws, but rather the biological power of the instincts: the needy will then be impelled by natural necessity, in other words hunger. Against the backdrop of the judicial reciprocity of the labour contract, the fundamental otherness of the social positions of the contracting parties emerges, while the pacified space of commercial relations is transformed into a battlefield for the whole of life when the *temporal* dimension is introduced into the labour contract. The employer can wait, can ‘freely’ contract, since he is not under the rule of necessity. The worker is biologically determined to sell his labour force because he is in a rush, he has an immediate need for a salary to survive.”<sup>xxiv</sup>

Having overcome the world of enforced and protected work, what is discovered is that the “condition of the worker becomes fragile when it is freed”. This fragility consists of the discovery that “freedom without protection can lead to the worst type of servitude:

that of need”<sup>xxv</sup>. The ‘freedom’ of the employee of flesh and bone only consists of its ‘negative attributes’. The confrontation between unequal ‘freedoms’ reveals the ‘sombre face’ of freedom, in other words “*the negative individuality* of all those who had no connections nor any supports, lacking any protection and recognition.”<sup>xxvi</sup>

The new order of the contract could not be established as the basis of a stable order for society, since its effective functioning not only produced constant instability – to the extent that it propelled workers into situations of uncertainty about their futures – but it also required this instability to be viable. Thus, at the same moment that work becomes the integrating element *par excellence* in the new social order, it is deprived of the effective conditions to exercise this role. The new condition of the precariousness of the masses that results raises the issue that was at the heart of the political struggles of workers in the nineteenth century<sup>xxvii</sup>: the struggle against the precariousness of employment and the constant threat of social disaffiliation<sup>xxviii</sup> which emerges at its boundaries.

### **3. The ‘free labour market’ model**

Due to its intrinsic characteristics the implementation of a ‘free’ labour market did not take place in a homogenous and uncontested form anywhere at all. To the contrary, an enormously complex and extensive field of struggles grew up around the meanings of this ‘freedom’. Its empirical reality was translated into configurations that varied from the ideal type of the independent employed worker to a myriad of labour arrangements that combined different degrees of ‘freedom’ and financial compensation for labour with elements of coercion (physical and pecuniary ), protection, compulsory and contracted labour, and even forms similar to slavery, such as servitude due to debt. As a result of the conflicts over its meaning and scope, ‘free labour’ was an ambiguous reality and at times an ‘unstable fiction’, even in countries like Great Britain and the United States of America<sup>xxix</sup> in the nineteenth century and initial decades of the following century, at the very least.

Despite this, the image of contemporary society as the result of the constant ascension of a social organisation based on ‘rationality’ and ‘freedom’ – facing only more or less localised resistance that are ultimately destined to fail – continues to have enormous influence on the models that intend to explain the meaning of the social and institutional transformation that have marked the last two centuries.

The clearest example of this is the insistence with which this image contaminates discussions about the transformations suffered in slaveholding societies, especially in the Americas, during the nineteenth century. In the context of these societies, ‘freedom of labour’ was presented as a radical opposition to slave labour. A counter position that seems self-evident – especially if thought of in the terms established in classical economics – which is actually as charged with ambiguity as the model of society that inspired it.

Robert Steinfeld states that the conviction that there exists a dry and clean cut that separates slave and free labour is based on a ‘conventional wisdom’ which translates in terms of a model what is in fact an evolutionary narrative of the history of work<sup>xxx</sup>. A narrative that translates this history as a process that slowly, and in parallel to the political history of societies in Western Europe, led to the birth of the ‘modern’ free employee labour market, an institutional and judicial counterpart of the ‘modern’ bourgeois city.

This ‘traditional narrative of free labour’ has, nonetheless, been systematically challenged by studies that have tried to understand its real functioning in specific historical situations. First of all, in ideal terms, the world of free labour supposes freedom of choice, absence of coercion for labour, capacity of workers to be mobile, impersonal employer/employee relations, but also the offer of work opportunities and the possibility of access to them by workers. In addition, it supposes that the absence of coercion of labour is a value also shared by wage earners. However, what studies about the functioning of the nineteenth century labour market, such as Steinfeld’s own study, show is that this configuration of the labour market is largely unreal. As a model, to the extent that it reified the categories dealing with the various types of labour arrangements, it ended up blurring the real functioning of this ‘market’<sup>xxxii</sup>.



As Tom Brass suggests, the question here is that the ‘theoretical opposition’ between freedom and non-freedom is not natural, rather it is constructed<sup>xxxii</sup>. In the same way, both employed labour and unfree labour do not have a fixed and demarcated content. Defining characteristics of free labour, such as financial compensation for work in the form of a salary or something else, were not uncommon in the slaveholding relationship. Forms of collective bargaining – such as ‘folding your arms’ – which used to be considered only in relation to free workers in industry, were also to some extent present in the strategies of slaves in their negotiations with their owners and administrators<sup>xxxiii</sup>. On the other hand, forms of forced labour (which included various forms of contract, *indentured labour*, debt servitude, *patronage* etc.), as well as physical coercion for work, were part of the daily lives of free workers during and after the slaveholding period. In the north of the United States, for example, the most part of the manual labour carried out by free whites before the Civil War would hardly be considered by today’s criteria and values as ‘free labour’: it lacked, among other things, the right to collective bargaining, the right to unionisation, or any guarantee against invalidity<sup>xxxiv</sup>. ‘Unfree’ modes of labour were used in various parts of the globe, both in places which did not see American type slavery (India under British rule), and in Africa where the fight against slavery was used as a justification for colonial intervention<sup>xxxv</sup>.

Actually, as has already been mentioned, “defining slavery and freedom” caused and causes “political as well as conceptual anxieties”<sup>xxxvi</sup>. The concept of free labour is proof of this. It has been shown to be a fundamental axis in the debate and dispute, because it raises not just economic questions about the organisation and distribution of the labour force, but more especially because it was capable of mobilising in the same way themes such as the right to work, the dignity of work, and access to political rights implied, or that could be implied, by ‘freedom’. Both the political argument of workers that they had right to citizenship and the argument of employers against trade unions could be built around its meaning<sup>xxxvii</sup>.

Thus, what this discussion shows is that the evolutionary narrative of the development of free labour in a modern market economy involves an excessively simplifying picture of

the problem of the relationship between ‘freedom’ and labour. It is also worth highlighting that the unrealistic character of this teleological theme constructs a image of contemporary capitalist society through the image it produces of itself. By doing so, it reinforces – as Polanyi stated decades ago – our “outdated market mentality”, which sees the market system and its institutions as the culminating point and the effective application of concepts such as “freedom, justice, equality, rationality and legal order”<sup>xxxviii</sup>.

#### **4. The meanings of ‘transition’**

There is no doubt that the historiography about slavery in recent decades has advanced immensely towards understanding in a much deeper way the functioning of slaveholding society in Brazil and the Americas. Fundamental dimensions of the experiences of slaves have been carefully explored in various works that have shed light on the autonomous actions of slaves that undermined the legitimacy of slavery, as well as their strategies to construct – both within and outside slave relationships - a viable universe of social relations. The forms of resistance and negotiation of slaves, their sociability networks, the place and the permanence of family relations, and the forms of struggle in captivity have been widely discussed<sup>xxxix</sup>.

Fundamental aspects of the slaveholding system remain less explored, especially in relation to the meaning and significance of freedom. The question about what exists beyond slavery involves responses that at the same as analysing in detail the economic, social and political dimensions of slave labour, frequently treat freedom as an undifferentiated concept that is rarely examined<sup>xl</sup>.

Even those works that directly confront the problem of the ‘meaning of freedom’, look at first of all its cultural and political dimensions in a broad sense – illuminating, for example, question referring to citizenship, race and ethnicity<sup>xli</sup>. Therefore, the question of the meanings that ‘free labour’ can have in the various post-emancipation contexts still deserves attention. In dealing with this problem, directly denouncing, for example, the ethnocentrism of the concepts of political economy in relation to the conceptions of

slaves, various studies have not confronted these same conception when dealing with the relations of work that former slaves faced outside slavery.

