

ANTI-SLAVE-TRADE LAW, 'LIBERATED AFRICANS' AND THE STATE IN THE SOUTH ATLANTIC WORLD, c.1839–1852*

On 5 August 1844, six African men boarded HMS *Helena* to tell Commander Cornwallis Ricketts that their lives were in danger. 'They state themselves that they are slaves, and that they are in bodily fear'. The six had embarked on the brig *União* at Mozambique Island, the capital of the Portuguese colonial 'province' of Mozambique. The *União* had been sailing in the 'Quillimane River' when the *Helena* had intercepted it as a suspected slave ship. Ricketts's officers, together with those of a fellow naval ship, HMS *Bittern*, then spent a week searching the *União* for signs of slave trading, and the men's statement added to the evidence.¹ Through a translator, the six requested a transfer to their captor's ship.² Ricketts agreed to accommodate the six on the *Bittern*, and all three ships set course for Cape Town, where Ricketts deposited the *União* at the British–Portuguese Court of Mixed Commission for adjudication. If the court condemned the ship, Ricketts and his crew would pocket prize money for the value of the ship, its fittings and equipment, and its human cargo. But the court's proceedings unfolded in a way that neither he nor anyone else could have expected.

The six men on board the *União* were part of a much larger diaspora of ex-slaves rescued from the transatlantic slave trade in

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¹ Entry for 5 Aug. 1844, ship log of HMS *Helena*, ADM 53/2619, UK National Archives, London (hereafter UKNA).

² In general, I have retained nineteenth-century spellings when quoting from sources. 'Quillimane' is now 'Quelimane', the seaport and capital of Zambezia Province, Mozambique. Archives of Cape Town Slave Trade Commission, papers relating to vessels adjudicated — the *União* [1844–1845], item 2, FO 312/37, UKNA.

the nineteenth century. Between Britain's legislative abolition of the slave trade in 1807 and the actual ending of the trade sixty years later, around 180,000 slaves were rescued, primarily when a British naval ship, such as the *Helena*, intercepted the slave ship on which they had been embarked.³ Several names for these ex-slaves overlapped, such as 'recaptives', 'captured Negroes' and '*emancipados*'. But the overarching international framework that tried to define who could be rescued — and how — named them 'liberated Africans'.⁴

Since slaves were a type of commodity, the rescue missions intervened in questions of ownership, and so the international framework for suppressing the slave trade defined 'liberated Africans' in terms of a change in legal possession. When a naval patrol intercepted a slave ship, the slaves became 'prize negroes': property of their captor with an exchange value.⁵ The captor then deposited the slave ship at one of two kinds of court. A court of mixed commission adjudicated when the nationality of a slave ship corresponded to a co-signatory of a bilateral abolition treaty with Britain, whereas a British vice-admiralty court adjudicated when the nationality of a ship was indeterminate.⁶ The court, as representative of the sovereignty of Britain or of the

³ Daniel Domingues da Silva *et al.*, 'The Diaspora of Africans Liberated from Slave Ships in the Nineteenth Century', *Journal of African History*, lv (2014).

⁴ Scholarship is divided on whether 'Liberated' or 'liberated' African is the most appropriate term. There was a Liberated African Department in Sierra Leone. But contemporary records varied regarding capitalization, and to avoid giving the impression of a reified group, I choose 'liberated African'.

⁵ I use the contemporary technical term 'prize negro' to refer to a captured slave who has not been processed through a court procedure to confirm her status as a 'liberated African', which I use when discussing recaptive slaves who have gone through that process. In practice (as we will see with one of the cases discussed below), the distinctions could be slight or non-existent. I use inverted commas for the first usage of these phrases alone. Prize negroes were not 'prize slaves', which strictly refers to slaves captured during wartime — see Kirsten McKenzie, citing the late Patrick Harries, in Kirsten McKenzie, *Imperial Underworld: An Escaped Convict and the Transformation of the British Colonial Order* (Cambridge, 2016), 105, n. 9. I use 'anti-slave-trade' to refer to attitudes and actions that are aimed at suppressing the slave trade; these attitudes and actions are not necessarily 'abolitionist', which additionally made some provision for what would subsequently happen to the slaves subject to the action/attitude.

⁶ Slaves also became liberated Africans after a shipwreck or when rescued from a slave factory (i.e. trading post) by a military operation. But naval interceptions were by far the most common form of intervention. This article does not address the question of how the 'nationality' of a ship was determined; it depended on factors such as the ship's owner, crew, flag and papers, which did not necessarily indicate the same nationality. On the courts more generally, see Leslie Bethell, 'The Mixed

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treaty's signatories, would pay prize money to buy the slaves and then renounce ownership of them, thereby freeing them. The slave trader was not necessarily punished: he was handed over to his own nation's jurisdiction.⁷ The liberated Africans became apprentices for between three and fourteen years.

Studying the archives to ask what happened, and why, as the liberated Africans negotiated their way through these myriad legal processes provides a new way of thinking about enslavement and abolition. Christopher Leslie Brown's study of various anti-slave-trade projects, such as the founding of colonial Sierra Leone, focused attention on how abolitionists accumulated and spent their 'moral capital'.⁸ In turn, historians have revealed the practical workings of anti-slave-trade activity, such as the social history of the naval crews that intercepted the ships, the bureaucracy of the prize money system, and the resettlement of liberated Africans around the Atlantic world.⁹ The last decade has also witnessed studies of how Britain's anti-slave-trade and anti-slavery agenda propelled a shift from maritime intervention to territorial colonization in Africa.¹⁰ However, there has been less focus on the history of the liberated Africans themselves. Current scholarship divides between those who view the anti-slave-trade naval patrols, treaties and settlement schemes as ultimately attributing rights (even human rights) to these

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Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century', *Journal of African History*, vii (1966).

⁷ Lauren Benton, 'Abolition and Imperial Law, 1790–1820', *Journal of Imperial and Commonwealth History*, xxxix (2011), 365.

⁸ Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill, NC, 2006).

⁹ Robert Burroughs, 'Eyes on the Prize: Journeys in Slave Ships Taken as Prizes by the Royal Navy', *Slavery and Abolition*, xxxi (2010); Padraic X. Scanlan, 'The Rewards of Their Exertions: Prize Money and British Abolitionism in Sierra Leone, 1808–1823', *Past and Present*, no. 225 (Nov. 2014); Richard Huzzey, 'The Politics of Slave-Trade Suppression', in Richard Burroughs and Richard Huzzey (eds.), *The Suppression of the Atlantic Slave Trade: British Policies, Practices and Representations of Naval Coercion* (Manchester, 2015); da Silva *et al.*, 'Diaspora of Africans Liberated from Slave Ships'.

¹⁰ Robin Law, 'Abolition and Imperialism: International Law and the British Suppression of the Atlantic Slave Trade', in Derek R. Peterson (ed.), *Abolitionism and Imperialism in Britain, Africa, and the Atlantic* (Athens, Ohio, 2010); Derek R. Peterson, 'Introduction: Abolitionism and Political Thought in Britain and East Africa', in Peterson (ed.), *Abolitionism and Imperialism in Britain, Africa, and the Atlantic*; Richard Huzzey, *Freedom Burning: Anti-Slavery and Empire in Victorian Britain* (Ithaca, NY, 2012).

recaptives, and those who focus on the ways in which the liberated Africans suffered *de facto* re-enslavement, for example through apprenticeship.¹¹

The insight of scholars who have focused on slaves and the law offers a promising route beyond this impasse in historians' understanding of liberated Africans. Many scholars have observed that the interactions of slaves with authorities were based partly on their actual or aspirational legal status.¹² The outcome of the bilateral treaties was the possibility of making claims based on the new legal status of being or becoming a 'liberated African'. The treaties constructed this status through comparisons to manumitted slaves or waged apprentices, but nonetheless kept it legally distinct regarding processes of identification, adjudication and assignment to apprenticeship.

Original archival research in Britain, South Africa and Brazil reveals the fundamental ambiguity of the legal status of 'liberated Africans'. This ambiguity affected issues such as how British imperial authorities expected its colonial governments and other states' governments to uphold 'liberated African' status, to whom these governments were accountable, and the processes by which the liberated Africans could fulfil their actual or aspirational status. By seeing how anti-slave-trade law came alive through the actions and interpretations of state officials, this article argues that the ambiguous legal status gave states and hirers the opportunity to exploit liberated

¹¹ On human rights, see Jenny S. Martinez, 'Antislavery Courts and the Dawn of International Human Rights Law', *Yale Law Journal*, cxvii (2008); Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (Oxford, 2012); for a critique, see Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Mass., 2010), ch. 1 and p. 247, n. 46. Robert Conrad's pioneering article on liberated Africans in Brazil emphasized both *de facto* enslavement and a 'legal purgatory between slavery and freedom': Robert Conrad, 'Neither Slave nor Free: The Emancipados of Brazil, 1818–1868', *The Hispanic American Historical Review*, liii (1973), 51, 69; see also Luis Carlos Soares, 'Urban Slavery in Nineteenth Century Rio de Janeiro' (Univ. of London Ph.D. thesis, 1988), 427, for the view that liberated Africans lived in 'total slavery'.

¹² Useful examples include Alejandro de la Fuente, 'Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited', *Law and History Review*, xxii (2004); Rebecca J. Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery* (Cambridge, Mass., 2005); Natalie Zemon Davis, 'Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname', *Law and History Review*, xxix (2011); Camillia Cowling, *Conceiving Freedom: Women of Color, Gender, and the Abolition of Slavery in Havana and Rio de Janeiro* (Chapel Hill, NC, 2013); Michelle A. McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600–1700* (New York, 2016).

Africans, but also gave liberated Africans the chance to reshape the law to suit the particular claims they wished to make. Instead of a position on a spectrum between enslavement and the 'full freedom' associated with rights, 'liberated African' legal status was characterized by what I call *unguaranteed entitlements*. Liberated Africans could plausibly claim certain kinds of treatment, wages and status, as prescribed by anti-slave-trade treaties, but they possessed no *right* to those goods. Liberated Africans could claim something from the state, but the state was only ever obligated to honour that claim as part of adhering to abolitionism as a projected moral universal, rather than in terms of respecting rights or for fear of any formal international, superstate legal sanction.

I

In Lauren Benton's influential analysis, the politics on the shores of the early modern Atlantic resembled a series of 'jurisdictional polygons' mapped onto land. Instead of seeing empires as projecting spheres of influence or meeting at borderlands, Benton describes states as trying to fill up spaces with sovereignty. Sovereignty may be strong or weak at specific points at the edges of these spaces.¹³ A state tried to exploit its rivals' weaknesses, leading to areas such as enclaves or riverine regions, which competing states struggled to occupy and manage completely. No single state could possess the sea, so individual ships travelled across the Atlantic as sovereign 'corridors', bearing the sovereignty of the state under whose flag the ship sailed.

Benton's model helps to visualize how Britain intended the suppression of the slave trade to work. Britain tried to reshape the polygons, points and corridors of sovereignty in the Atlantic world from 1807 onwards. Until the end of the Napoleonic Wars in 1815, Britain's metropolitan government authorized the Royal Navy to intercept suspected slave ships as wartime enemies, and intercepted ships became the prizes of the naval captors.¹⁴ Suppression was essentially a question of British naval corridors

¹³ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York, 2010).

¹⁴ Bethell, 'Mixed Commissions for the Suppression of the Transatlantic Slave Trade', 81; Benton, 'Abolition and Imperial Law'; Scanlan, 'Rewards of Their Exertions', 138–9.

attacking enemy naval corridors. But from 1815 onwards, Britain's former allies and enemies demanded that the anti-slave-trade patrols and courts operate according to a set of internationally-agreed principles, and so Britain signed a series of bilateral treaties with Portugal, Spain and the Netherlands. The treaties incrementally generalized the category of 'liberated African' until it covered most slave-trading routes — for example, the treaty with Brazil, signed after independence, was almost a copy of the one with Portugal. These bilateral treaties established a new set of jurisdictional points at port cities around the Atlantic, which hosted the mixed-commission and vice-admiralty courts, and which thereby became the key sites for the adjudication of slave ships and the conversion of slaves into liberated Africans. From a war between corridors, abolition in its second phase became a question of how effective a set of international jurisdictional points would be at processing slave ships.

