IRSH 54 (2009), pp. 391–416 doi:10.1017/S0020859009990356

Freedom, Precariousness, and the Law: Freed Persons Contracting out their Labour in Nineteenth-Century Brazil

HENRIQUE ESPADA LIMA

History Department, Universidade Federal de Santa Catarina, Brazil

E-mail: henrique.espada@gmail.com

SUMMARY: This essay discusses the relationship between Brazilian labour laws and the labour arrangements entered into by former slaves (*libertos* – freed persons) in Brazil during the nineteenth century. It discusses firstly how the definition of "contract" was important in guiding the labour laws on Brazilian national and immigrant workers, as well as on former slaves. By analysing a sample of labour contracts entered into by freed persons and recorded in the archives of notaries in the southern Brazilian city of Desterro (now Florianópolis) between the 1840s and 1887, this essay discusses too the conflicted meanings of "freedom of labour" to freed persons and their employers. It attempts further to show how efforts to deal with precariousness were central to the strategies of freed persons and the negotiations underlying those contracts. Finally, this essay aims to understand the possible reasons for the disappearance of the contracts from notarial records after the end of slavery.

The study of the uncertain boundaries between "free" and "unfree" labour addresses more than just definitions of words and concepts. We have to recognize that neither the meanings nor the actual experience of the juridical condition of freedom or bondage had, in the long term, a strictly defined content, without uncertainties and ambiguities. Since the nineteenth century especially, when the ideology of free labour started to gain more judicial and political substance, and when the principle of "free contract" became the paradigm compared with which all formal and informal labour arrangements should be seen, a complex and contested field has emerged in which the meaning of freedom, of labour freedom, the limits of coercion, and the definition of acceptable boundaries between slavery and freedom became subjects of a wide-ranging and constant debate.

The main subject of the present essay is to discuss some aspects of this contentious field, and to explore the experiences of men and women in

nineteenth-century urban Brazil who managed to escape from slavery by contracting out their labour and services in order to pay for their manumission. The background to their experiences was the changing legal framework in Brazil after the 1830s, when a new set of laws was introduced to regulate the labour arrangements of some categories of worker. It will be argued that the introduction of notions of "contract" that were not present in the former Luso-Brazilian legal traditions also had an important impact on the freedom and labour arrangements of slaves and ex-slaves after that period. Those issues will be addressed by discussing the labour contracts relating to former slaves registered in the notarial records for the island of Santa Catarina, in southern Brazil, between the 1840s and 1888. The discussion here is organized around three central questions: What was the nature of those contracts? What do they teach us about the society that produced them? And why did they disappear after abolition?

CONSTRAINTS AND SOURCES

The sources for this essay come from the city of Desterro and its districts, on the island of Santa Catarina, in southern Brazil. In the nineteenth century, Desterro was the capital of the state of Santa Catarina. This is an area considered peripheral in terms of the main focus of the historical interpretation of Brazilian slavery, which is usually concerned with the plantation areas in the south-east (the São Paulo hinterland and the state of Rio de Janeiro) or the main urban centres such as the city of Rio de Janeiro and Salvador, which had a dense concentration of slaves throughout the nineteenth century. In comparison, the island of Santa Catarina had a much smaller-scale slave society, although it was also much more similar to the majority of situations in non-plantation areas throughout Brazil, which were characterized by a very widespread ownership of slaves, even among the less affluent. Because of that, studies in areas such as Santa Catarina can provide important insights into the historical dynamics of slavery and into emancipation in Brazil as a whole.[1]

The main documents treated here come from five notaries, from five different districts: the first and second extra-judicial notary offices in Desterro (first and second *ofícios de notas*[2]) and the notaries of Nossa

1. On the importance of discussing the slave areas beyond the limits of plantation areas in Brazil, see Bert J. Barickman, *A Bahian Counterpoint: Sugar, Tobacco, Cassava, and Slavery in the Reconcavo, 1780–1860* (Stanford, CA, 1998).

2. The first and second *ofícios de notas* in Desterro were two distinct nineteenth-century notary offices, both covering the city of Desterro. However, almost all the documents from the first have been either lost or destroyed. The surviving documents are today among the papers of the second notary and will be considered here as part of just one corpus.

Table 1. *Labour contracts registered on the island of Santa Catarina (1841–1888)*

Gender	1841–1871*	1871–1888	Totals
Male	27	114	141
Female	23	96	119
Totals	50	210	260

*Before October 1871.
Sources: The table is based on a compilation of the records from five notaries on the island of Santa Catarina: Notas do 1º e 2º Distrito do Desterro, Notas do Cartório do Juiz de Paz da Freguesia de Nossa Senhora da Conceição da Lagoa, Notas do Cartório do Juiz de Paz da Freguesia de Nossa Senhora das Necessidades de Santo Antônio, Notas do Cartório do Juiz de Paz da Freguesia de Nossa Senhora da Lapa do Ribeirão, and Notas do Cartório do Juiz de Paz da Freguesia da Santíssima Trindade. All of those notaries are still in existence today, and all have preserved and retained ownership of the records quoted from here.