The fact is that the general question related to the abolition of slavery in the Americas is that it signifies above all the right to own human beings. Of course this is somewhat emotionally called ‘freedom’, for political reasons above all, but also due to the direct influence of the parameters of political economy. However, in nineteenth century slaveholding societies, ‘freedom’ and ‘slavery’ are more than anything else legal terms that refer to property and are not automatically translatable as ‘free labour’ and ‘slave labour’. Transferring the meanings of concepts from the judicial sphere to another cannot be done without a meticulous examination of the relevance of this movement. The danger of the overlapping of the two types of meetings – it is worth insisting – leads to faulty interpretation that can translate into a reading of slaveholding societies (and their transformation and dissolution) in terms that are decidedly evolutionist. The insistence on the meaning of the ‘transition’ from slave labour to free labour, as has been systematically done in a long tradition of studies on the socio-economic meaning of slavery and its abolition in Brazil is a clear example of this<sup>xliii</sup>.

Sílvia Lara argued some years ago that the tradition in historiography that discusses the ‘transition’ has been responsible for justifying, for example, the invisibility of the presence of former slaves in the history of workers movements in post-emancipation Brazil<sup>xliiii</sup>. Evolutionary logic decided that the mark of slave labour relations turned a significant group of individuals incompatible with the rules of the new ‘modern’ society based on free labour. The ‘substitution’ of one form of labour by another implies in the last instance the physical substitution of former slaves by European immigrants supposedly educated to behave as ‘modern’ individuals compatible with the rules of the market. This ‘substitution’, however, leaves behind a fragment, a perfectly disposable left-over in relation to the explanation of the organisation of work, as well as the struggle of workers, in the post-slavery epoch. This left-over fragment is the world of the former slaves.

In the field of the history of slavery, as I have stated above, much as already been done to escape from the evolutionary logic and to interrogate the experience of slaves through their own terms. On the other hand, in the case of the experiences of free and

freed poor, the analysis of the forms of domination and the maintenance of archaic forms of dependence is often emphasised before anything else, having as a counterpart an idealised image of a society based on rational principles.

Therefore, in some of the sociological reflections on the experience of the free poor and dependents in slaveholding Brazil<sup>xliv</sup>, an image of Brazil was at times constructed where rationality and calculation were only seen as one of the poles of the slave-owner relationship. These are analyses that oppose a class of land owners who operate within the 'modern' logic of maximisation and a class of propertyless dependents who act through a logic defined as 'traditional' and lacking any rationality. This appears to me to be an opposition idealising on the one hand the meaning of the actions of the 'new' subjects, emphasising their individualism, their comprehension and clarity about their own 'interests'<sup>xlv</sup>, their unlimited access to information and resources, the homogeneity of their actions and the coherence of their strategies, etc; on the other hand, it generally underestimates any 'rational' component of the actions of free dependent workers, supposedly imbued with reactive and visceral (social and economic) behaviour, incapable of innovation and imprisoned in domination networks that are ultimately 'survivals' of slavery.

What links the question of the 'transition' to the sociological discussion that analyses Brazilian society through its 'absences' is the existence of a regulating counterweight to guide the criteria of analysis - society as it should be, in other words the idealised vision of an ordered model where the economic and social relations are marked by a paradigm of a society defined by rationality and impersonalness<sup>xlvi</sup>.

## **5. Under the contract system: labour arrangements outside slavery**

In slaveholding America, the idea of 'contract' was central to various emancipation projects – and processes – throughout the nineteenth century<sup>xlvii</sup>. In Brazil the slow and gradual emancipation process was constructed in parallel with the gradual insertion of legislation that had, more than anything else, the aim of disciplining and ordering the labour market in the country, including both the contingents of immigrant workers and those leaving slavery. Particular attention was given to the introduction of legal rules that

governed contracts between employers and employees<sup>xlviii</sup>. The emphasis on the preparation of laws in the vision of legislators and in the political struggle of elites over the terms of the new organisation of labour in relation to its economic interest has occupied the most part of the analyses developed on this theme. The effective functioning and the detailed analysis of labour arrangements occurring under the new logic of the contract and ‘free’ labour have been much less studied.

Portuguese legislation, which applied to Brazil even after independence, treated the problem of labour relations in a very restricted form. The Philippine Laws (*Ordenações Filipinas*, which referred to what we call ‘civil law’ (and which remained in force in Brazil until the beginning of the twentieth century), dealt with relations between slaves and their owners in Book IV<sup>xlix</sup>, stipulating the forms and values of payment for wages and services. This legislation did not cover other forms of labour apart from domestic service and even so still within very restricted parameters.

After independence from the Portuguese crown the first moves towards creating legislation to deal with labour took place in 1830<sup>l</sup>. The law enacted on 13 September with especially concerned with regulating labour contracts that involved immigrants delimiting periods, deadlines and salary advances. This law was later supplanted by another more complex one – Law 108, enacted on 11 October 1837. This law, implemented in the context of treaties made with the United Kingdom related to the end of the slave trade, again had immigrant agricultural workers as its main target, with it not being (in principle) applicable to Brazilian workers. This legislation would regulate labour contracts until 1879<sup>li</sup>.

The first law directly concerned with the ‘transition’ from slave to free labour was Law 2040, passed on 28 September 1871<sup>lii</sup>. The Rio Branco Law, also known as the ‘Free Womb’ Law, was the first piece of legislation that directly dealt with the organisation of the labour of former slaves in the context of a gradual emancipation project. Among other things, it immediately freed all children of slaves born after the date it came into force, establishing rules for the indemnification of child labour and the care of these free children and their commitments to the (former) owners under whose care they would remain. The law also gives judicial consistency to a series of practices that were then current in the slaveholding relationship<sup>liii</sup>, such as the possibility of slaves accumulating

money, buying their freedom with the money they saved and the indemnifications owed to owners. Another customary practice regulated was the taking out of loans from third parties by slaves to obtain their emancipation.

In article 4, § 3 contracts for the provision of services were limited to a seven year period. In article 6, § 5, it was established that slaves freed under the law would be “obliged to hire out their services under the penalty of being forced, if living idly, to work in public establishments”.

The 1871 law was considered the central part of a legal strategy that directly connected the freeing of slaves to the reordering of work and the transition to a free labour market. There is no doubt that the first part of the statement is correct; however, the problem of the creation of this ‘market’ has not been analysed other than through legal logical and the parliamentary debates about the laws. Thus, more than anything else, it is the self-image of the legislators and their projects that is to the fore. What remains submerged is the meanings that workers themselves gave to the ‘market’ into which they were ‘freely’ thrown.

Looking closely at the contracts created under the theoretical parameters of ‘economic man’, it can be seen that they involve arrangements whose central significance is given to us beforehand: they reveal the universal bargaining game that, within the limits of an unequal relationship, led the former slaves to get the best possible material result from the new labour arrangements<sup>liv</sup>. If not, there is nothing to do but agree with the rhetoric that saw the former slaves as unprepared for the world, needing to be educated about their own interests and how to behave rationally in their new choices as free men and women<sup>lv</sup>. The previous observations would certainly disagree with this approximation. The inverse choice – interrogating the positivism of the contracts – can be, on the other hand, an important experience involved in recovering “alternative visions of economic life”<sup>lvi</sup> that could guide the choices of these subjects in their new situation and the definition of their interests”<sup>lvii</sup>. More than this, it also needs to be stated that it is not enough to discover the existence of an alternative rationality: its meaning for the subjects who operate it also has to be interrogated. Doing this will certainly help shed light on the concrete content that the actions of former slaves could be attributing to the ‘freedom’ they had won.

I would like to attempt this now, interrogating a small sample of ‘contracts for services’ that are part of a larger set of free contracts and deeds that are part of research I have been carrying out on the experience of ‘free’ labour in the town of Desterro in the nineteenth century<sup>lviii</sup>.