The treaties did not cover all slave-trading routes. France and the United States resisted signing treaties — France insisted that its national courts have jurisdiction over its intercepted slave ships, and the United States did not agree to a mutual right of search of its ships with Britain until the Civil War. But the most serious problem was the Brazilian slave trade. The initial treaty with Portugal only targeted the slave trade north of the equator, but just three ports (Luanda, Cabinda and Benguela) accounted for the majority of the Lusophone slave trade in the early nineteenth century, and all of them were south of the equator.¹⁵ Ironically, the slave trade to Brazil *expanded* after abolition. Of the entire transatlantic slave trade, the destination with the single largest number of embarked slaves was Brazil in the decade 1821–30, with around 553,000 embarkations. Brazil's imperial government was reluctant to suppress the slave trade, even mocking the Feijó Law that declared it illegal in 1831 as 'para ingles ver' ('[merely] for the English to see').¹⁶ By sheer volume of slaves and by intransigence to diplomatic pressure, the South Atlantic trade

¹⁵ See, for instance, the ports of embarkation between 1800 and the declaration of Brazilian independence in 1822: Estimates Database (2016), *Voyages: The Trans-Atlantic Slave Trade Database* (hereafter *TSTD*), at <<http://slavevoyages.org/voyages/F1L0U1VU>> (accessed 9 Dec. 2017).

¹⁶ Courtney J. Campbell, 'Making Abolition Brazilian: British Law and Brazilian Abolitionists in Nineteenth-Century Minas Gerais and Pernambuco', *Slavery and Abolition*, xxxvi (2015), 522, 523.

to Brazil occupied top place in Britain's anti-slave-trade agendum from 1826 until the closing of the trade in 1851.

After another decade of heavy slave trading, and with diplomatic murmurings that Portugal and Brazil were having second thoughts about renewing the anti-slave-trade treaties, the British government decided that unilateral action would fill the legal gaps in the international regime. The Palmerston Act 1839 (2 & 3 Vict., c. 73) and Aberdeen Act 1845 (8 & 9 Vict., c. 122) authorized the Navy to intercept any suspected slaver bound for Portugal and Brazil whether it was carrying slaves or merely fitted out for the trade, and whether it displayed a clear nationality or not.¹⁷ British squadrons could now reach beyond the treaties, which had limited interceptions to ships whose flags corresponded to the treaties' signatories, to consider any *potential* slave vessel. Slavers without a clear nationality fell under the jurisdiction of vice-admiralty courts, and so port cities began to witness an increase in the number of vice-admiralty cases alongside mixed-commission ones.

The period 1839–52 was therefore a period of rapid expansion of British domination in and around the Atlantic to suppress the slave trade, and the primary target of that expansion was Brazil. At the same time, the period represented a pivot within the British imperial imagination regarding liberated Africans for two reasons. First, the Palmerston Act crushed the slave trade from south-east Africa to the Atlantic, and the Cape Town courts adjudicated most of the intercepted slave ships. In 1842, Portugal agreed a new anti-slave-trade treaty with Britain and, over the next two years, naval squadrons effectively eliminated the trade. Second, from 1839, colonial governors at Sierra Leone implemented a policy of retrenchment. To cut the administrative costs of settling newly-arrived liberated Africans, the colony periodically exported thousands of them to the Caribbean.¹⁸ Although the Cape sits geographically and conceptually in the histories of both the Atlantic and Indian

¹⁷ The Palmerston Act initially authorized only the capture of Portuguese south of the equator and fitted-out slave ships, but three weeks after its passage, naval officers were instructed to intercept indeterminate ships too. Leslie Bethell, *Abolition of the Brazilian Slave Trade: Britain, Brazil and the Slave Trade Question, 1807–1869* (Cambridge, 1970), 161–4; Huzzey, 'Politics of Slave-Trade Suppression'.

¹⁸ Christopher Fyfe, *A History of Sierra Leone* (London, 1962), 219; Rosanne Marion Adderley, 'New Negroes from Africa': *Slave Trade Abolition and Free African Settlement in the Nineteenth-Century Caribbean* (Bloomington, 2006).

Oceans, the anti-slave-trade activity that ultimately closed the major routes in the South Atlantic made the Cape more part of the Atlantic in the years 1839–52.¹⁹ Within a legal category that stretched over the entire Atlantic, these years represented a period when the questions of liberated Africans' arrival, settlement and legal status impinged most on Brazil and the Cape. Port cities were points at the edge of jurisdictional polygons, and from 1839 Cape Town was a particularly important point for the management of incoming liberated Africans.

The port cities of Salvador da Bahia and Cape Town offer a fruitful comparison of the effects of anti-slave-trade law in the years following the Palmerston Act, as state officials and liberated Africans attempted to make sense of how to interpret the many laws and processes that defined the legal status of liberated Africans. Both port cities were volatile prior to 1839 and fundamentally unprepared for the influx of liberated Africans that the state authorities would be required to manage. Subaltern groups, such as mobile labouring bands of ex-slaves, presented urgent problems to political authority.

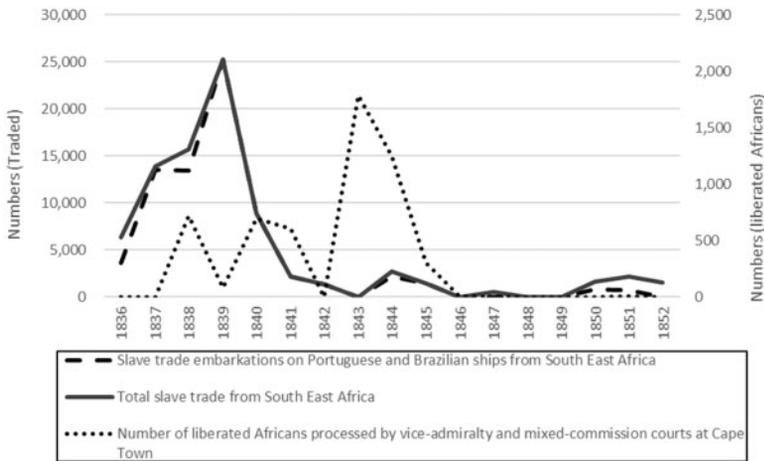
In 1839, the Cape had been a British colony for only thirty-three years (excluding the brief British occupation in the period 1795–1803), and its continued colonial rule was by no means certain. There were six frontier wars between the British and the Xhosa, or another polity, between 1799 and 1852. The Boers had headed north in the 'Great Trek' in 1834 partly to escape British colonial jurisdiction that had recognized the emancipation and landowning rights of Khoikhoi and 'coloured' populations under Ordinance 50 (1828).²⁰ Within the Western Cape, the press tried to preserve a self-image of stability and respectability.²¹ But the region was still vulnerable to the same pressures of slave resistance that troubled many

¹⁹ On Cape Town's history, see Nigel Worden (ed.), *Cape Town between East and West: Social Identities in a Dutch Colonial Town* (Auckland Park, South Africa, 2012).

²⁰ Susan Newton-King, 'The Labour Market of the Cape Colony, 1807–28', in Shula Marks and Anthony Atmore (eds.), *Economy and Society in Pre-Industrial South Africa* (London and New York, 1980); Stanley Trapido, '“The Friends of the Natives”: Merchants, Peasants and the Political and Ideological Structure of Liberalism in the Cape, 1854–1910', in Marks and Atmore (eds.), *Economy and Society in Pre-Industrial South Africa*; Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge, 2002).

²¹ Kirsten McKenzie, *Scandal in the Colonies: Sydney and Cape Town, 1820–1850* (Carlton, 2004).

THE SUPPRESSION OF THE SLAVE TRADE FROM SOUTH EAST AFRICA*



* Source: Slave trade from figures from Estimates Database (2016), *TSTD*, at <<http://slavevoyages.org/voyages/v9tMFb7C>> (accessed 9 Dec. 2017). Court captures derived from adding data from CCT 382, Collector of Customs Registration Book, 'Negroes 24 Oct '43 to 23 May '51', Western Cape Archives, Cape Town, South Africa (hereafter WCA), and Mixed Commission Minutes of Proceedings 1843–1859, FO 312/24, UKNA. Note that CCT 382 is the only extant register of perhaps three in total, and the data from at least seventeen ships is missing. *Correspondence with British Coms. at Sierra Leone, Havana, Cape of Good Hope, Jamaica, Loanda, and Cape Verd Islands; Reports from British Vice-Admiralty Courts and Naval Officers on Slave Trade, 1849–50 (Class A)*, Parliamentary Papers, 1850, lv, paper 1290.

places around the Atlantic. In 1825, Galant, a slave in Bokkeveld (around 100 miles north of Cape Town), led a rebellion, killing his owner and two others.²² A slave maroon community existed on the outskirts of Cape Town in the eighteenth century.²³ The Protector of Slaves, established in 1826 to help improve slaves' living and working conditions, allowed slaves to submit complaints against masters in cases of corporal punishment, constraints on behaviour (such as refusals to allow slaves to marry) and denials of manumission.²⁴

²² G. M. Theal (ed.), *Records of the Cape Colony* (London, 1904), vol. xx, 188–341.

²³ R. L. Watson, *The Slave Question: Liberty and Property in South Africa* (Middletown, Conn., 1990), 50–1.

²⁴ McKenzie, *Scandal in the Colonies*, ch. 5; Fiona Vernal, "'No Such Thing as a Mulatto Slave': Legal Pluralism, Racial Descent and the Nuances of Slave Women's

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Capetonian political authorities developed similar institutions to manage liberated Africans, mainly in response to metropolitan pressure and Africans' complaints. In 1828, the Bigge-Colebrooke Commission of Inquiry uncovered widespread corruption regarding the allocation of liberated Africans to private hirers and how they were treated during apprenticeship.²⁵ Charles Blair and the wonderfully named William Wilberforce Bird had conspired to use their Treasury positions to assign liberated African apprentices to preferred clients as part of business deals.²⁶ During this process, the liberated African cook Jean Ellé suffered de facto re-enslavement when Blair transferred him from a benevolent hirer to an unpleasant one.²⁷ Ellé's testimony to the Commission was crucial in prompting the Inquiry to criticize Blair and Bird. The Commissioners' proposed remedy was the introduction of a ten-shilling servant tax to protect the interests of apprentices against exploitative masters.²⁸

Like Cape Town, Salvador had periodically faced slave resistance in the early nineteenth century, such as the tailor revolt in 1798, the fishermen revolt of 1814, and fears that Candomblé practices inside 'African tenements' in the city

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Sexual Vulnerability in the Legal Odyssey of Steyntje van de Kaap, c.1815–1822', *Slavery and Abolition*, xxix (2008), 41.

²⁵ Christopher Saunders, "'Free, yet Slaves': Prize Negroes at the Cape Revisited', in Nigel Worden and Clifton Crais (eds.), *Breaking the Chains: Slavery and Its Legacy in the Nineteenth-Century Cape Colony* (Johannesburg, 1994); McKenzie, *Imperial Underworld*, ch. 4. On the Commission of Inquiry, which investigated colonial governance in the Cape, Mauritius and Ceylon (Sri Lanka), see Zoë Laidlaw, 'Investigating Empire: Humanitarians, Reform and the Commission of Eastern Inquiry', *Journal of Imperial and Commonwealth History*, xl (2012).

²⁶ John Philip, *Researches in South Africa Illustrating the Civil, Moral, and Religious Condition of the Native Tribes: Including Journals of the Author's Travels in the Interior, Together with Detailed Accounts of the Progress of the Christian Missions, Exhibiting the Influence of Christianity in Promoting Civilization* (London, 1828), vol. i, 388–91.

²⁷ Saunders, "'Free, yet Slaves'"; Patrick Harries, "'Ideas of Liberty and Freedom': Servile Labour at the Cape Colony Before and After Emancipation', in Babacar Fall, Ineke Phaf and Andreas Eckert (eds.), *Travail et culture dans un monde globalisé: de l'Afrique à l'Amérique Latine* (Paris, 2015), 181; McKenzie, *Imperial Underworld*, ch. 4.