In an initial survey, I located 56 contracts for the provision of services for the period 1849 - 1887<sup>lix</sup>. I will start with a selection of the entries from these books to – based on the discussion I have made so far – propose some hypotheses for their comprehension.

The first contract of this nature I found was dated 9 February 1847 and involved a freed African called Antonio, from the Mocingo nation. Antonio had signed a service contract with a José Manoel de Souza, who had lent him 263\$610 *réis*, with which he had redeemed the value of another contract he had previously signed with Zeferino Fernandes (only cited). In exchange for this money Antonio was obliged to provide eight years service to his new employer “as if he were a captive”. The latter undertook to “clothe him, sustain him and cure him of his illnesses”<sup>lx</sup>.

In another contract, dated April 1849, a 25 year old African woman called Thereza contracted her services to Dona Filisberta Coriolana de Souza Passos. This time there was a debt of one hundred thousand *réis* which the former slave had contracted to free herself. In exchange for the money she committed herself to no less than 25 years work, accepting to work “as if she were a captive” and to accompany her employer, or anyone indicated by her “to anywhere she was sent”. In addition, she agreed not to contract herself with anyone else during this period. In exchange she would receive from her employer clothes, sustenance and care if she fell ill<sup>lxi</sup>.

These initial contracts contain several of the elements that will reappear in most of the work arrangements involving former slaves for the following four decades: first, the debts inevitably contracted to pay for freedom (or, as in the case of Antonio, a new contract to pay for a previous debt linked to emancipation); also appearing is the commitment signed to “serve and respect” “as if he or she were a slave (or captive)”, while the contracts also contain clauses that explicitly commit the contractor to provide sustenance for the employee as well as to look after them in case of illness. Furthermore,

the relationship between the value of the debt and the time of the contract is not always consistent with the market value of the contracted labour.

As has already been stated, some of these terms repeat and become the basic terms used in contracts in the following decades. If we think of these deeds as records that made public the results of arrangements involving the strategies and expectation of at least two subjects, we can formulate some questions.

First, contrary to what appear at first sight, the service contracts do not necessarily follow a stereotypical model. Looked at individually, they reveal variations and particularities that directly point to active negotiation by both parties. Their clauses cover, for example, care for the family, spatial mobility, or the possibility of have some control over working times and conditions.

Thus on 19 November 1847, Sebastião Cabinda appeared at the notary office of Lopes Gondim with the German Pedro Kemper [or Kimfer], with whom he had a debt of 230\$000 réis, “an amount given to him for his freedom”. In exchange for the money he committed himself to pay the rest “in the instalments that suit him, he can undertake any journey [...] to where it suits him, with the consent of the creditor, clothing and feeding himself at his own account”<sup>lxii</sup>

This arrangement was very different from that made on 28 January 1848, by the black Maria Leocadia with Captain Fernando Antonio Cardoso. In this contract the freed slave redeemed a debt from a previous contract of 300\$000 reis. To pay this, she contracted her services for a period of ten years, and was also obliged: “...in the position of the natural carer of her daughter Joaquina aged seven months, more or less, to keep her in the power of the creditor for a period of [...] twenty years, also counting from the first of this month, with the creditor being obliged to feed her, dress her and gave her the necessary education, for which he shall require no money and this favour shall compensate the services of the girl during the said period”<sup>lxiii</sup>

On 27 June of the same year, Francisco Benguela also redeemed a service contract and made a new one with Antonio Lopes da Silva. Recognising a debt of one hundred thousand réis, he committed himself to redeeming it with his work for a period of three and a half years: “with the condition of serving [his employer] as if he were a captive and



had to provide him with obedience and services, though the creditor was obliged to feed him, treat him properly and dress him, and in this period of three and a half years any time spent running away or refusing to provide services ordered of him will not be taken into account”<sup>lxiv</sup>.

Almost forty years later, now under the auspices of the laws that were created to regulate and provide a legal basis for this type of contract, we can still find arrangements of work involving former slaves in the new world of free labour.

In the middle of December 1884 the freed Creole João Ancelmo and his employer Jacinto Feliciano da Conceição appeared at the notary office of Leonardo Jorge Campos. João declared a debt of two hundred thousand réis and made a contract for providing agricultural services to pay it. He would work for four years on his employer’s farm “on all working days, working in crop growing, planting of grass and anything related to services applied to agriculture”. His employer made a commitment to “sustain and dress him for work, as well as to treat his illnesses”. When the arrangement decreed that “the contract had ended [...] it could be renewed in accordance to the dispositions of Law 2827, dated 15 March 1879, if the parties agreed.”<sup>lxv</sup>

On 8 May the following year, the Creole Gertrudes, also hired out her services to a Fortunato Soncini. For four years she would work as a domestic servant to pay back the 170,000 réis that the creditor had loaned her. She was obliged to “respect him and his family [and] do whatever domestic service was required of her”. Soncini, on the other hand, had a commitment to give her “sustenance and clothing”, as well as “to look after the debt when sick for a period of fifteen days”. After this time Gertrudes would be responsible for expenses on “pharmacy, medicine and diet”. The contract also stipulated that “if by any chance she, the debtor, does not get on with him, the creditor, and his family, she can work in any family house providing him, the creditor, with the monthly sum of ten thousand réis until the stipulated time is completed.”<sup>lxvi</sup>

On 26 January 1887, it is the freed black Germano who we find contracting out his domestic services to the family of Frederico Momm. He was redeeming a debt of 150\$000 réis committing himself to four years of “his good services”, “compatible with

his strength and sex”. In exchange for respect and obedience (registered in the deed), he received the commitment of his new employer to “treat him when ill once this does not exceed fifteen days, with medicine, pharmacy, diet and treatment without any bonus for the debtor”<sup>lxvii</sup>.

How to explain the variety contained in these deeds? What do they reveal about the distinct situations in which former slaves could find themselves when trying to face the challenge of articulating a possible labour arrangement in the so uncertain condition of having a debt that actually served as a type of ballast on their freedom?

The new situation did not appear in homogenous form for everyone: the mother, probably single and with precarious ties apart from slavery, saw herself forced to commit her work and promise that of her daughter when still young for the following twenty years in exchange for an ambiguous promise to see her receive “the proper education”. The twenty-five year old young woman, practically re-enslaved herself for the following twenty-five years of her existence. How to compare these situations with those that show workers achieving not only comfortable periods to repay their debts, but even a difficult to explain tolerance of these periods? How to articulate in the same way these situations with the – certainly exceptional – case of the creed Creole Antonio Martins da Rocha who signed with his own hand in 1869 a contract for providing services in which he committed himself to pay a debt of one ‘*conto*’ of réis (i.e., one thousand réis) – with the businessman and local notable, Joaquim Augusto do Livramento – with nothing less than eight years of his services “selling water”, obliging himself to deliver every month 100,000 réis during the entire period?<sup>lxviii</sup> The situation of a former slave capable of committing himself to mobilise resources of this size – which would pay in eight years several times the value of an adult slave apt for work –, at the same time as he tied himself to a draconian work arrangement, certainly reveals much of the paradoxical conditions in which he was experiencing his ‘free’ work<sup>lxix</sup>.

The invisible threads that link these fragments of history are not self-evident. Most of the questions evoked cannot be dealt with in as much depth as in this article. For now, however, it is enough to draw up some hypotheses related to a general interpretation of the meanings that freedom of labour could have had for these men and women. Leaving aside for now the interrogation of the specific conditions of this time and place – the

town of Desterro in the nineteenth century – I will look at some aspects of the experiences of these freed workers that may throw some light on the common challenges that were present in the very heart of this new condition of ‘free labour’ they faced.

After being thrown into the labour ‘market’ in an urban environment, the options for a former slave, whether man or woman, were often quite restricted. The fact is that the vast majority of emancipations conceded in the last decade of slavery in the main notary office in Desterro contained some clause related to the provision of services – whether to their former owners or to third parties through service contracts – seems to be an important indication. Transforming slavery into a contract for the payment of a debt could also signify an attempt to somehow guarantee the continuity of an occupation that would guarantee subsistence and reduce uncertainty about the future. Pecuniary compensation for this work – as actually suggested in the contracts – was certainly subordinate to this condition<sup>lxx</sup>. This appears to be the principal element revealed in these choices. On the other hand, the possibility, which is also present, of obtaining freedom with money accumulated from paid employment while still a slave can reveal a less uncomfortable reality, that implies the existence of ties of solidarity outside slavery, knowledge of a trade and access to better work opportunities. But this was only a possibility and not a certainty. Certainly it was not obtainable by all<sup>lxxi</sup>.

In towns such as Desterro, where industrial occupations were non-existent or very limited and where agricultural production (in the rural districts) functioned with stable and small levels of labour, those who did not have a trade or who were not employed in domestic positions (or, also in the case of female work, in complementary occupations such as washerwoman or seamstress), the ‘market’ for former slaves meant above all non-specialised occupations that involved the contracting of their strength as porters or other forms of manual labour. These are intermittent occupations, linked to demand in the port, for public works, or the localised demands of private individuals. Uncertain, lacking continuity and badly paid, they nonetheless consisted of the most probable form of work in a local economy that did not experience even to a small extent that ‘lack of arms’ that concerned slave owners and employers in the agricultural export economy<sup>lxxii</sup>.

As the tough history of workers in the nineteenth century does not tire of pointing out ‘freedom of labour’ did not mean right to work. As in every economy which

‘modernises’, ‘available’ workers are freed but not necessarily ‘recruited’ for work<sup>lxxiii</sup>. The result of this is, obviously for the majority, a rather unpromising possibility of access to the positive aspects in which the concept of ‘freedom’ as an ideal and a horizon of expectation is dressed: access to property and a paid trade that would allow a former slave to live in dignity, the guarantee that they could construct by themselves their ties of sociability and belonging.

The only certainty of those freed was being thrown into a new social situation marked by precariousness, and rarely with the tools and resources necessary to face it. This precariousness could appear in an abrupt and irremediable form at every corner: through sickness and indigence, work accidents and invalidity, widowhood, becoming an orphan or being abandoned, solitary and unassisted old age.

The meanings of the terms of the contracts to which these men and women subjected themselves cannot be looked at without first taking into account this basic reality which hung over them as a sort of negative horizon on their choices. The reduction of uncertainty, as Giovanni Levi has taught us, is a potent motor for human actions and decisions<sup>lxxiv</sup>.

Therefore, we should not fool ourselves with the disturbing juxtaposition of slavery and freedom that the terms of the contracts seem to suggest. The terms that ritually reassert the ties of obedience and dependency of the old lords and the new employers are not there as proof that the former slaves did not understand the meaning of the freedom they had achieved, that they were paralysed by the property values of slavery and therefore incapable of living by autonomously. To the contrary I believe that they revealed very different things.

## **6. The political struggle of slaves and the meanings of freedom of labour**

Karl Polanyi compared the nineteenth century English working classes to the de-tribalised natives of the African colonies: the threat of ‘free trade’ had destroyed their social ties, disintegrating their cultural environment and mortally challenging their forms of organising the world<sup>lxxv</sup>. Perhaps we can appropriate this reasoning to follow the inverse path and re-propose this analogy for the experience of African slavery: pulled out

of their tribal relations, their culture and their territory, the Africans were thrown to the limit experience of social disaffiliation that signified slavery and the Atlantic trade. In the Americas, however – as shown exhaustively in historical research on slavery – slaves were not transformed into beings without will, into inert objects delivered to anomie. They certainly fought against slavery: they resisted, escaped and revolted in all possible ways. But also, and both despite slavery and within it, Africans and their descendents fought to construct and reorganise new social ties that would make life bearable. In the constant tension that characterised the slaveholding relationship, they were victims and accomplices in the construction of a social order that – even based on violence and exploitation – was organised in a stable form, conferring on them a determined place in a social hierarchy, in a relationship that gave them sustenance and care. Under the paternalist dominion of the slave owner the expectations of slaves were organised within a foreseeable horizon. The exchange of duties and obedience for favours and protection organised expectations of the future that could include the favour of emancipation, the possibility of marrying and creating a family, of achieving some form of autonomy and even becoming an *agregado* (a sort of share cropper). Any challenge to this order on the part of the slave could signify severe punishment, the desegregation of their ties and even death, but this punishments shared the same sense of order and being foreseeable. ‘Affiliation’ to, or ‘incorporation’<sup>lxxvi</sup> in, slaveholding society configured affiliation to a community, a territory and a hierarchical order<sup>lxxvii</sup>. Of course this was a profoundly oppressive form of belonging to which slaves had been incorporated against their will. It could be unbearable for some, simply tolerable for many, or even the only form of belonging known to those who had been born within it. What we cannot leave aside is that this was a form of social organisation capable of maintaining itself strongly cohesive and stable.

Underestimating the capacity for coherence and social cohesion of slavery is an error. The persistence of slavery in the Americas and Brazil cannot be understood without giving some weight to the aggregate role that social relations produced within these societies.

From the end of the eighteenth century and during the nineteenth, this order was profoundly transformed. The new forms of organisation in society, politics, work and the economy challenged the intellectual, moral and economic bases of slavery and destroyed it in the end<sup>lxxviii</sup>. For the slaves these transformations have many meanings. The most important was that perhaps it may have given them new meaning to their expectations and struggles. The idea of 'freedom' acquired a new meaning: it began to carry the absolutely new promise of access to universal rights, which implied another form of belonging that no longer passed through subordination, but was based on the idea of affiliation to a community or rights and civic duties. These included the right to work, but also to property, to dignified remuneration, their own sustenance, and to the future. In the same way, the right to choose which networks of sociability and interdependence, which relations of solidarity, which connections of sentiment to belong to<sup>lxxix</sup>. Freedom could also signify being able to give an autonomous meaning to this new belonging.

Thus, as noted by Sidney Chalhoub, the 'political cause' of slaves and former slaves became more than anything freedom, both their own and their fellows<sup>lxxx</sup>. But it must be added that freedom was (and is) a political objective involving tensions: it can be ambiguous as a reality and abstract as a value. The promises that the term invokes are not automatically fulfilled with emancipation and slaves know this. Under the empire of 'freedom' translated in terms of the anti-social utopia of the market, former slaves can face a threat as great as, or greater than, slavery: the 'modern' reality of social disaffiliation. The old coercions and protection can be easily substituted through the coercion of misery.

Freed from what was, despite everything, a stable and integrated social organisation, slaves could be thrown into the 'individuality' that is produced in the new organisation of the labour market. The threat of negative 'freedom' that signifies the absence of connections and the interdependency imposes itself on the horizon of the anticipations and choices of those men and women who fought for and won their emancipation and who struggled to insert themselves in some way in this world.

When we return to the service contracts, we can read in them not the survival of a deteriorating order, but the result of the confrontation of distinctive expectations. Contracts are not necessarily evidence of subordination of passive consent. They provide public testimony to a compromise solution, to the result of an active negotiation through which new forms of social organisation are articulated and constructed, new ties of dependence and inter-dependence.

On the one hand, it is certain that the employers and former owners tried to reorganise the ties of subordination and protection through the new institutional form of the contract. The fact that they did this by re-proposing forms of domination analogous to slavery should not cause fright. In Europe and the Americas in the nineteenth century, one of the characteristics of the conservative reaction to the desegregating threats of market society was, in the impossibility of reconstituting the old subjection<sup>lxxxix</sup>, the attempt to impose paternalism as a plan of political governability<sup>lxxxii</sup>. In Brazil it was not just the old ‘slaveocrats’, raised under the ideology of the “inviolability of the will of the slaveowner”<sup>lxxxiii</sup> who took pains to construct these protections: in addition – and significantly – ‘modern’ entrepreneurs such as the German immigrant, businessman and industrialist in Santa Catarina, Carl Hoepke, or even the businessman Germano Wendhausen, secretary of the *Desterro Abolitionist Club* also did<sup>lxxxiv</sup>.