²⁸ There was no punishment for Blair and Bird, however, because the Commission had powers to investigate but not to punish, and Blair and Bird had also kept their arrangements informal to reduce the chance of finding legal proof of corruption. See McKenzie, *Imperial Underworld*, 128.

could form an urban maroon community.²⁹ The most severe revolt was the Malê rebellion in January 1835, when hundreds of slaves, led by African-born Muslims, had marched through the streets. In response, the chief of police suggested two new ways of dealing with freed slaves (*libertos*), particularly those born in Africa and who had gained manumission in Brazil. In a letter to the Ministry of Justice in Rio de Janeiro, he argued that African-born *libertos* were a threat to 'our political existence' and that the Ministry should therefore authorize either mass deportations or compulsory labour on plantations, rather than allowing the *libertos* to roam Salvador where it was difficult to track them.³⁰

The provincial assembly of Bahia added three more policies in a proposal to the General Legislative Assembly. First, the assembly wished to strike an agreement with the Republic of Uruguay and the Provinces of Rio da Prata to prevent the continuation of the illegal slave trade 'of millions of barbarians, which, with the most shameful scandal, still occurs in our ports', and which was even more threatening to Bahia's security and prosperity than 'the spirit of insurrection and rebellion' that arose during the period of the legitimate slave trade. Second, 'the absolute cessation of all Commerce between our ports and those of west and east Africa, with the exception of the Cape Colony' would prevent the revival of any slave trading. Third, a Brazilian colony in Africa would offer a new home for *libertos* where 'the Laws of humanity, the precepts of the Christian Religion, and the principles of current civilization' would guide colonial rule.³¹ In effect, the provincial assembly advocated the retraction of the jurisdictional corridors of goods and slaves that had paradoxically led Bahia to grow rich and become chronically unstable.

By the 1850s, the police and Ministry of Justice had begun to apply this dual approach to liberated Africans whom naval patrols

²⁹ On rebellions and conspiracies, see George Reid Andrews, *Afro-Latin America, 1800–2000* (Oxford, 2004), 75; Greg L. Childs, 'Secret and Spectral: Torture and Secrecy in the Archives of Slave Conspiracies', *Social Text*, xxxiii (2015). On urban 'quilombos' (maroon groups) in tenement housing, see João José Reis, *Divining Slavery and Freedom: The Story of Domingos Sodré, an African Priest in Nineteenth-Century Brazil*, trans. H. Sabrina Gledhill (New York, 2015), 166.

³⁰ Manuela Carneiro da Cunha, *Negros, estrangeiros: os escravos libertos e sua volta à África* (São Paulo, 1985), 75.

³¹ 'Representação da Assembléa [sic] Provincial da Bahia à Assembléa [sic] Geral Legislativa', 11 May 1835, enclosed in George Jackson to Palmerston, despatch 33, FO 84/175, UKNA.

had rescued from slave ships (*africanos livres*). In annual reports, the Ministry periodically announced its intentions to deport liberated Africans.³² Cape Town and Salvador were port cities that had chronic problems with the breakdown of legal order related to former slaves. For anti-slave-trade policies to be effective, Foreign and Colonial Office personnel in London had assumed that the jurisdictional points would be the strongest parts of the system, with courts and accountable officials for managing liberated Africans. But the points were arguably the weakest places because it was so hard to keep track of mobile labouring populations, unlike on plantations.

Cape Town was one of the largest sites of settlement in the years 1839–52, with at least 3,505 liberated Africans rescued through the vice-admiralty court and an uncertain number transferred from St Helena to work in domestic service.³³ Salvador, by contrast, accommodated only a few hundred liberated Africans during the nineteenth century.³⁴ The demographics of arrival were similar in both places: mortality between embarkation on a slave ship and the end of quarantine for slaves arriving at Bahia and liberated Africans arriving at Cape Town were respectively 15.6 per cent and 16.8 per cent.³⁵ While Cape Town had vice-

³² Conrad, 'Neither Slave nor Free'.

³³ An exact figure is hard to calculate. 3,505 is a lower threshold, derived from *Correspondence with British Coms. at Sierra Leone, Havana, Cape of Good Hope, Jamaica, Loanda, and Cape Verd Islands*, 221–5; Robert Shell has argued that there were at least five thousand liberated Africans brought to the Cape in the period 1808–56, excluding any reproduction: Robert Carl-Heinz Shell, *Children of Bondage: A Social History of the Slave Society at the Cape of Good Hope, 1652–1838* (Hanover, NH, 1994), 148; Chris Saunders mentions that 1,360 St Helenan liberated Africans were brought to the Cape: Christopher Saunders, 'Between Slavery and Freedom: The Importation of Prize Negroes to the Cape in the Aftermath of Emancipation', *Kronos*, ix (1984), 39. Patrick Harries has suggested seven thousand for the period c.1840–70 (private communication, 9 Mar. 2016).

³⁴ Governo da Província, Tesouraria, correspondência recebida do Inspetor da Tesouraria da Bahia 1857, Maço 4247, Arquivos Públicos do Estado da Bahia, Salvador, Brazil (hereafter APEB). On liberated Africans in Brazil more generally, see Afonso Bandeira Florence, 'Entre o cativo e a emancipação: a liberdade dos africanos livres no Brasil (1818–1864)' (Federal Univ. of Bahia Mestrado dissertation, 2002).

³⁵ For the mortality of the slave trade to Bahia in the years 1838–47, see Estimates Database (2016), *TSTD*, at <<http://slavevoyages.org/voyages/UWtNazzr>> (accessed 28 Feb. 2017) (11.1 per cent) and Alexandre Vieira Ribeiro's calculation of 5 per cent rate of slaves after arrival: Alexandre Vieira Ribeiro, 'The Transatlantic Slave Trade to Bahia, 1582–1851', in David Eltis and David Richardson (eds.), *Extending the Frontiers: Essays on the New Transatlantic Slave Trade Database* (New Haven and London, 2008), 148. This gives a combined survival statistic of 0.8445 (0.889 x

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admiralty and mixed-commission courts to process prize slave arrivals, Salvador had no analogous judicial structure (since the British–Brazilian Courts of Mixed Commission were in Rio de Janeiro and Freetown). The liberated Africans in Salvador probably ended up there from interceptions along the Brazilian coast during which naval officers decided that the prize negroes were too ill to transport to Rio de Janeiro and therefore landed their recaptives at the nearest port instead. As the jurisdictional points came under the strain of adjudication, fissures opened up in which liberated Africans' claims-making became most potent and visible.³⁶

II

As well as internal reasons within each port city that made state authorities in Salvador and Cape Town unprepared for dealing with the influx of liberated Africans, there were external reasons, primarily the difficulties that the Royal Navy faced in *identifying* liberated Africans. State officials tried to convert an ambiguous population into a manageable workforce through obsessive documentation at every step of legal transformation: identification and capture of slave ships, adjudication at port, registration and apprenticeship. By interpreting and implementing anti-slave-trade laws, state officials left an archival trail of the conventions and challenges during that conversion process along the Bahian and Cape coasts. The ultimate aim of this process was to transform a slave, who was outside relations of interdependency and subject to arbitrary coercion, to being a liberated African, who worked for a

(*n.* 35 *cont.*)

0.95), or a mortality of 15.55 per cent. For Cape Town, I have used the death records cited in *Correspondence with British Coms. at Sierra Leone, Havana, Cape of Good Hope, Jamaica, Loanda, and Cape Verd Islands* and added in deaths recorded by the Collector of Customs for the prize negroes during their quarantine and registration, for which see CCT 382, WCA.

³⁶ Useful analyses of how states manage populations in port cities include Richard H. Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens, and the Origins of Environmentalism, 1600–1860* (Cambridge and New York, 1995); Janet J. Ewald, 'Crossers of the Sea: Slaves, Freedmen, and Other Migrants in the Northwestern Indian Ocean, c.1750–1914', *American Historical Review*, cv (2000); Henk Driessen, 'Mediterranean Port Cities: Cosmopolitanism Reconsidered', *History and Anthropology*, xvi (2005).

hirer and was subject to the oversight of specially-designated state officials.

At 2 a.m. on 9 December 1839, the crew of HMS *Modeste* had observed a suspicious sail south-south-east of its position approximately 90 nautical miles south of Quelimane. The *Modeste* gave chase for nearly three hours south-south-west, nearly hitting a reef. The wind dropped a knot, and perhaps the suspected slaver spotted an opportunity to outrun its hunter: it shot at the *Modeste* and then threw 'boats, casks, etc.' overboard in the hope of making a getaway. It took the *Modeste* almost nine hours to force the Portuguese brig to yield. The *Escorpião* was now 36 hours from Quelimane, and was a large prize: 756 slaves.³⁷

Slaves were of course the most obvious evidence of slave trading, and traders wielded political and diplomatic as well as maritime resistance to capture. On 22 July 1851, the steamer HMS *Sharpshooter* observed a brig south-east of Cabo Frio on the Brazilian coast. It caught the *Piratinim* after over two hours of pursuit. It took the *Sharpshooter*'s officers five minutes to decide to detain the ship, having found '90 negroes in the hold', matting for slaves, and 'a division separating the women from the men'.³⁸ It did not matter that the provincial government of Bahia had authorized the *Piratinim* to carry these slaves to Rio, nor that representatives in the Brazilian Chamber of Deputies gave speeches condemning the *Sharpshooter*'s interference. The Navy confiscated the slaves and transferred them to HMS *Crescent*, a British ship at Rio de Janeiro that held slaves captured in Brazilian waters. The *Crescent* released these slaves as liberated Africans in either Rio de Janeiro or the British colonies in the Caribbean.³⁹

As the *Sharpshooter*'s log reveals, naval squadrons looked beyond embarked slaves for evidence of slave trading, investigating the ship's construction, layout and cargo, such as the spare plank required for laying a slave deck, shackles and large

³⁷ Entry for 9 Dec. 1839, ship log of HMS *Modeste*, ADM 53/837, UKNA.

³⁸ Entry for 22 July 1851, ship log of HMS *Sharpshooter*, ADM 53/3534, UKNA.

³⁹ For the *Piratinim*, see Bethell, *Abolition of the Brazilian Slave Trade*, 355–7; for the operations of the *Crescent*, see Adderley, "New Negroes from Africa", 246 (appendix 2); Beatriz G. Mamigonian, 'In the Name of Freedom: Slave Trade Abolition, the Law and the Brazilian Branch of the African Emigration Scheme (Brazil–British West Indies, 1830s–1850s)', *Slavery and Abolition*, xxx (2009), 47 (table 2), 53.

quantities of rice and water.⁴⁰ Although the bilateral treaties and parliamentary *Instructions to Naval Officers* (1844) attempted to stipulate what made a ship 'fitted out' for the trade, these legislative frameworks could not prevent officers' creative interpretations. In the case of the *União*, the officers of the *Helena* had their suspicions aroused by the hatchway, which seemed larger than usual for a merchant vessel, and the ledgers (horizontal beams that supported the hold), which seemed to have been bunched together to make room for human cargo.⁴¹ But the 1844 *Instructions* did not mention that bunched ledgers or large hatchways were grounds for detention, only hatches that were fitted with open gratings.

Even the definition of a slave could provoke similar confusion. The Treaty of 1842 permitted Portuguese settlers who were returning from Africa to Portugal to travel with slaves who were 'bona fide household servants', as long as these Africans travelled with 'passports' and not on slave ships.⁴² But passports had no standardized content or authority and naval crews struggled to differentiate between enslavement, domestic servitude, any kind of bonded labour, and willing 'free' labour regarding the work of African marines (the legal term for anybody employed on a ship) on board suspicious vessels.⁴³

Just as the rules for identifying slave ships and slaves were open to interpretation, so too were the rules regarding the treatment of prize negroes between the detention of the slave ship and its arrival in a port for adjudication. Prize negroes were, for instance, subject to being transferred to a different squadron ship, as the crew of the *União* had been. In 1841, HMS *Acorn* intercepted the *Anna*, which was carrying six hundred slaves, probably to Salvador.⁴⁴ Eighty died soon after detention.

⁴⁰ See, for example, Palmerston Act, 2 & 3 Vict., c. 73, 'Act for the Suppression of the Slave Trade' (1839), article iv.

⁴¹ See the corroborating statement of James Brown, Master of HMS *Winchester*, item 38, FO 312/37, UKNA.

⁴² Article V, *Instructions for the Guidance of Her Majesty's Naval Officers Employed in the Suppression of the Slave Trade*, Parliamentary Papers, 1844, I, papers 577, 489. The 1844 *Instructions* were the only general, codified set of guidelines for the Navy in the period 1839–52.