On the other hand, those freed tried, in their own way, to actively construct sufficient social ties and guarantees to deal with uncertainty and precariousness, reorganising ties of dependence and interdependence that would allow their affiliation to a minimally viable social order – that would to some extent organise their expectations and give them some security in relation to the future (stability that their ‘freed’ situation did not guarantee and, at the very limit, threatened).

It is clear that the workers who contracted themselves were domestic workers, cooks, gardeners, or if lucky hat makers or shoemakers. The overwhelming majority were illiterate, and they would have found it very hard to articulate in trade unions or associations (even if some of them did this to an extent in the religious brotherhoods). They were not ‘modern’ industrial workers and it is different to call them ‘wage earners’. Certainly their experiences cannot be considered to be statistically representative of workers. But their luck and their struggles, I believe, reveals a lot about the luck and the

struggles of workers and the poor in general. They all faced the same enemy, incarnating in the new form of coercion the actual condition of the new organisation of free labour: misery, necessity and precariousness. These were the same causes that led the poor workers of Europe, China and India to cross the oceans to try to find a better life, working on sugarcane plantations in the Caribbean, on the railroads in the American West or the coffee plantations in Brazil. These were also the challenges that gave meaning – and continue to do so – to the political struggles of workers to conquer the right to freedom in their own terms.

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<sup>i</sup> The notion of ‘interests’ as Albert Hirschman notes, assumes an almost strictly economic character from the eighteenth century onwards. He discusses the history of this transformation in *Paixões e interesses. Argumentos políticos a favor do capitalismo antes do seu triunfo*. Rio de Janeiro: Record, 2002.

<sup>ii</sup> POLANYI, Karl. *The Great Transformation: the political and economic origins of our time*. Boston: Beacon Press, 1957 (1944), p. 68. The following pages are generally based on the analyses developed by Polanyi.

<sup>iii</sup> Once again I follow Polanyi’s discussion contained in *The Great Transformation*. The terms *embedded/disembedded* are central to Polanyi’s theoretical typology (cf. GRENDI, Edoardo. *Polanyi dell’antropologia economica alla microanalisi storica*. Milano: Etas Libri, 1978). This choice of terms is distinct from the terms used in the Brazilian translation cited above which I use for the rest.

<sup>iv</sup> Hirschman’s book, cited in note 1, serves as a useful introduction to the issue. See also Louis DUMONT, *Homo aequalis. Gênese e plenitude da ideologia econômica*. Bauru: Edusc, 2000.

<sup>v</sup> Cf. POLANYI, op. cit. p. 3.

<sup>vi</sup> The intellectual triumph of the liberal model was more extensive and much longer lasting than any political or economic triumph that this model has had. This has to be kept in mind in the analysis of political positions, reforming plans, or the calculation of the efficiency of social agents that keep this model on their rational horizon.

<sup>vii</sup> A fundamental reference appears to be E.P. Thompson’s discussion of the meaning of peasant struggles in England at the end of the eighteenth against the imposition of market rules for the regulation of prices on foodstuffs: *Customs in Common: Studies in Traditional Popular Culture*. New York: The New Press, 1993, especially chapters 4 and 5 (*The Moral Economy of the English Crowd in the Eighteenth Century* and *The Moral Economy Reviewed*, pp. 185-351).

<sup>viii</sup> Cf. CASTEL, Robert. *As metamorfoses da questão social. Uma crônica do salário*. Petrópolis: Vozes, 1998, p. 170.

<sup>ix</sup> *Ibid*, p. 155.

<sup>x</sup> At least this is the image that the defenders of the free market had of forced labour. In relation to the amount of rhetoric contained in this image, we have to keep in mind the growing importance of slave labour in the colonies of the New World during the ascension of liberal economics. In economies where

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labour “was not readily available in the right place, at the right price, or sufficiently detached from noncapitalist relations of production” – as in the case of America – slave and forced labour was widely used at the same moment when the capitalist system of paid labour was maturing in Europe. (Cf. COOPER, F., T. Holt & R. Scott, Introduction *In: Beyond Slavery: explorations of race, labor, and citizenship in postemancipation societies*, Chapel Hill: Univ. of N. Carolina Press, 2000, p. 23).

<sup>xi</sup> Cf. CASTEL, op. cit., p. 44.

<sup>xii</sup> Cf. CASTEL, op. cit., p. 212.

<sup>xiii</sup> For a discussion of the meaning of pauperism, see Chapters 9 and 10 of *The Great Transformation* and Chapter 5 of Robert Castel’s book. This sociologist in particular discusses how discourses about pauperism – which portray workers as morally degraded – do not represent only the fear of the ‘haves’ in regard to new social conflicts, nor ethnocentrism or pure anti-worker prejudice (even though it is this), rather it reveals something about the sociological reality of that society: “the novelty [pauperism] is due to people becoming aware of working conditions that are so degraded that entire populations are placed in the frontier of associability” (CASTEL, op. cit., p. 289).

<sup>xiv</sup> Cf. CASTEL, op. cit., p. 219.

<sup>xv</sup> Cf. CASTEL, op. cit., p. 221.

<sup>xvi</sup> Cf. CASTEL, op. cit. p. 284. This is also the meaning of the statement that “vagabonds represent the essential negative of the wage earner”, since “the vagabond is a ‘pure’ wage earner in the sense that speaking in absolute terms, he only possesses the strength of his arms. This is labour in most brutal form, but it is impossible for him to enter in a wage relationship to sell it. The condition of the wage earner, it can be said, ‘reaches the bottom of the barrel’ in the form of the vagabond, it is the lowest element in the wage earning condition: an impossible state (but one of which hundreds and thousands of examples exist) condemned to social exclusion. However, this limit case highlights aspects that at the time the majority of wage earners shared.” (ibid. p. 149).

<sup>xvii</sup> Cf. CASTEL, op. cit. p. 250.

<sup>xviii</sup> Cf. POLANYI, op. cit. p. 258.

<sup>xix</sup> Cf. CASTEL, op. cit., p. 263.

<sup>xx</sup> Id. Ibid.

<sup>xxi</sup> POLANYI, op. cit., p. 72. The concept of ‘commodity’ is central here. As Polanyi notes, it is through this that “the market mechanism is geared to the various elements of industrial life. Commodities are here empirically defined as objects produced for sale on the market; markets, again, are empirically defined as actual contacts between buyers and sellers. Accordingly, every element of industry is regarded as having been produced for sale, as then and then only will be subject to the supply-and-demand mechanism, interacting with price. In practice **this means that there must be markets for every element of industry; that in these markets each of these elements is organized into a supply and a demand group; and that each element has a price which interacts with demand and supply.**” (op. cit. p. 72, emphasis added).

<sup>xxii</sup> Cf. POLANYI, op. cit., pp. 73.

<sup>xxiii</sup> Cf. CASTEL, op. cit., p. 255. Here the analyses of Polanyi and Castel complement each other again. It can be said that both shared the Polanyi’s central thesis that is systematically outlined in *The Great Transformation*: “Our thesis is that the idea of a self-adjusting market implied a stark utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man and transformed his surroundings into a wilderness.” (Cf. POLANYI, op.cit., p. 3).

<sup>xxiv</sup> Cf. CASTEL, op. cit., p. 273.

<sup>xxv</sup> Cf. CASTEL, op. cit., p. 44.

<sup>xxvi</sup> Cf. CASTEL, op. cit., p. 45.