⁴³ For additional examples, see Burroughs, 'Eyes on the Prize', 110, on the *Maria de Gloria*; Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge, Mass., 2016), 128.

⁴⁴ *TSTD* lists this ship, spelt *Ana* (ID 3140), with Rio de Janeiro as the principal place of slave disembarkation because the ship was intercepted and the slaves

(cont. on p. 194)

British authorities at Rio arranged the transfer of 470 to the *Crescent*, 150 of whom then passed to the *Arrow*, which must have re-crossed the Atlantic.⁴⁵ The Collector of Customs at Cape Town eventually registered 148 of them. Two years later, British vessels intercepted the *Vencedora* and an unknown vessel chartered for Brazil. Again, authorities transferred 895 slaves in total to the *Crescent*, declared the *Vencedora* unseaworthy, but registered it as a prize at the vice-admiralty court at Cape Town.⁴⁶ Within a convoluted process of slave transfers and judicial decisions, British jurisdiction over the condemnation of vessels and apprenticeship of liberated Africans stretched from Cape Town to the ports of Rio and Salvador.

Squadrons improvised depending on the conditions in which they found the slaves and on naval crews' fears about slaves' behaviour between detention and adjudication. After a five-hour chase on the morning of 13 December 1844, HMS *Cleopatra* ran aground an anonymous brig on the banks of Rio Mariangombe near Quelimane. The crew had abandoned the slave ship with approximately 420 slaves imprisoned in the hold behind a fastened grating. The boarding officer, who wrote an unsigned statement in the ship's log, claimed that he decided with the Captain, Charles Wyvill, and Lieutenant that 'the only chance of saving [the slaves'] lives was to allow them to swim on shore'. They transferred seven slaves to the *Cleopatra*, five of whom survived for emancipation by the vice-admiralty court at Cape Town.⁴⁷

Shortly before capturing the elusive *Escorpião*, HMS *Modeste* had captured the *Anna Feliz*. Two days after the capture, the officers decided to supply the squadronal crew who were sailing the prize with several weapons, including twelve light cannon and

(n. 44 cont.)

transferred to the *Crescent*. But the ship was caught at 15.28° South 20.30° West which suggests a route to Salvador.

⁴⁵ *Correspondence with British Coms. at Sierra Leone, Havana, Cape of Good Hope, Jamaica, Loanda, and Cape Verd Islands*, 222.

⁴⁶ For the most accurate number of liberated Africans who boarded the *Crescent*, see the ship log of HMS *Crescent*, ADM 53/2349, UKNA; *Correspondence with British Coms. at Sierra Leone, Havana, Cape of Good Hope, Jamaica, Loanda, and Cape Verd Islands*, enclosure 153.

⁴⁷ Entry for 13 Dec. 1844, ship log of HMS *Cleopatra*, ADM 53/2195, UKNA; CCT 382, WCA; *Correspondence with British Coms. at Sierra Leone, Havana, Cape of Good Hope, Jamaica, Loanda, and Cape Verd Islands*.

several hundred cartridges for pistols and muskets, probably to keep the prize negroes under control.⁴⁸ It is impossible to know exactly what the crew feared might happen; the fact that the average time between capture and sentencing was often longer than the Middle Passage probably increased the chances of expressions of anguish, frustration or rebellion by prize negroes.⁴⁹ Perhaps the prize negroes were complaining about their cramped and infectious living arrangements below deck, fearful of dying from smallpox.⁵⁰

After arrival, state officials in the port classified the prize negroes as healthy, waged employees. In this context, it is useful to think about a set of terms from the historical literature on slavery in Africa. Referring to a debate between scholars about how harshly owners treated their slaves in Africa, Martin Klein has pointed out that both sides 'see slavery within a range of coerced relationships, both stress a process of incorporation [into kinship lineages] and both see the slave essentially as an outsider'.⁵¹ The emphasis on the processes by which an outsider becomes an insider is useful for understanding what happened to a liberated African upon arrival. Igor Kopytoff has labelled one aspect of that process 'terminal commoditization', by which a commodity is exchanged and then has its use-function fixed. Prior to terminal commoditization, a slave's value veers between processes of commoditization and individualization, and his or her price is

⁴⁸ Entry for 28 Nov. 1839, ship log of HMS *Modeste*, ADM 53/837, UKNA.

⁴⁹ Of twenty-three interceptions that involved the rescue of slaves and for which the Cape Town vice-admiralty court adjudicated, the median time between detention and sentencing was eighty-one days, and the mean was eighty-five days. This was longer than the Middle Passage from south east Africa to the Americas, which took an average of 68.4 days. See Estimates Database (2016), *TSTD*, at <<http://slavevoyages.org/voyages/RktKHMUA>> (accessed 9 Dec. 2017). Averages for Cape Town derived from *Correspondence with British Coms. at Sierra Leone, Havana, Cape of Good Hope, Jamaica, Loanda, and Cape Verd Islands*.

⁵⁰ See the proclamation about smallpox related to the arrival of these ships in: Colonial Office, Cape of Good Hope Colony Original Correspondence, CO 48/207, UKNA, despatch 7. See also the coverage in the *South African Commercial Advertiser*, 11 Jan. 1840. For a discussion of relations between prize negroes and naval crews, see Burroughs, 'Eyes on the Prize'.

⁵¹ Klein's emphasis on the slave as outsider is derived from M. I. Finley. For the quotation, see Martin A. Klein, *Slavery and Colonial Rule in French West Africa* (New York, 1998), 9; key texts in the debate include Igor Kopytoff and Suzanne Miers, 'Introduction: African "Slavery" as an Institution of Marginality', in Suzanne Miers and Igor Kopytoff (eds.), *Slavery in Africa: Historical and Anthropological Perspectives* (Madison, 1977); Claude Meillassoux, *Anthropologie de l'esclavage: le ventre de fer et d'argent* (Paris, 1986) especially 12–15.

unambiguous only at the point of sale.⁵² The path of a liberated African from slave ship to adjudication indicates that just as commoditization as chattel was a process, so was commoditization as an emancipated, free labourer.⁵³

The key technology for terminal commoditization was the register of liberated Africans, written soon after the suspected slave ship entered the port.⁵⁴ An official in the local treasury department, such as the Collector of Customs, recorded liberated Africans' names, ages and distinguishing marks or features. The Collector of Customs at Cape Town, William Field, could use these data to try to identify any liberated African who fled from the holding facility at Papendorp (a suburb of Cape Town), and to adjudicate in potential disputes between hirers over the ownership of a particular apprenticeship contract. For example, at Cape Town, Jusay was registered on 29 October 1843 as liberated African number twenty-nine from the unknown brig captured in August by HMS *Arrow*. He was male, 22 years old, 5 feet 2.5 inches tall, had a 'large wart under left Ear' and was 'Tattooed over right Breast'.⁵⁵ Particular liberated Africans may have been appointed to act as interpreters to help communicate this information.⁵⁶ The register became invested with the authority to value and assign liberated Africans according to their physiological characteristics; it standardized each liberated African as a member of the labour force.

The treasury officials then transported the liberated Africans to a quarantine station. In Cape Town, smallpox quarantine hospitals were established at Wynberg and near the Cape Town Market.⁵⁷ The station was one location, along with the 'Liberated

⁵² Igor Kopytoff, 'The Cultural Biography of Things: Commoditization as Process', in Arjun Appadurai (ed.), *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge, 1986).

⁵³ Kopytoff, 'The Cultural Biography of Things'. On the question of how to conceptualize the slave as historical actor, see Walter Johnson, 'On Agency', *Journal of Social History*, xxxvii (2003); Joseph C. Miller, *The Problem of Slavery as History: A Global Approach* (New Haven, 2012); Nicholas T. Rinehart, 'The Man That Was a Thing: Reconsidering Human Commodification in Slavery', *Journal of Social History*, 1 (2016), for a Kopytoffian argument about the commoditization of slaves.

⁵⁴ Jennifer Nelson, 'Apprentices of Freedom: Atlantic Histories of the *africanos livres* in Mid-Nineteenth Century Rio de Janeiro', *Itinerario*, xxxix (2015); Henry B. Lovejoy, 'The Registers of Liberated Africans of the Havana Slave Trade Commission: Implementation and Policy, 1824–1841', *Slavery and Abolition*, xxxvii (2016).

⁵⁵ CCT 382, WCA.

⁵⁶ See the discussion of interpreters in Lovejoy, 'Registers of Liberated Africans of the Havana Slave Trade Commission'.

African Yard', where state officials began making plans for the apprenticeship of liberated Africans. Quarantine was nothing new — it was a key component of the 'seasoning' of slaves — but the decision to hold liberated Africans in quarantine stations led to their working in these institutions due to local, short-term necessity. For instance, eight liberated Africans rescued in 1855 ended up working in 'Mont Serrat' in Salvador, the same Catholic sanctuary and hospital that quarantined slaves who were suffering from smallpox following the Middle Passage.⁵⁸ Here slaves and liberated Africans shared occupational and social connections in a space of state oversight.

Treasury officials then advertised the availability of liberated African labour to local hirers and other government departments in publications such as the *Government Gazette*. Publication brought the stipulations in bilateral treaties into existence. For instance, Article VII of the Act for the abolition of the slave trade 1807 (47 Geo. III, c. 36), in force from 1808, authorized state officials

to bind [liberated Africans] . . . as Apprentices, for any Term not exceeding Fourteen Years . . . any Indenture of Apprenticeship duly made and executed . . . shall be of the same Force and Effect as if the party thereby bound as an Apprentice had himself or herself . . . *duly executed the same*; and every such Native of Africa who shall be so enlisted or entered . . . as a Soldier, Seaman, or Marine, *shall be considered, treated, and dealt with in all Respects as if he had voluntarily so enlisted or entered himself*.⁵⁹

The definition of a 'liberated African' presupposed the legal capacity to enlist in the forces or to contract to apprenticeship labour, which common-law precedents never attributed to chattel slaves.⁶⁰ The Act attributed to Africans that capacity to justify decisions made in their interests, and simultaneously suspended the Africans' exercise of that personality until *after* enlistment or apprenticeship. The subsequent bilateral treaties, modelled in part on the Abolition Act, did not specify the length of apprenticeships or the kinds of work liberated Africans would do, but the regulations for the mixed-commission courts

⁵⁷ *South African Commercial Advertiser*, 11 Oct. 1840.

⁵⁸ Maço 4247, APEB; Ribeiro, 'Transatlantic Slave Trade to Bahia', 147.

⁵⁹ Emphases added.

⁶⁰ On slaves in English common law, see Miranda Kaufmann, 'Slavery and English Common Law', in Eric Martone (ed.), *Encyclopedia of Blacks in European History and Culture* (Westport, Conn., 2008).

stipulated that every liberated African receive a daily allowance of 1s. (in the Cape) or 180 réis (in Brazil) for subsistence.⁶¹

The treaties framed apprenticeship in terms of political economy, which posited that an apprentice sold part of her labour power but not a part of herself in working for another person under contract. Another relevant conception, which the treaties did not consider, was 'wealth-in-people'. An important strand of scholarship states that a common metaphor among many Africans portrayed a powerful person who took advantage of a subordinate as 'eating' the subordinate and her wealth, rather than 'feeding' her. Wealth-in-people provided an ethical system in which apprentices evaluated the fairness or unfairness of contractual labour relations.⁶² Unfair treatment by a hirer could awaken an apprentice's fear of being eaten through working for another person.

The publication of information regarding the apprenticeship of liberated Africans was more prevalent at Cape Town than Salvador. In the 1840s, the Cape *Government Gazette* published details roughly three times a year of how many liberated African apprentices were available and an order of priority of hirers who wished to request an apprentice, whereas there was apparently no similar published material in Salvador.⁶³ Interested parties requested a specified number of liberated Africans, whose distribution was recorded in the registers. Hirers signed a contract, ostensibly with a liberated African but really with the Collector of Customs, that included Christian instruction, forbade corporal punishment and, in the 1840s, guaranteed the payment of a wage, all overseen by the state. The abolition treaties and state practice in both Salvador and Cape Town attempted to impose a standard of waged, proselytized liberated African as evidence of the creation of 'civilized' free labour.⁶⁴

⁶¹ See the Regulations of the Courts of Mixed Commission, article viii, *Instructions for the Guidance of Her Majesty's Naval Officers Employed in the Suppression of the Slave Trade*, 229.

⁶² Jane I. Guyer and Samuel M. Eno Belinga, 'Wealth in People as Wealth in Knowledge: Accumulation and Composition in Equatorial Africa', *Journal of African History*, xxxvi (1995).

⁶³ However, Brazilian legislation did state that the status of liberated Africans would be published. See Aviso of 29 Oct. 1834 in *Coleção das decisões do governo do Império do Brasil de 1834* (Rio de Janeiro, 1866), 281.

⁶⁴ John Comaroff and Jean Comaroff, *Of Revelation and Revolution*, i, *Christianity, Colonialism, and Consciousness in South Africa* (Chicago and London, 1991). See also

(cont. on p. 199)

For example, the Department for Public Lighting in Salvador exclusively selected men to work in street lighting, who were paid 100 réis per day.⁶⁵ In Cape Town, Field allocated Jusay (recall his wart behind the ear and tattooed breast) to Paul Stadler, corn farmer in Smallepad, Groenekloof (present-day Mamre). He became a farm servant on 5 December 1843, the same date that his wife, Heppo, became a servant in Stadler's household.⁶⁶ These liberated Africans had married before their enslavement, or as slaves but before embarkation, or on board the slave ship. It is unlikely that they would have carried any proof of their marital status with them on their voyage west.⁶⁷ The archival traces that remain are of cases in which liberated Africans tried to persuade Field that they were married and, if he believed them, to allow them to work in the same location; there are no archival traces of how liberated Africans reacted if Field denied their requests.

In Salvador, Field's counterpart was Antonio Francisco de Aguiar Cardoso, an official in the *Thesouraria da Fazenda*. He was required to monitor the apprenticeships of liberated Africans to private hirers, and the only extant register, for the period 1851–2, tracked how much each hirer owed the state for the labour of liberated Africans. He visited each hirer to verify how many liberated Africans were in his or her charge; each entry lists the names of every apprentice and dates for payments.⁶⁸ Ultimately, state officials monitored liberated Africans at moments of quarantine, registration and apprenticeship to ensure that financial payments were correct rather than to defend the rights of liberated Africans.

(n. 64 cont.)

Alvará com força de lei of 26 Jan. 1818 in *Coleção das leis do Brasil de 1818* (Rio de Janeiro, 1889), 9.

⁶⁵ See Regulamento of 8 May 1858 in *Legislação da Província da Bahia sobre o negro: 1835 a 1888* (Salvador, 1996), 189, and also Maço 4247, APEB.

⁶⁶ CCT 382, WCA. Comparison of the Collector of Customs' register with the *Government Gazette* indicates that parents and children, and sometimes siblings, were also apprenticed to the same hirer and/or in the same location.

⁶⁷ The only evidence of which I am aware of marriage between prize negroes which carried over to their liberated African status is Helen MacQuarrie and Andrew Pearson, 'Prize Possessions: Transported Material Culture of the Post-Abolition Enslaved — New Evidence from St Helena', *Slavery and Abolition*, xxxvii (2016), 59. The authors found two skeletons who had marriage beads, but it is unclear whether the use of such beads was confined to particular places and/or peoples in Africa.

⁶⁸ *Tesouraria da Província, livro de contas correntes com os arrematantes de salários de africanos livres, 1851–1852, Maço 7007, APEB.*

But state officials' attentiveness to liberated Africans did not prevent problems from arising, particularly at the point when the stipulations in international treaties seeped into a state's internal legal system (municipal law). In Cape Town, Field initially applied metropolitan legislation such as the Order-in-Council of 16 March 1808 and the Slave Trade Act 1824 (5 Geo. IV, c. 113) to apprentice the liberated Africans from the *Anna Feliz* and *Escorpião*. The legislation, authorizing apprenticeship for up to seven years, was unsatisfactory because many children would not have reached maturity after a seven-year-long apprenticeship. Field reached a temporary solution with the Cape Attorney General to apprentice the children for seven years with an addendum that enabled an extension.⁶⁹ He then wrote to the Governor, requesting amendments to metropolitan legislation to enable apprenticeships until males reached eighteen and females sixteen. In May 1843, Field was still waiting for the updated Order-in-Council (promised in March 1842) and was required to request from the Governor permission to continue his extended apprenticeship scheme on a provisional basis.⁷⁰

Apprenticeship arrangements posed an even greater problem in Salvador than in Cape Town. The ownership of slaves was still legal in Brazil, and there was no civil code for determining labour relations. The Ordenações Filipinas (in force since 1603) contained many key clauses that shaped relations between Africans and their hirers. A prospective owner could refuse to purchase a slave because of disease or a defect but not because of a 'character flaw'.⁷¹ The only exception was if the slave revealed a tendency to flee. This distinguished a slave from an animal (*besta*), which an owner could legitimately reject if it was cowardly or rebellious.⁷² A slave did not possess legal personality according to the Ordenações, but there was a relation between a slave's inherent traits and the phenomenology of her behaviour in a way that was not true of an animal; the animal's behaviour *was* the purchasable animal in the eyes of the law. The importance of

⁶⁹ Collector of Customs Despatches to the Colonial Office, CO 517, Field to Secretary of Government, 26 Feb. 1840, enclosed in despatch 61, WCA.

⁷⁰ *Ibid.*

⁷¹ Cândido Mendes de Almeida (ed.), *Código Philippino, ou, Ordenações e leis do reino de Portugal* (Rio de Janeiro, 1870), bk iv, título xvii, title and clause 2. This is the first edition printed in Brazil. I consulted the 1985 facsimile edition, reprinted by Fundação Calouste Gulbenkian.

⁷² Mendes de Almeida (ed.), *Código Philippino*, bk iv, título xvii, clause 8.

inherent traits informed another set of laws within the Ordenações, which specified punishments for slaves for carrying an arquebus, arson and flight.⁷³ If anybody provided encouragement, reason or assistance to a slave to flee, he or she suffered banishment, flogging or 'became the captive' (i.e. slave) of the master.⁷⁴

The key question in Salvador, then, was how to prevent liberated Africans, as 'free labourers', from encouraging huge numbers of slaves to seek liberty.⁷⁵ This prospect was especially pressing because the state should, in theory, have applied apprenticeship and post-apprenticeship emancipation to *all* Africans who arrived in Brazil after 1831. These slaves were victims of an illegal trade and Britain or Brazil *could* have reclassified all 95,000 of those transported to Bahia as liberated Africans (*africanos livres*). Although freed slaves (*libertos*) had several routes to manumission in Salvador — such as self-purchase and bequests in owner's wills — they relied upon negotiations with their owners, who in many cases could re-enslave them at any time by revoking consent for manumission.⁷⁶ *Libertos*' status as citizens, declared by the 1824 Constitution, was dependent upon and circumscribed by the maintenance of cordial relations with their owners (and their owners' families or executors).⁷⁷ By contrast, *africanos livres* were freed by virtue of a state mandate. There was no extant system in Salvador, or Brazil, for the accommodation of liberated Africans, and state authorities feared that liberated Africans would set a precedent for slaves to gain freedom uninhibited by their owners' conditional will for manumission.⁷⁸ The continual fear of disruption led authorities to continue apprenticing *africanos*

⁷³ Mendes de Almeida (ed.), *Código Philippino*, bk v, título lxxxvi, clause 5 (arson); bk v, título lxii, clauses 1 and 2 (flight); bk v, título lxxx, clause 13 (carrying an arquebus).

⁷⁴ Mendes de Almeida (ed.), *Código Philippino*, bk v, título lxiii.

⁷⁵ Sidney Chalhoub, *A força da escravidão: ilegalidade e costume no Brasil oitocentista* (São Paulo, 2012), ch. 7.

⁷⁶ Sidney Chalhoub, 'The Politics of Ambiguity: Conditional Manumission, Labor Contracts and Slave Emancipation in Brazil (1850s–1888)', *International Review of Social History*, lx (2015).

⁷⁷ See Artigo 6 for the definition of Brazil-born *libertos* as citizens, but also Artigo 94 for the exclusion of *libertos* from voting for federal senators, deputies, and members of provincial councils.

⁷⁸ See also Beatriz Gallotti Mamigonian, 'O direito de ser africano livre', *Direitos e justiça no Brasil: ensaios de história social* (Campinas, 2006); Mariana Armond Dias Paes, 'O procedimento de manutenção de liberdade no Brasil oitocentista', *Estudos Históricos (Rio de Janeiro)*, xxix (2016).

livres while paying lip service to the idea of deportation into the 1850s.⁷⁹

The lack of clarity regarding the legal capacities of liberated Africans and the accountability of states meant that abuses occurred. In Cape Town, the *South African Commercial Advertiser* inveighed against a New Constantia farmer, Carel Gerhard Blanckenburg, whose treatment of his juvenile indentured labourers was so egregious that it was barely ‘above the point at which it would have been imperative on [the Commissioners] to cancel their indentures’. Indeed, he had treated his black workers as ‘*chattel*’.⁸⁰ The *Advertiser* begged Field to make him ineligible for the allocation of liberated African apprentices. Yet, in 1844, Field allocated Alexander, Yeffa, Chakalobo, Voolomalemo and Lokenni to Blanckenburg.⁸¹ In Salvador, José de Barros Reis employed liberated Africans to win contracts from the state for managing public sewerage at Rio Camarajipe, thereby increasing his revenue stream, but not the wages of his apprentices.⁸² That said, apprenticeship conditions and the legal status of liberated Africans probably improved over time. By 1843, apprenticeship terms had reduced from fourteen years to three years in Cape Town with apprentices able to complain to magistrates in cases of ill-treatment under the Master and Servants Ordinances. Despite threats of deportation, liberated Africans were never deported from Salvador (or from anywhere else in Brazil) as punishment, only ever transferred to the *Crescent*.⁸³

⁷⁹ On deportation, see Aviso of 29 Oct. 1834, clause 6, in *Coleção das decisões do governo do Império do Brasil de 1834*, 280; Cunha, *Negros, estrangeiros*.

⁸⁰ *South African Commercial Advertiser*, 29 Jan. 1840 (original emphasis).

⁸¹ *Government Gazette*, 28 Mar. 1845; *Government Gazette*, 30 May 1845; *Government Gazette*, 22 Oct. 1846.

⁸² José de Barros Reis to the President of the Province, 7 July 1857, Maço 4247, APEB. See also Adriana Santos Santana, ‘Africanos Livres Na Bahia 1831–1864’ (Univ. Federal de Bahia Mestrado dissertation, 2007), 119.

⁸³ In the 1818 Alvará, ‘seu préstimo e bons costumes’: *Coleção das leis do Brasil de 1818*, 9. I have not been able to work out how many apprenticeships were reduced. In Cape Town, apprenticeship was reduced initially to one year to bring it in line with the Master and Servants Ordinance of January 1840 (see CO 48/207, despatch 7, UKNA). By 1843, Field had increased it to three years even though metropolitan legislation granted a period of up to seven: see CO 517, WCA. See also Harries, ‘“Ideas of Liberty and Freedom”’, 191. Some liberated Africans in Rio de Janeiro had their apprenticeships extended: Beatriz Mamigonian, ‘To Be a Liberated African in Brazil: Labour and Citizenship in the Nineteenth Century’ (Univ. of Waterloo Ph.D. thesis, 2002), ch. 5.

The farther that liberated Africans moved from the jurisdiction of bilateral treaties at sea towards the municipal laws that covered the land, the more that key differences emerged between liberated African experiences at Cape Town and Salvador. In Cape Town, state authorities were concerned primarily with proving to the abolitionist metropole that liberated Africans were not slaves. In addition to inspections regarding wage payments and living conditions, Field could impose a fine of fifty pounds if hirers failed to present apprentices to him or a resident magistrate on the agreed end date of the apprenticeship. The *Government Gazette* advertised the end of Jusay and Heppo's (transcribed 'Hippo') apprenticeship in a notice placed at the Custom House on 21 November 1844 and reprinted in the *Government Gazette* the following day. The notice listed data relating to age, hirer, location and magisterial jurisdiction. Even notable worthies were accountable to the Collector of Customs and magistracy regarding their treatment of their apprentices. Hamilton Ross, a member of the Legislative Council, and Sir Andries Stockenström, former lieutenant governor of 'British Kaffraria', were subject to inspections.⁸⁴ By contrast, in Salvador, the state was primarily concerned with separating liberated Africans from chattel slaves for fear of setting a precedent that the imperial state would, either voluntarily or under pressure from Britain, guarantee the emancipation of all slaves — which is why re-exportation appeared to be a promising option for so long.