<sup>xxvii</sup> The attempt to understand the new misery that emerged with industrialisation is also at the heart of the origin of modern social theory: whether economic liberalism, social Darwinism, positivism or Marxism. Polanyi highlights the connection between pauperism, political economy and the ‘discovery of society’ that underpins the search for an explanation “true significance of the tormenting problem of poverty” (Cf. POLANYI, op. cit. p. 125). The solution, as guaranteed by the premises of classical economics, that sees in nature the explanation of society (transforming the laws of the market into natural laws), also commences to overshadow the sciences of man there. Social Darwinism, naturalism, and scientific racism are examples of this. Marxism as social thought, on the other hand, is an attempt (unsuccessful from the theoretical point

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of view, according to Polanyi) to reintegrate society into the human world. For a longer discussion (albeit one that is frequently impressionistic) of these themes, see Chapters 9 and 10 of *The Great Transformation*.

<sup>xxviii</sup> The concept of ‘social disaffiliation’ is used by Robert Castel to describe a social situation defined by the vulnerability of the position of an individual in relation to the networks of social integration, that can involve precarious belonging to a community of sociability network or the precariousness of work and the fragility of socio-cultural bonds. The concept is fluid, but central in his analyses of the constitution of ‘wage society’ in the nineteenth century and its specificities. For an extensive discussion of the issue, see the introduction and first chapter of *As metamorfoses da questão social* (pp. 21-93). See also : CASTEL, R. et alii. Symposium sur Les métamorphoses de la question sociale: une chronique du salariat, *Sociologie du travail*, n° 43, 2001, pp. 235-263.

<sup>xxix</sup> This is suggested, for example, in the work of PECK, Gunther. *Reinventing free labor: Padrones and immigrant workers in the North American West, 1880-1930* (New York: Cambridge University Press, 2000), which shows that in the American West in a space and time that US historiography usually considers as paradigmatic of the American entrepreneurial spirit, the notion of free labour involved important ambiguities, and labour relations centred on the figures of *padrones* and based on the coercion and protection that were used, not by rude and primitive employers, but by modern entrepreneurs.

<sup>xxx</sup> Cf. STEINFELD, Robert. *Coercion, contract and free labor in the Nineteenth Century*. Cambridge (Mas.): Cambridge University Press, 2001, p. 2. For a discussion prior to Steinfeld about the judicial history of ‘free labour’, see his *The Invention of Free Labor: The Employment Relation in English and American Law and Culture*. Chapel Hill (NC): North Carolina University Press, 1991.

<sup>xxxi</sup> Steinfeld calls attention to the need to construct an “anti-essentialist” vision of the typologies used to deal with the types of labour: “One difficulty with the conventional wisdom is that it reifies labor types, treats them as ‘things’ with a fixed content rather than as social/legal practices that might be constructed in a range of different ways” (*Coercion, contract and free labor*, cit. p. 33)

<sup>xxxii</sup> BRASS, Tom. “Free and unfree labour: the debate continues”, In: BRASS, Tom & Marcel Van Der Linden (eds.) *Free and Unfree Labour: The Debate Continues*. New York: Peter Lang Publishing, 1997, p. 12. Brass discusses in this introductory section the articles by Robert Steinfeld and Stanley Engerman published in the volume.

<sup>xxxiii</sup> In relation to this, see the articles published in the first part (*Negotiating Slavery*) of the book organised by TURNER, Mary: *From Chattel Slaves to Wage Slaves. The Dynamics of Labour Bargaining in the Americas*. Kingston, Bloomington and Indianapolis, London: Ian Randle, Indiana University Press, James Currey, 1995.

<sup>xxxiv</sup> Cf. GLICKSTEIN, Jonathan A. *Concepts of free labor in Antebellum America*. New Haven: Yale University Press, 1995, p. 2. This, we can add, also obviously applies to other places, such as Brazil, throughout the whole nineteenth century.

<sup>xxxv</sup> In relation to this, see: COOPER, F., T. Holt, & R. Scott, Introduction, in *Beyond Slavery...* cit. See also, especially, Frederick Cooper’s article in the same volume: “Conditions Analogous to Slavery”, pp. 107-149.

<sup>xxxvi</sup> Cf. COOPER, F., T. Holt, & R. Scott, Introduction, in *Beyond Slavery...* cit., p. 5. The authors of this inspirational book discuss the problem of ‘freedom’ in terms that are worth citing: “freedom is not a natural state. It is a social construct, a collectively shared set of values reinforced by ritual, philosophical, literary, and everyday discourse. Freedom has a history that contains distinct notions whose conflation in a particular historical tradition is itself as important as the tension among them.” (p. 9).

<sup>xxxvii</sup> “By the 1890’s, English elites had developed their own definition of ‘free labour. ‘*The Economist* noted in 1891... that the ‘general controversy about labour is going largely to turn upon the respective rights and duties of free labourers and unionists’— free labourers being defined as all those who wished to make their own independent contracts with their employers regardless of the trade-union position.’ John Saville, ‘Trade Unions and Free Labour: The Background to the Taff Vale Decision’, in *Essays in Labour History*, ed. Asa Briggs and John Saville (London, 1967), 319.” *Apud*: STEINFELD, Robert. *Coercion, contract and free labor in the nineteenth-century*, cit. p. 14, note 27.

<sup>xxxviii</sup> POLANYI, Karl (and Abraham Rotstein). *Dahomey and the slave trade. An analysis of an archaic economy*. Seattle and London: University of Washington Press, 1966, p. xvii.

<sup>xxxix</sup> There are numerous references. In the case of Brazil, to help provide (a necessarily incomplete) list of the most influential works, we can cite: CARDOSO, Ciro F. (org.) *Escravidão e abolição no Brasil: novas perspectivas*. Rio de Janeiro, Zahar, 1988; LARA, Sílvia H. (org) *Escravidão* (special number of *Revista*

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*Brasileira de História* with various articles on the theme, vol. 8, no. 16, March/August 1988); REIS, João José & Eduardo Silva, *Negociação e conflito. A resistência negra no Brasil escravista*. São Paulo: Companhia das Letras, 1989; CHALHOUB, Sidney, *Visões da Liberdade. Uma história das últimas décadas da escravidão na Corte*. São Paulo: Companhia das Letras, 1990; MATTOS, Hebe Maria, *Das cores do silêncio: os significados da liberdade no Sudeste escravista. Brasil, nineteenth century*, Rio de Janeiro: Nova Fronteira, 1998 (1995); FLORENTINO, M. e J. R. Góes, *A paz nas senzalas. Famílias escravas e tráfico atlântico, Rio de Janeiro, c. 1790 - c. 1850*. Rio de Janeiro: Civilização Brasileira, 1997; SLENES, Robert. *Na Senzala uma Flor. Esperanças e recordações na formação da família escrava, Brasil Sudeste, século XIX*. Rio de Janeiro: Nova Fronteira, 1999.

<sup>xi</sup> Therefore, it is also worth noting of Brazil what the authors of *Beyond Slavery* have stated about the American historiography of slavery: ‘Free labour’ is defined simply as “the ending of coercion, not as a structure of labor control that needed to be analysed in its own way”, cf. COOPER, F., T. Holt, & R. Scott, Introduction, cit. p. 3. They also add: “The concept of slave societies suggested, and encouraged the study of, a totality: a political economy, its ideological legitimization, and its ecological and cultural consequences, all somehow illuminated through and illuminating in turn a particular set of social relations of labor. **We are not accustomed to thinking about ‘freedom’ and ‘free societies’ in quite the same way**” (ibid. p. 4, emphasis added).

<sup>xii</sup> Two important works that directly emphasised the problem in Brazil of the ‘meaning of freedom’ – those of Sidney Chalhoub and Hebe Mattos cited two notes above – do this without fully dealing with the meaning of the ‘freedom of labour’. More recently the historiographical problem of the post-abolition era has been the subject of inspirational studies. See, for example, the recently launched studies: MATTOS, Hebe Maria & Ana Maria Rios. *O pós-abolição como problema histórico: balanços e perspectivas*. **Topoi**, volume 5, 8, January-June 2004, pp. 170-198; the already mentioned *Beyond Slavery*, cit., recently translated in Brazil with an important preface by Hebe Mattos; and also: MATTOS, Hebe Maria and Ana Lugão Rios. *Memórias do cativo: família, trabalho e cidadania no pós-abolição*. Rio de Janeiro: Civilização Brasileira, 2005.

<sup>xiii</sup> Once more there are various references for this. Some of the most important include: COSTA, Emília Viotti da. *Da senzala à colônia*, São Paulo: Liv. Ciências Humanas, 1982 (1966); PINHEIRO, P. S. (ed.). *Trabalho Escravo, Economia e Sociedade*. Rio de Janeiro: Paz e Terra, 1984; GEBARA, Ademir. *O mercado de trabalho livre no Brasil (1871-1888)*. São Paulo: Brasiliense, 1986; KOWARICK, L. *Trabalho e vadiagem: a origem do trabalho livre no Brasil*. São Paulo: Brasiliense, 1987; LAMOUNIER, M. L. *Da escravidão ao trabalho livre: a lei de locação de serviços de 1879*. Campinas: Papirus, 1988.

<sup>xiii</sup> LARA, Sílvia H. Escravidão, cidadania e história do trabalho no Brasil, *Projeto História*, no. 16, 1998, pp. 25-38.

<sup>xiv</sup> Such as, for example, the classic work by FRANCO, Maria Sílvia de Carvalho – *Homens livres na ordem escravocrata*, 3<sup>rd</sup> edition, São Paulo: Kairós, 1983 – which continues to influence socio-historical analyses in this area. For a thoughtful critique of this work and an alternative vision of some of its issues, see MATTOS, Hebe M. *Das cores do silêncio...* cit.

<sup>xv</sup> Manolo Florentino and João Fragoso have shown in contrast that the ‘rationality’ of the landholding class was not effectively homogenous and could in the nineteenth century cover a broadly ‘archaic’ project (not necessarily in the sense of value judgement, but rather in the Polanyian meaning of ‘archaic economy’): *O arcaísmo como projeto. Mercado atlântico, sociedade agrária e elite mercantil em uma economia colonial tardia. Rio de Janeiro, c. 1790 – c. 1840*. 4<sup>th</sup> ed. rev. and exp. . Rio de Janeiro: Civilização Brasileira, 2001.

<sup>xvi</sup> Therefore, starting from the supposition of what Brazilian society should be like, an analysis is attempted of what it is (or was). In doing this, a trap is constructed that risks making the interpretation go round in circles.

<sup>xvii</sup> As eloquently shown by Amy Dru Stanley in his book *From Bondage to Contract. Wage labor, marriage and the market in the age of slave emancipation*. Cambridge (Mas.): Cambridge University Press, 1998 (especially the first chapter). About the questions related to the meaning of freedom and contract in the post-emancipation English Caribbean, see the article by Thomas C. in the already cited *Beyond Freedom* (2000), as well as his book, *The Problem of Freedom. Race, Labor, and Politics in Jamaica and Britain, 1832-1938*. Baltimore and London: Johns Hopkins University Press, 1992.

<sup>xviii</sup> Ademir Gebara and Maria Lúcia Lamounier (see note 43) develop this argument analysing Laws 2040 dated 28/09/1871 (the Rio Branco Law) and Decree 2827, dated 15/03/1879 (the Sinimbu Law).

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<sup>xlix</sup> Section XXIX to XXXVI (*Ordenações Filipinas*, vols. 1 to 5; Cândido Mendes de Almeida Edition, Rio de Janeiro de 1870, digitalised version: <http://ara.ci.uc.pt/ihti/proj/filipinas/ordenacoes.htm>).

<sup>1</sup> The law was enacted on 13 September 1830. In relation to the history of the labour legislation in the slaveholding period, see GEBARA, *O Mercado de trabalho livre no Brasil (1871-1888)*, cit. (especially chapter 2). This is the main reference used for this paragraph.

<sup>li</sup> When a law on the leasing of agricultural services was passed. Ver LAMOUNIER, *Da escravidão ao trabalho livre*, op. cit.

<sup>lii</sup> Law 2040, dated 28 September 1871. *Collecção das Leis do Imperio do Brasil de 1871*, Vol. XXXI, Parte I (Rio de Janeiro, 1871), pp. 147.151 (references taken from CONRAD, Robert. *Os últimos anos da escravatura no Brasil*. Rio de Janeiro: Civilização Brasileira, INL, 1975, which transcribes the entire law in appendix II, pp. 366- 369).

<sup>liii</sup> Furthermore, the principal novelty introduced in the slave/owner relationship was the legalisation of practices that were previously only customary and whose validity depended above all on the will of the owners. Nevertheless, this was certainly a destabilising element of the order on which slaveholding relationships were based. For a discussion of the meanings of Law 1871 in relation to the customary practices of slavery, see Sidney CHALHOUB, *Visões da liberdade* (cit.).

<sup>liv</sup> This is the exclusive meaning given to the slaves' contracts if we follow, for example, what Mary Turner says about the bargaining terms available for slaves: speaking about a "new strand of slave worker resistance" that studies of slavery have highlighted (in addition to the traditional dichotomy 'accommodation' and 'rebellion'), the 'negotiation' of slaves, she states reveals 'a slave working population conscious of the value of its labour and determined to win the best returns for it' Introduction (by Mary Turner) *In: From Chattel Slaves to Wage Slaves*, cit. p. 2. This book is proof that even a formidable set of works critically concerned with the issue of the negotiation of slaves can fall into the traps arising out of the 'market' paradigm, even when they have explicitly attempt to avoid them.

<sup>lv</sup> In relation to this, see the discussion by Joseli Maria Nunes MENDONÇA – *Entre a mão e os anéis. A lei dos sexagenários e os caminhos da abolição no Brasil*. Campinas: Edunicamp/Cecult, 1999 (especially the first chapter, pp. 45-135)

<sup>lvi</sup> In relation to this, see the introduction to *Beyond Slavery*, cit., especially p. 21. For a discussion of an "alternative vision of the economic life" of Jamaican slaves and freedmen confronted with the expectations of British colonial officers in the post-emancipation period, see HOLT, Thomas, The essence of the contract, *In: Beyond Slavery*, cit. pp. 33-59.

<sup>lvii</sup> In addition, it is worth commencing with Edoardo Grendi's belief that "thinking economic society does not necessarily involve the requirement of an abstraction of the economic sphere of the 'rest'" (GRENDI, *Polanyi...* op. cit., p. 3). In other words, understanding that these "alternative visions" do not refer to an 'economy' abstracted from culture and social relations.

<sup>lviii</sup> The sample I will discuss below contains data raised in my own research, as well as in the research of Clemente Gentil Penna and Tamelusa Ceccato, whom I would like to thank.

<sup>lix</sup> This sample was obtained from ongoing research into the books of the Second Notary office of Florianópolis. This notary office has a series of books, with many gaps, that belonged to the First and Second Notary Offices of Desterro in the nineteenth century. The sample is a result of a complete survey of all the registrations in the following books: Book 11 of the 1<sup>st</sup> Notary Office (*1º Ofício de Notas*) - (1886-7), 2<sup>nd</sup> Notary Office (*2º Ofício de Notas*): books 11 (1847-1848), 12 (1849), 14 (1853), 22 (1859), 23 (1861), 29 (1866), 31 (1868-9), 33 (1870), 58 (1884), 59 (1885), 60 (1885-86), 61 (1886-87), 62 (1887).

<sup>lx</sup> "Deed for the provision of services made by the freed black from the Moringa Nation and José Manoel de Souza...", *Livro 11 do 2º Ofício de Notas da Cidade do Desterro (1847-1848)*. (Notary - João Antonio Lopes Gondim), fls. 4 and 4v.