At the same time, state processes were not the fulfilment of a rights-based legal regime for liberated Africans. For that to be the case, bilateral treaties and municipal law would have had to attribute natural or positive rights to liberated Africans (conventionally in some kind of constitutional or civil code), recognize that they had the capacity to exercise those rights, and provide an enforcement mechanism against state officials and private individuals when those rights were violated. But in Cape Town and Salvador, and across the Atlantic, rights were never clearly attributed; capacity was suspended; and enforcement focused on periodic checks on hirers and detailed financial arrangements, rather than on upholding rights.

⁸⁴ On Hamilton Ross, see *Cape Town Mail*, 10 Feb. 1844. For the expiration of the apprenticeship contract of Gaiwae, employed by Sir Andries Stockenström, see *Government Gazette*, 24 Feb. 1848.

III

Even without a clear system of rights, the complex legal status of liberated Africans enabled them to make claims to authorities to try to bend that status closer to their aspirations, but without any guarantee that states would honour those claims. The mixed-commission court case of the *União* illustrates the opportunity for making claims. The prize negroes spent almost two weeks in the holding barracks at Papendorp until adjudication could begin, giving them time to discuss their situation in Portuguese and Makua — one slave, Sabino, was fluent in both. The case got off to a bad start when the Portuguese Arbitrator (the second-in-command to the judge), Alfredo Duprat, excused himself from the deliberations because the ship's cargo belonged to a relative.⁸⁵ The Portuguese judge, Lourenço José Moniz, would adjudicate with the British judge, George Frere, and in the event of deadlock, the British Arbitrator would have the final say, invariably following his superior's opinion.

It is hard to know how much the judges or the prize negroes knew about the history of slave migration from Mozambique Island to the Cape, which Patrick Harries has thoroughly studied. During a boom in 1797–1807, Portuguese traders restocked ships and sold sick slaves on the way to Brazil, resulting in around seven thousand slaves staying in the Cape. In 1807, Alexander Tennant, a creditor to slave traders, had secured a permit from the colonial government to import five hundred slaves to mitigate the Cape's labour shortage. When the government discovered that Tennant had imported an additional 117 slaves, they allowed him to apprentice them. When Tennant died, the government could no longer hold him accountable for their well-being and many disappeared, and may have been re-enslaved.⁸⁶ The case resulted in an embarrassing

⁸⁵ For Duprat, see 20 Sept. 1844, FO 312/24, UKNA. It is hard to know who the relative was. There were eight documents, signed by officials in Mozambique, to authorize Silveira to carry cargo, on board the *União* at the time of capture. Two refer to Jose d'Andrade Taborda as the recipient (for coffee and ivory); the rest of the documents do not list a recipient. Silveira listed D'Andrade as the owner of cargo in his testimony to the mixed-commission court. See item 13 (for the cargo lists) and item 21 (for testimony), FO 312/37, UKNA. The names do not appear in José Capela, *Dicionário de negreiros em Moçambique 1750–1897* (Porto, 2007).

⁸⁶ Patrick Harries, 'Mozambique Island, Cape Town and the Organisation of the Slave Trade in the South-West Indian Ocean, c.1797–1807', *Journal of Southern African Studies*, xlii (2016); for the history of Mozambican migration to South

(cont. on p. 205)

investigation in 1817, and was perhaps part of the memory of bungled manumission that the judges were keen to prevent and the slaves keen to avoid. In any case, the judges produced a thorough investigation of the *União*, leaving an archive of sworn testimony from the ship's crew, prize negroes and 'expert' witnesses about revealing features of a suspected slave ship, along with copies of passports, certificates from customs houses and from the naval captors, and surveys of the ship's fittings. The documentation forms part of the records of the Cape Courts of Mixed Commission in the Foreign Office records of the UK National Archives. James Macleay, secretary and registrar to the court, collected and ordered the material and transcribed witness testimony, and the judges signed the preface to the file.⁸⁷

The first problem to confront the judges was uncovering what, precisely, the six alleged slaves had said to the crew of the *Helena*. Ricketts had reported that they were in 'bodily fear' as 'slaves'. William Blackford, master of the *Bittern* and present on the *Helena* during the initial exchange, supported but did not corroborate this version of events: they had 'all stated through the Interpreter that they were on board the *União* against their will' and four of them were badly dressed. Peter Pasqual, able seaman on the *Bittern* and the translator for the six men (from Portuguese to English), gave testimony that corresponded more closely to Blackford's than Ricketts's: *five* of the men had stated to him, during the search of the *União*, that they were on board against their will, and had suffered ill-treatment. They then repeated this claim to Ricketts and the commander of the *Bittern*, Edmund Peel, on board the *Helena*. The exception was José Mozambique, who had embarked as a servant to a passenger,

(n. 86 cont.)

Africa in the the Natal sugar industry and Kimberley mineral industry, see Patrick Harries, *Work, Culture, and Identity: Migrant Laborers in Mozambique and South Africa, c. 1860–1910* (Portsmouth, NH, Johannesburg, London and Witwatersrand, 1994); Patrick Harries, 'Slavery, Indenture and Migrant Labour: Maritime Immigration from Mozambique to the Cape, c.1780–1880', *African Studies*, lxxiii (2014).

⁸⁷ The case file is FO 312/37, UKNA. For the backgrounds of some of the key personnel on the court, see J. P. van Niekerk, 'British, Portuguese, and American Judges in Adderley Street: The International Legal Background to and Some Judicial Aspects of the Cape Town Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century (Part 3)', *Comparative and International Law Journal of Southern Africa*, xxxvii (2004), 405–8.

Gaspar Camacho, and who, in accordance with the 1842 treaty, possessed a corroborating passport.⁸⁸

The status of the alleged slaves before embarkation on the *União* was also obscure, as was their status between embarkation and interception. The master of the *União*, Joaquim Maria da Silveira, claimed that the five were chattel slaves before embarkation. He had bought them and manumitted them on condition that they would work during the voyage. He certainly had manumission papers for all five.⁸⁹ But whether manumission made any material difference to how he treated the five marines was questionable: at the end of his testimony, he asked for the record to be amended to state that he had mistakenly referred to the five as embarked 'slaves', when he had intended to call them 'negroes'.⁹⁰ Silveira had bought bilingual Sabino at Quelimane to replace a marine whom Silveira ominously labelled 'not serviceable'. The other four — João Cadete, Antonio Valente, Francisco Serenão and Patricio — had joined on 19 July at Mozambique Island, to replace one black marine who had died at 'Nos Beh' and other crew members who were left at a hospital due to illness.⁹¹ Silveira implied that the five had been treated like any other crew member because they had been 'entered on the Muster Roll'. Camacho testified that the five were 'free' when they came on board. The archival remains of his testimony are only in English, so whether he used the word *liberto* or *livre* is unrecoverable. 'None of them showed any Disinclination to go on board' and they 'were satisfied as they were going to get Five Dollars a Month'.⁹²

Frere and Moniz interviewed the five alleged slaves after they had questioned Silveira, and before Blackford and Pasqual. They began proceedings by asking each man for his name and religion, bringing to the fore signs of truthfulness: could the slaves take a religious oath? Testimony from all, including the Muslim and 'Gentile' slaves, was admissible because they swore that they

⁸⁸ Item 17, FO 312/37, UKNA.

⁸⁹ Items 15 and 16, FO 312/37, UKNA.

⁹⁰ Testimony of Joaquim Maria da Silveira, 26 Sept. 1844, item 21, FO 312/37, UKNA.

⁹¹ The unserviceable and dead black marines might have included Izidoro and João Maria, who were manumitted with Sabino on 19 Dec. 1843, but who were not present on the ship when it was detained. See register of crew, 31 July 1844 (enclosed in item 1) and item 15. 'Nos Beh' is now Nosy Beh, off northwest Madagascar.

⁹² Items 21 and 33, 28 Oct. 1844, FO 312/37, UKNA.

knew what 'the truth' was. The judge's questions focused on the marines' labour, clothing and treatment before and during the voyage, hoping to uncover 'small clues' that would provide clinching proof of enslavement.⁹³ But there was no straightforward evidentiary relationship between a labour regime and the socio-legal status of its participants, or rather, there were *as many relationships as there were labour regimes*.

Take the fifth and final slave to be interviewed, Francisco Serenão: he was a slave on Mozambique Island, but the captain freed him on condition that he worked during the *União's* voyage. He was flogged when working on board as a 'sailor'. He had lived a day-to-day existence on board: 'He did not know whether he was to return on shore [when the ship completed its voyage] or to stay on board'.⁹⁴ He had no basis for future planning, even on the small scale open to chattel slaves via provision grounds entitlements, and none of the social capital that a slave might have been able to cultivate with other slaves, overseers or masters on a plantation. Yet, he had suddenly been presented with the opportunity of some control over the narration of his past and his choices for the future.

Whether fully intentional or not, the witnesses affected confusion, even resentment, at the way they had been treated on board the *União*.⁹⁵ The witnesses gave different answers to the question that the judges hoped would resolve the issue because it was a supposedly distinguishing feature of free labour. It was one for which they recalled the witnesses: did the master pay them wages on board? João Cadete and Antonio Valente merely stated that the captain had agreed to pay wages, but Sabino stated that 'the Captain said he would pay him Wages, but he had paid him none'. Serenão was even more forceful: 'The Captain did not tell him that he was to have any Wages: he never received any Wages'. To add to the confusion, some of the

⁹³ Carlo Ginzburg, 'Morelli, Freud and Sherlock Holmes: Clues and Scientific Method', *History Workshop Journal*, no. 9 (1980); see also Francesca Trivellato, 'Is There a Future for Italian Microhistory in the Age of Global History?', *California Italian Studies*, ii (2011); Sidney Chalhoub, *Visões da liberdade: uma história das últimas décadas da escravidão na corte* (São Paulo, 1990).

⁹⁴ Macleay numbered the testimony from the five suspected slaves together as items 29 and 30, FO 312/37, UKNA. Serenão was also unable to specify how long he had been enslaved, so his sense of his past had also been constricted or distorted.

⁹⁵ On intentionality, consciousness and resistance, see Comaroff and Comaroff, *Of Revelation and Revolution*, vol. i, p. 29.

witnesses had received wages *as slaves*, prior to being sold to Silveira. Valente had been a carpenter, paying half of his earnings to his master, one Senhor Matias, lieutenant at the Arsenal at Mozambique Island.⁹⁶

Even the existence of documentation did not produce a definitive answer. When the judges, Moniz and Frere, showed each marine a manumission letter supposedly signed by Silveira, each insisted that the document was a passport instead. Perhaps the witnesses were expressing their discontent at the lack of change in their treatment since being legally manumitted. After all, the manumission papers stated that they 'would possess freely [*livremente*] everything that belongs to them, in the same way as somebody born from a free womb [*ventre livre*]'.⁹⁷ Marines sailing from a Portuguese enclave encountered similar problems to *libertos* and *livres* in Brazil regarding the legal, representative and material distinctions between their statuses and that of slaves and the freeborn. When Frere tried to define the slaves' legal status according to documentary descriptions, the slaves used that definition to further complicate the binary between enslavement and free labour.

Perhaps two acts of dissimulation had occurred. The captain was cheating his crew: he had promised wages and liberty to the crew, but withheld them while they were working on board, treating them effectively like chattel slaves and storing the manumission papers as proof to a potential captor that he had no slaves on board. The crew, in retaliation, was deceiving their captain and the court: they denied the evidentiary value of the manumission papers and focused the court's attention on the outstanding wages. The evidence of slave trading was therefore inconclusive and the judges restored the ship to da Silveira,

⁹⁶ Slaves earned wages through hiring out their labour and paying a share of the income to their owner, which was a common feature in port towns including Lourenço Marques, Salvador and ironically Cape Town: see Andrew Bank, 'The Erosion of Urban Slavery at the Cape', in Worden and Crais (eds.), *Breaking the Chains*, 82.

⁹⁷ See manumission paper for Sabino, Izidoro and João Maria (Mozambique, 18 Dec. 1843), item 15; and manumission paper for Antonio Valente, João Cadete, Francisco Serenão and Patricio (Mozambique, 19 July 1844), item 16, FO 312/37, UKNA.

with the captors liable for costs amounting to an eye-watering £2,430. 8s.⁹⁸

The difficulty in rendering determinate judgments based on conjectural facts pushed the judges towards contingent decision-making. There is a legal correlate to Kopytoff's point that slaves are in constant tension between commoditization and individualization: the legal status of slaves fluctuated between legislative definitions and Africans' demands, and was only ever fixed at the moment of transfer from slave ship to captor (as prize negro) and from captor to territorial state (as liberated African). That tension produced unintended consequences. The court did not restore *the crew* immediately to the captain. Instead, the judge asked each one what they wished to do next: return to the *União* or stay in Cape Town as a 'free man'?⁹⁹ Sabino and Serenão decided to remain; the others, to return to the *União*, presumably thinking that they had taught Silveira a lesson. The crew of the *União* had accessed the precise part of legal status — consent to decide future work and settlement arrangements — withheld from liberated Africans by the abolition treaties.¹⁰⁰ By casting doubt on the evidential link between a labour regime and socio-legal status, the marines forced Frere to interpret 'liberated African' status as the attribution of personal choice over work and settlement rather than as the prerogative of colonial jurisdiction.

The *União* case reveals the perverse and unintended dynamic by which the mixed-commission court was more disposed to condemn a ship *without* any slaves than one with passengers or crew of ambiguous status, but would also insist on freeing 'slaves' even when deciding to *restore* ships. The court may have

⁹⁸ Cape Town Slave Trade Commission, minute book, 1843–59, British and Portuguese, FO 312/24, UKNA. It is also possible, but less likely, that the captors had stretched the evidence regarding what the five marines had said in order to bolster a flimsy prize case; but if so, it failed because judges decided on restoration on the grounds of the ship's innocent fittings rather than the possible enslaved status of the Africans on board. For costs, see the second entry for 17 Jan. 1845.

⁹⁹ The precise meaning of 'free' and its inflections in Portuguese are also lost to the historian in this phrase. That said, neither Sabino nor Serenão appeared in the *Government Gazette* lists as available for apprenticeship between October 1844 and May 1845, nor did they appear on lists that stipulated hirers' requirement to present their apprentices to Field or a magistrate at the end of their apprenticeship in 1847 or 1848 (when a three-year apprenticeship would have ended).

¹⁰⁰ See Natalie Zemon Davis's concept of the impostor's 'out'. Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, Mass., 1983), 60; Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, Calif., 1987).

continued that dynamic due to suspicion amongst its British staff about whether a new law in Portuguese colonies in Africa that converted slaves into apprenticed *serviçais* was merely a legal veneer for continuing the slave trade around the Cape.¹⁰¹ In 1858, the court restored the *Flor de Mozambique* but gave its ten apprenticed African workers the choice to remain in Cape Town (which they did), and in 1862, the court restored the *Flor de Cabaçeira* but freed its two possible slaves.¹⁰²

Four years after the *União*'s alleged slaves negotiated their way out of service to the captain, a group of liberated Africans in Salvador used their status to develop their own conceptions of independence. In 1848, there were seventy-five liberated Africans working in the Arsenal, fifty of whom were servants and oarsmen on *saveiros*, small launches used to transport goods from ships to the dock. Eleven were skilled labourers and possibly literate, since they were working in the offices of various departments of the Arsenal, such as under the direction of the mason and ironmonger.¹⁰³ It is not clear when the group arrived at Salvador, or if they had arrived together.¹⁰⁴ But they had certainly attracted the attention of the local police inspector, the *subdelegado*, because

¹⁰¹ For an overview of how the law worked, see Stephen J. Rockel, 'New Labor History in Sub-Saharan Africa: Colonial Enslavement and Forced Labor', *International Labor and Working-Class History*, lxxxvi (2014); Eric Allina, *Slavery by Any Other Name: African Life under Company Rule in Colonial Mozambique* (Charlottesville, Va., 2012), 4.

¹⁰² See minute book for the Mixed Commission, 1862, FO 312/25, UKNA. The mixed-commission court seems to be characterized more by its contingency than by being a 'farce'. Christopher Saunders, 'A Nineteenth Century Farce: The Anglo-Portuguese Mixed Commission at the Cape of Good Hope', *Quarterly Bulletin of the South African Library*, xxxvii (1983); J. P. van Niekerk, 'British, Portuguese, and American Judges in Adderley Street: The International Legal Background to and Some Judicial Aspects of the Cape Town Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century (Part 1)', *Comparative and International Law Journal of Southern Africa*, xxxvii (2004); J. P. van Niekerk, 'British, Portuguese, and American Judges in Adderley Street: The International Legal Background to and Some Judicial Aspects of the Cape Town Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century (Part 2)', *Comparative and International Law Journal of Southern Africa*, xxxvii (2004); Niekerk, 'British, Portuguese, and American Judges in Adderley Street (Part 3)'.

¹⁰³ Presidência da Província, Militares, Intendência da Marinha, 1826–1859, Maço 3254, APEB.

¹⁰⁴ According to the *TSTD*, the *Santone* (ID 4683) is the slave ship whose interception fell closest to the events in the Arsenal. The British Navy intercepted the ship in 1845, disembarking 651 slaves in Bahia.

he reported their disruptions of the prevailing culture of slavery to the secretary of police, João Joaquim da Silva, creating an archival trail of disagreement between state agencies regarding the management of liberated Africans. The secretary wrote a blustering report to the President of the Province, João José de Moura Magalhães, in which he claimed that 'at various times [the liberated Africans] have caused disorder because they have refused to accept that other Africans will not be seduced [by the liberated Africans] and have [instead] denounced the liberated Africans for practising witchcraft and for dealing with liberty'.¹⁰⁵

According to the original complaint to the police, made by slaveowner Querino Antonio, the liberated Africans had disrupted the 'public peace' on three different occasions by blocking streets, marching down the main streets of the parish of Vitoria armed with hunting equipment, and allegedly attacking slaves who had refused to join them.¹⁰⁶ In the covering letter to de Moura Magalhães, the secretary of police had described the liberated Africans as 'Nagô', Yoruba speakers.¹⁰⁷ The President passed the case to the Steward of the Arsenal, João Joaquim Rapozo, demanding an explanation 'urgently'.¹⁰⁸

But the police's explanation of liberated African behaviour in terms of ethnicity told only half the story. In reply to the President, Rapozo did not mention 'Nagôs' at all, and indeed sided with the liberated Africans *against* the police:

and leaving aside . . . the vagueness of the accusations . . . on which it suffices simply to reflect on the list of so many disorders that occur in this

¹⁰⁵ Secretary of the Bahian Police to the President of the Province, 27 Mar. 1848, Governo da Província, Polícia (assuntos diversos), 1828–1849, Maço 3113, APEB. There are also references to the passage in Dale Torston Graden, *From Slavery to Freedom in Brazil: Bahia, 1835–1900* (Albuquerque, 2006), 110; Reis, *Divining Slavery and Freedom*, 135.

¹⁰⁶ Statement of Querino Antonio to Chief of Police [23 Mar. 1848], enclosed in secretary of the Bahian Police to the President of the Province, 27 Mar. 1848, Governo da Província, Polícia (assuntos diversos), 1828–1849, Maço 3113, APEB.

¹⁰⁷ João José Reis and Beatriz Mamigonian, 'Nagô and Mina: The Yoruba Diaspora in Brazil', in Toyin Falola and Matt D. Childs (eds.), *The Yoruba Diaspora in the Atlantic World* (Bloomington, 2004); more generally, see David Eltis, 'The Diaspora of Yoruba Speakers, 1650–1865: Dimensions and Implications', and Ann O'Hear, 'The Enslavement of Yoruba', in Falola and Childs (eds.), *The Yoruba Diaspora in the Atlantic World*.

¹⁰⁸ See the handwritten note on the letter from secretary of the Bahian Police to the President of the Province, 27 Mar. 1848, Governo da Província, Polícia (assuntos diversos), 1828–1849, Maço 3113, APEB.

City, without the Police ever intervening, and apprehending the perpetrator . . . I would say to Your Excellency that on the part of this Arsenal, there is not the slightest tolerance of faults or disorder, which the Africans could commit outside of working hours; however, when any [fault] is brought to my attention I order it to be punished, as well as anyone who misses the call at 8 p.m. to be registered and locked in to their accommodation.¹⁰⁹

Since witchcraft in this case was an accusation, perhaps the evidence is best seen as an attempt by the police to wrest control over the liberated Africans from their rival authorities in the Arsenal. Liberated Africans were a valuable resource but also an unstable one because the law did not permit the authorities to use the threat of re-enslavement as punishment. The police secretary's invocation of 'Nagô' identity as particularly dangerous offered a way to circumvent this obstacle. In this sense, the accusation of witchcraft was simply the reflection of a fight over resources.

On the other hand, if the liberated Africans *were* participating in some kind of ritual, it suggests that witchcraft was an alternative to law as the link between the unique status of 'liberated African-ness' and the labouring conditions that it caused.¹¹⁰ The liberated Africans had a world view that tried to make sense of the relationship between the physical conditions of their labour and an invisible and inscrutable world of causations that resulted in their apprenticeship in the Arsenal.¹¹¹ Their understanding of that relationship was an implicit repudiation of the claims in abolition treaties and legislation that a liberated African's legal status was realized and respected through apprenticeship labour for the state — witchcraft was a defence against the danger of hirers' consumption of wealth-in-people.¹¹² The liberated Africans invoked ambient protections as an alternative to the ambient protections supposedly provided by bilateral treaties

¹⁰⁹ Steward of the Arsenal to the President of the Province, 29 Mar. 1848, Governo da Província, Militares, Intendência da Marinha, 1847–1848, Maço 3241, APEB.

¹¹⁰ But for a reading that emphasizes the possible ethnic dimensions of the spiritual practices involved, see Reis, *Divining Slavery and Freedom*, 135.

¹¹¹ See James Ferguson, *Global Shadows: Africa in the Neoliberal World Order* (Durham, N.C., 2006), 74; Luis Nicolau Parés, *A formação do candomblé: história e ritual da nação jeje na Bahia* (Campinas, 2006), ch. 3.

¹¹² Jean Comaroff and John L. Comaroff, *Theory from the South: Or, How Euro-America Is Evolving toward Africa* (Boulder, 2012), ch. 7.

and municipal laws. They had inserted themselves into a space of the city occupied by slaves and *libertos*. The liberated Africans had undermined their separation from slaves that had been envisaged in Brazilian legislation and they threatened to produce the kind of disorder that had haunted Salvador since 1798. For the Steward, Salvador and most importantly the liberated Africans themselves, there was a real human cost to the witchcraft accusation: the President overruled the Steward and punished the alleged offenders by ordering their transfer to Rio de Janeiro in December 1848.¹¹³

Deportation was the overreaction of a weak government struggling to keep a grip on order within Salvador and along its coastline. The police had previously had problems with African *saveiro* pilots hiding weapons on the beaches as part of an alleged conspiracy.¹¹⁴ The police and slaveowners such as Antonio were trying to assert their domination over slaves and liberated Africans whose cultural world views they did not fully understand and whose labouring habits they could not contain in legal definitions, as much as they tried. Liberated Africans' trial-and-error practices of resistance afforded opportunities for flight.¹¹⁵ One beneficiary of these practices in Salvador was Tom Pepper.¹¹⁶ Pepper was a slave of Mina ethnicity, who disembarked in Bahia probably sometime in August 1850. He was then enslaved on a plantation called Valencixo, near

¹¹³ Intendência da Marinha to President of the Province, 22 Dec. 1848, Maço 3242, APEB. Beatriz Mamigonian has traced some of the liberated Africans after deportation in Beatriz Gallotti Mamigonian, 'Do que "o preto mina" é capaz: etnia e resistência entre africanos livres', *Afro-Ásia*, xxiv (2000). For the human effects of witchcraft in a different setting, see Lyndal Roper, *The Witch in the Western Imagination* (Charlottesville, Va., 2012), ch. 4.

¹¹⁴ Chief of police of the 1st District to the President of the Province, and Commander of Arms of the Province, 12 Dec. 1845, Governo da Província, Polícia, Correspondência recebida dos delegados, Capital e Interior, 1842–1889, Maço 3001–1, APEB.

¹¹⁵ James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, 1998).