<sup>lxi</sup> "Deed for the provision of services made by the freed black Theresa and Dona Filisberta Coriolana de Souza Passos", *Livro 12 do 2º Ofício de Notas da Cidade do Desterro (1849)* (Notary - João Antonio Lopes Gondim), fls. 10 and 10v.

<sup>lxii</sup> "Deed for the provision of services made by the freed black Sebastião Cabinda and Pedro [Kemper]", *Livro 11 do 2º Ofício de Notas da Cidade do Desterro (1849)* (Notary - João Antonio Lopes Gondim), fls. 31v and 32.

<sup>lxiii</sup> "Deed for the provision of services made by the freed black Maria Leocadia and Captain Fernando Antonio Cardoso", *Livro 11 do 2º Ofício de Notas da Cidade do Desterro (1849)* (Notary - João Antonio Lopes Gondim), fls. 41, 41v and 42.



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<sup>lxiv</sup> “Deed for the provision of services made by the freed black Francisco Benguella and Antonio Lopes da Silva”, *Livro 11 do 2º Ofício de Notas da Cidade do Desterro (1849)* (Notary - João Antonio Lopes Gondim), fls. 54 and 54v.

<sup>lxv</sup> “Deed for the provision of services made by the freed Creole João Ancelmo and Jacinto Feliciano da Conceição as described below” *Livro 58 do 2º Ofício de Notas da Cidade do Desterro (1884)* (Notary - Leonardo Jorge de Campos), fls. 27v, 28 and 28v.

<sup>lxvi</sup> “Deed for the provision of services made by the Creole Gertrudes and Fortunato Soncini as described below”, *Livro 59 do 2º Ofício de Notas da Cidade do Desterro (1885)* (Notary - Leonardo Jorge de Campos), fls. 5v and 6.

<sup>lxvii</sup> “Deed for the provision of services provided by the freed black Germano to Frerderico Momm”, *Livro 62 do 2º Ofício de Notas da Cidade do Desterro (1887)* (Notary - Leonardo Jorge de Campos), fls. 48 and 48v.

<sup>lxviii</sup> “Deed for the provision of services provided by the freed Creole Antonio Martins da Rocha to Doutor Joaquim Augusto do Livramento in the form declared below”, *Livro 31 do 2º Ofício de Notas da Cidade do Desterro (1868-69)* (Notary - Leonardo Jorge de Campos), fls. 88. (deed dated 31/05/1869).

<sup>lxix</sup> That he became – to create an anachronistic neologism – a type of ‘micro-employer of profit’ only makes the question even more interesting, to the extent that it reveals the ambiguity of the actual idea of ‘entrepreneur’ supposedly within the reach of any ‘free’ worker.

<sup>lxx</sup> The acceptance of such an onerous financial commitment as accepted by the freed slave Antonio da Rocha (see note 68) can only be understood in this context as a choice that places stability of work (and of work capable of providing dignified and stable subsistence) ahead of pecuniary gains.

<sup>lxxi</sup> The existence of paid activities during slavery involved a series of work arrangement between slaves and their owners. These activities are well documented and deserve the attention of the many specialists on the history of slavery. See, for example, SOARES, Luiz Carlos, Os escravos de ganho no Rio de Janeiro do século XIX century, *Revista Brasileira de História*, no. 16, March/Aug. 1988 (number dedicated to Slavery organised by Sílvia Lara), pp. 107-142; as well as the classic work of Sidney CHALHOUB, *Visões da liberdade* (cit.). For the south of Brazil, it is worth citing research that points in the same direction: PENA, Eduardo Spiller. *O jogo da face. A astúcia escrava frente aos senhores e à lei na Curitiba Provincial*. Curitiba: Aos Quatro Ventos, 1999; MOREIRA, Paulo Roberto S. *Os cativos e os homens de bem: experiências negras no espaço urbano. Porto Alegre, 1858-1888*. Porto Alegre: EST Edições, 2003.

<sup>lxxii</sup> This was a concern that underpinned the discussion about the importation of foreign labour and the handling of national and slave labour, such as in the coffee plantation in the last decades of slavery (cf. LAMOUNIER, *Da escravidão ao trabalho livre*, cit.). It is important to note that the differences between the rural and urban situations are very important and will receive more attention in the continuation of this work.

<sup>lxxiii</sup> CASTEL, R. *As metamorfoses da questão social*. cit. p. 117.

<sup>lxxiv</sup> Cf. LEVI, Giovanni. *A herança imaterial. Trajetória de um exorcista no Piemonte do século XVII*. Rio de Janeiro: Civilização Brasileira, 2000, p. 104.

<sup>lxxv</sup> Cf. POLANYI, K. *The Great Transformation*, cit. p. 191.

<sup>lxxvi</sup> As suggested by Bernard Lepetit as an alternative to the term ‘social affiliation’ used by Robert Castel (cf. LEPETIT, B. Le travail de l’histoire, *Annales HSS*, May-June 1996, no. 3, p. 537).

<sup>lxxvii</sup> Cf. Introduction to *Beyond Slavery*, cit. p. 60.

<sup>lxxviii</sup> As highlighted by David Brion Davis, this also involves a radical transformation in the Western moral conscience, marked by the appearance of a relatively generalised opinion that slavery in the New World “symbolised all the forces that threatened the true destiny of man”, Cf. DAVIS, D. B. *The problem of Slavery in the Age of Revolution 1770-1823*. New York/Oxford: Oxford University Press, 1999, p. 41.

<sup>lxxix</sup> In relation to this, see, once again, the discussion about the idea of citizenship, rights and freedom in the context of slaveholding societies and in the post-emancipation period, cutting through the work of Cooper, Holt and Scott, in *Beyond Slavery*(cit.).

<sup>lxxx</sup> Cf. CHALHOUB, S. A enxada e o guarda-chuva: a luta pela libertação dos escravos e a formação da classe trabalhadora no Brasil (paper presented to the *XXI Simpósio Nacional da ANPUH*, Niterói, June 2001, mimeo.).

<sup>lxxxi</sup> From the point of view of the elites, as shown by Castel, “when the literally reactionary option of reconstituting, as such, the old subjections, it is necessary instead to reconstruct in a universe where in principle the contract reigns, new regulations that are compatible with freedom and maintaining relations of

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dependency, without which social order is impossible” (Cf. CASTEL, R. *As metamorfoses da questão social*, cit. p. 307).

<sup>lxxxii</sup> Cf. CASTEL, R. op. cit. p. 278. See for the Americas (especially the Caribbean), HOLT, Thomas, “The essence of the contract”, cit. *In: Beyond Slavery*; SCOTT, Rebecca C. “Fault Lines, Color Lines, and Party Lines”, *In: Beyond Slavery*, cit. pp. 61-106; CRATON, Michael. Reembaralhando as cartas: a transição da escravidão para outras formas de trabalho no Caribe britânico (c. 1790-1890), *Estudos Afro-Asiáticos*, no. 28, 1995, pp. 31-83.

<sup>lxxxiii</sup> To use the apt expression used in Sidney Chalhoub’s analyses (see, for example, “Para que servem os narizes? Paternalismo, darwinismo social e ciência racial em Machado de Assis”, *In* CHALHOUB, S. et alli (org.) *Artes e ofícios de curar no Brasil. Capítulos de história social*. Campinas: Ed. Unicamp, 2003, p. 31).

<sup>lxxxiv</sup> *In Livro 58 do 2º Ofício de Notas da Cidade do Desterro (1884)* (Notary - Leonardo Jorge de Campos) are registered an emancipation and two service contracts which have as the contractor “Carl Hoepke & Companhia”. *In Livro 60 do 2º Ofício de Notas da Cidade do Desterro (1884)* (Notary - Leonardo Jorge de Campos), there is a service contract between Wendhausen and the freed Creole Idalino who committed himself as payment for the two hundred thousand réis that Wendhausen had lent him to work for four years “with all respect, love and charity” (fls. 34).

Translated by Eoin O’Neill

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