¹¹⁶ Details of the Pepper case are in Foreign Office, Fugitive Slave Commission: reception of fugitive slaves on board British ships in foreign territorial waters, 1837–1871, FO 84/1433, UKNA, fol. 268, and Mamigonian, 'In the Name of Freedom', 56.

Cachoeira, probably growing tobacco.¹¹⁷ He made his daring escape after seven months.¹¹⁸

Somehow, Pepper managed to make the eighty-seven-kilometre journey to Morro de São Paulo, where he attracted the attention of HMS *Conflict*, whose commander, F. G. Drake, took him on board. Pepper is recorded in the ship's log as a 'negro [who] came on board [and] claimed protection', which brought into conflict the slaveowner's right to property and the slave's moral claim to redefining his status as a liberated African rather than an illegally-traded slave.¹¹⁹ What is striking is his method of getting to the *Conflict*. According to the British consul at Rio de Janeiro, Robert Hesketh, who interviewed him, Pepper used a 'canoe'. It is unclear exactly what kind of boat Pepper used because Hesketh needed 'another negro' to act as a translator, but his exploitation of the vulnerabilities of the Bahian shoreline and his willingness to jump into the status of being a liberated African were similar to the actions of the liberated Africans in the Arsenal. From the *Conflict*, he would probably have ended up as one of the thousands of liberated Africans transported to the Caribbean. His everyday labour would be similar to that in Cachoeira, but at least with the promise of freedom from apprenticeship after a fixed term.

The flight of liberated Africans from enslavement and apprenticeship was not unique to Pepper: the whereabouts of 32–4 per cent of liberated Africans in Brazil was unknown according to estimates taken in the 1860s, and a further 22–6

¹¹⁷ Pierre Verger first made the argument linking tobacco, sugar and the transatlantic slave trade: see Pierre Verger, *Flux et reflux de la traite des nègres entre le Golfe de Bénin et Bahia de Todos os Santos du XVII^e au XIX^e siècle* (Paris, 1968), 34–46; see also *Falla que recitou o presidente da provincia da Bahia, o dezembargador conselheiro Francisco Gonçalves Martins, n'abertura da Assembléa Legislativa da mesma provincia em 4 de julho de 1849* (Bahia, 1849), 41; Stuart B. Schwartz, *Sugar Plantations in the Formation of Brazilian Society: Bahia, 1550–1835* (Cambridge, 1985), 83, for tobacco production in Cachoeira. Ribeiro states that African potentates on the Mina coast developed a taste for the low-grade Bahian tobacco that was prepared using molasses: Ribeiro, 'The Transatlantic Slave Trade to Bahia', 141–2.

¹¹⁸ On Pepper's origins and travel route, see Hesketh's letter in FO 84/1433, UKNA, fol. 268. Hesketh claims that '[Pepper's] looks confirm this statement [about his Mina origin]'. There is no perfect match in the *TSTD* for a ship that Pepper was on, but the most probable matches are *Mosquito* (ID 4608), *Brasil* (ID 4609) or *Igualdade* (ID 4610).

¹¹⁹ Entry for 13 Mar. 1851, ship log of HMS *Conflict*, ADM 53/3856, UKNA.

per cent had been freed from apprenticeship.¹²⁰ Behind every case of flight lay a story of a liberated African's strategic use of 'weapons of the weak', such as protest, evading work and negotiation, but only some, such as Pepper's, left archival traces.¹²¹ The decree in 1864 that ended all liberated African apprenticeships was a direct inversion of the Ordenações Filipinas: instead of blaming the slave for flight, the decree stated that emancipation papers for every fugitive liberated African would be stored for them to collect if and when their locations were established.¹²² The decree was a recognition of the contemporary state of affairs regarding liberated Africans' choice and determination to live beyond the visibility of civil law, rather than a change in the legal status of liberated Africans or in state practice towards them. Largely through their own efforts, liberated Africans rendered the schemes to re-export them a dead letter. While international law in abolition treaties and nationally-defined apprenticeship arrangements claimed to define liberated Africans as a distinctive legal subject, the Africans redefined what the legal code could control and authorize and tried to stretch it to fit their own aspirations.

The law could have spun out different results, with the return of the crew of the *União* to the master, and the restoration of Pepper, as chattel property, to his owner in Cachoeira. But the abstract nature of 'liberated African' status made it amenable to Africans' own claims to a grounded theory of 'protection'-in-law: the *União* crew and Pepper may have been treated badly, but neither could claim that their lives were in immediate danger, unlike the 420 slaves trapped behind the grating on the Rio Mariangombe. But they presented British and Brazilian judges, diplomats and naval squadrons with sufficiently ambiguous cases to ensure that state officials took their wishes into consideration in the immediate present, rather than being suspended until a post-apprenticeship future.

¹²⁰ For various estimates from some official and non-official contemporary reports, see Mamigonian, 'O direito de ser africano livre', 144; Chalhoub, *A força da escravidão*, 313, n. 3.

¹²¹ James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven, 1985).

¹²² Decreto 3310, 24 Sept. 1864: *Coleção das leis do Império do Brasil de 1864* (Rio de Janeiro, 1864), tomo xxvii, parte ii, 160–1.

IV

The legal status of liberated Africans as free labourers and political subjects emerged through the intersection of an international legal regime, local state practices and African responses to that regime and those practices around the Atlantic world. In Cape Town, this intersection propelled a shift from the open abuse of liberated African labour in the 1820s to clearly delineated channels for Africans to lodge complaints through the Collector of Customs in the 1840s. In Salvador, the category of 'liberated African' was initially a residual one that resulted from defiance of abolition treaties: the state did little to ensure that slaves illegally transported to Bahia after 1831 were liberated. But throughout the 1840s and by the 1850s, state officials had developed monitoring practices similar to those in Cape Town, such as tracking arrivals and apprentices, to prove to Britain that liberated Africans were not slaves. Liberated Africans in Cape Town probably had more opportunity than those in Salvador to use the 'weapons of the strong' — state instruments such as the court and officials such as the Collector of Customs — to determine their futures in ways faster than treaties and legislation envisaged. In Salvador, Africans relied on the 'weapons of the weak', such as flight.

The difference in options available to liberated Africans in Cape Town and Salvador probably came down to three variables. First, there was the question of critical mass. In the 1840s, there were liberated Africans arriving in Cape Town every two or three months, and so it is possible that the Africans resident in the holding facility at Papendorp or in the smallpox hospital could inform the next wave of arrivals about using the court or the Collector of Customs as ways to make claims about their futures — there was probably greater awareness of the meanings and potentialities of status as a liberated African. Second, the presence of mixed-commission and vice-admiralty courts in Cape Town gave liberated Africans an additional resource not open to their counterparts at Salvador; the mixed-commission court must have seemed even more accessible considering that it was located on Adderley Street, adjacent to the lodge in the Company Gardens where liberated Africans were sometimes held. Third, Capetonian state officials and hirers were under pressure from the potential moral censure

of metropolitan abolitionists and the potential legal and political intervention by the metropolitan government to avoid the same scandal that had beset the colony in the 1820s. There was no analogous pressure at Salvador; indeed, the closest equivalent was the British naval squadron's posting along the Bahian coast, which some Africans such as Pepper managed to use as a means of escape.

What, then, was the precise legal status of liberated Africans in the Atlantic world? Jenny Martinez has argued that slave-trade suppression, and abolitionism more generally, bestowed human rights upon former slaves.¹²³ A softer version of this claim, proposed by Beatriz Mamigonian and the late Patrick Harries, has argued that liberated Africans claimed rights through court processes.¹²⁴ But the language of 'humanity' and the attribution of rights were absent from the bilateral treaties and it is not clear that liberated Africans made claims to *rights*, either against other individuals or the state.¹²⁵ As an alternative to rights-based approaches, historians have carefully revealed how naval squadrons saw liberated Africans as an opportunity to earn prize money and how hirers saw liberated Africans as a cheap source of apprenticed labour.¹²⁶ Consequently, debate has revolved around the extent to which anti-slave-trade legislation re-enslaved liberated Africans, and therefore the extent to which the same processes of ethnic survival or creolization, which supposedly shaped slaves' lives and choices for centuries, in turn shaped liberated Africans' lives and choices in making sense of the profound rupture that they had experienced through transatlantic displacement.¹²⁷ But historians should

¹²³ Martinez, 'Antislavery Courts'; Martinez, *Slave Trade and the Origins of International Human Rights Law*.

¹²⁴ Mamigonian, 'O direito de ser africano livre'; Harries, "Ideas of Liberty and Freedom", 174.

¹²⁵ Martinez, 'Antislavery Courts'; Martinez, *Slave Trade and the Origins of International Human Rights Law*; Moyn, *Last Utopia*.

¹²⁶ Scanlan, 'Rewards of Their Exertions'; Emma Christopher, "'Tis Enough That We Give Them Liberty"? Liberated Africans at Sierra Leone in the Early Era of Slave-Trade Suppression', in Burroughs and Huzzey (eds.), *Suppression of the Atlantic Slave Trade*; McKenzie, *Imperial Underworld*, ch. 4.

¹²⁷ The argument about ethnic survivals and creolization goes back to Melville Herskovits and Sidney Mintz. See Melville J. Herskovits, *The Myth of the Negro Past* (New York, 1941); Sidney W. Mintz and Richard Price, *The Birth of African-American Culture: An Anthropological Perspective* (Boston, 1992); Adderley, 'New Negroes from Africa', 235–6; Nelson, 'Apprentices of Freedom'.

ask themselves if dusting off the scales to weigh survivals and creolization gets us much purchase on how historical actors understood the choices available. As Michel-Rolph Trouillot put it, the paradigmatic expectation that Africans would be 'either *tabula rasa* or mere carriers of tradition' tries to give historical meaning to slaves; but these alternatives do not probe deep enough in understanding the profound political, social and legal brutalities wreaked on enslaved people, or the consequent precarities in their post-emancipation status.¹²⁸

This article has unpacked an alternative approach, defining liberated Africans' legal status in terms of unguaranteed entitlements. Liberated Africans used unguaranteed entitlements to make claims about *status* ('I am not chattel') and about *possible futures* ('I shall support myself through witchcraft or flight rather than through waged apprenticeship'). Although unguaranteed entitlements theoretically had the same remit anywhere in the Atlantic under anti-slave-trade law, their success as claims varied hugely depending on local context, state personnel and the resources at the disposal of liberated Africans in each particular case.

Many historians have innovatively researched the ways in which 'history as process' made the Atlantic a coherent region in the early modern period.¹²⁹ European colonization of the New World, the transatlantic slave trade and the growth of new states through warfare and revolution in America, Haiti and West Africa brought the four continents together until 1830.¹³⁰ The continued vigour of the slave trade after 1830 prompted British attempts to reorder the seas, coasts and ports around the Atlantic

¹²⁸ Michel-Rolph Trouillot, 'North Atlantic Universals: Analytical Fictions, 1492–1945', *South Atlantic Quarterly*, ci (2002), 855; for similar arguments, see Vincent Brown, *The Reaper's Garden: Death and Power in the World of Atlantic Slavery* (Cambridge, Mass., 2008), 8; Diana Paton, *The Cultural Politics of Obeah: Religion, Colonialism and Modernity in the Caribbean World* (Cambridge and New York, 2015), intro.

¹²⁹ Bernard Bailyn, *Atlantic History: Concept and Contours* (Cambridge, Mass. and London, 2005), 41.

¹³⁰ Other key texts in the field of Atlantic history include J. H. Elliott, *Empires of the Atlantic World: Britain and Spain in America, 1492–1830* (New Haven, 2006); Joseph C. Miller, 'Introduction: Atlantic Ambiguities of British and American Abolition', *William and Mary Quarterly*, lxvi (2009); David Armitage and M. J. Braddick (eds.), *The British Atlantic World, 1500–1800* (Basingstoke, 2009); Matthew Brown and Gabriel Paquette (eds.), *Connections after Colonialism: Europe and Latin America in the 1820s* (Tuscaloosa, 2013).

as legal spaces of slave-trade suppression. The result, particularly from 1839 onwards, was increasingly aggressive British unilateral action, and a consequent influx of liberated Africans into the Cape and Brazil. The problems and possibilities that their unguaranteed entitlements raised remind us that the Atlantic Ocean continued to form a horizon across the nineteenth century.

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