Senhora da Conceição da Lagoa, Nossa Senhora da Lapa do Ribeirão, Nossa Senhora das Necessidades de Santo Antônio, and Santíssima Trindade, all districts located on the island of Santa Catarina, where Desterro is sited, and all administratively subordinated to that municipality. Three other notaries existed in the period discussed here, but their documents are now lost. Furthermore, the surviving documents cover the period after 1829 only incompletely. The lack of documentation before 1829[3] is an important constraint on our study, as is the fact that many of the documents after that date have been lost too.

The contracts – usually called *contratos de locação de serviços* (service rental contracts) – appear among the notaries' records for the period from the 1840s until the final moments of slavery, in 1888. No other kinds of labour contract are included, at least not in the notarial papers – which recorded all legal contracts in Brazil – and no labour contracts can be found in those notarial records after the end of slavery.[4] We have been able to identify 260 contracts involving freed persons. The earliest date from 1841 (see Table 1).

The context of these arrangements is also given by the place of the slave and the "freed" population on the island of Santa Catarina. As shown in

3. The exception is an index of the first *ofício de notas do Desterro* records compiled in 1842: this index lists, with minimum information, all records registered between March 1805 and December 1842. It covers 13 volumes, with a total of 3,358 entries (there are no contracts among them, but we cannot be certain whether some of the debts and obligations referenced in the index can be considered contracts).

4. The absence of other contracts is valid for this context only. However, we have no information on other modalities of labour contracts in other urban contexts in Brazil. On the other hand, rural labour contracts are likely to be found in regions where European immigration to work on the plantations was more common, as in the states of São Paulo and Rio de Janeiro.

Table 2. *Population of island of Santa Catarina in 1872 (all 7 districts), by status and gender*

Gender	Slaves	%	Free	%	Total
Male	1304	11.73	9,814	88.27	11,118
Female	1308	11.67	9,903	88.33	11,211
Total	2612	11.70	19,717	88.30	22,329

Table 3. *Population of island of Santa Catarina in 1872 (all 7 districts), by "colour", status, and gender*

Gender	Slaves (blacks and mixed colour*)	Free blacks and mixed colour*	Blacks and mixed colour* as % of total population	Free whites and others**	Whites and others as % of total population	Total
Male	1304	1429	24.58	8385	75.42	11,118
Female	1308	1658	26.46	8245	73.54	11,211

*Mixed colour: listed in the census as *pardos*.
**Others listed as *caboclo* (meaning white mixed with native population) – listed separately in the census (a very small number in all areas and diluted in the "free" non-black population here).
Sources for Tables 2 and 3: Recenseamento Geral do Brazil de 1872, II – Provincia de Santa Catharina, CD-Rom, Gerência de Biblioteca e Acervos Especiais do Instituto Brasileiro de Geografia e Estatística (GEBIS-IBGE), s/d. districts: Parochia de Nossa Senhora do Desterro; Parochia de N.S. das Necessidades de Santo Antônio; Parochia de N.S. da Lapa do Ribeirão; Parochia de S. João Baptista do Rio Vermelho; Parochia de S. Francisco de Paula de Canasvieiras; Parochia de SS. Trindade Detraz do Morro; and Parochia de N.S. da Conceição da Lagoa.

Tables 2 and 3, which draw on data from the Brazilian census of 1872, there was a significant population of free blacks (*pretos*) and mixed-colour people (*pardos*) living and working side by side with the slaves and the free "whites". This free population was larger than the slave population in 1872 and many of these men and women were *libertos* (freed persons) themselves. Some of them certainly contracted out their labour in order to escape from slavery.

LABOUR ARRANGEMENTS AND FREEDOM ARRANGEMENTS

The *labour* arrangements discussed here are closely linked to the *freedom* arrangements secured by the former slaves in urban Brazil prior to abolition. All the formal contracts that could be found involved an ex-slave

who succeeded in purchasing his or her freedom from their master or mistress, using the intercession of a third party, usually someone who lent the slave money in exchange for immediate and future payment of labour or currency.

To interpret those contracts, we have to be aware that, especially in the urban context, Brazilian slave relations had always been characterized by surprisingly extensive negotiations and all manner of transactions between slaves and their masters.[5] Until the abolition of slavery in 1888, Brazilian society was deeply marked by slavery, but also by a strong presence of manumission – the formal individual emancipation from slavery, usually by the master and through the intervention of a third party (a patron, or someone who lent money at interest), or through monetary compensation for example. Manumissions – or "writs of freedom" – were very common and were a feature of the management of slave relations long before abolition. Throughout the entire slave era, manumission had always been an option – though not all slaves were equally able to take advantage of it.[6] Because of that, Brazil's was a society long familiar with the presence of men and women who had experienced slavery, and who had to deal with the challenge of organizing their lives and arranging their labour in the face of the ambiguities of being "free".[7]

"Buying" manumission was certainly the most important way by which a slave could negotiate freedom from a master. Actually, the possibility open to slaves to earn money (*pecúlio*) through someone's favour or through some pecuniary compensation was one of the slave's prerogatives in the "moral economy" of slavery in Brazil.[8] For the slave, another way to obtain money was through access to some form of credit, through the informal (and largely unknown) credit market operated by many small businessmen (and women), some of them ex-slaves themselves.[9]

5. João José Reis and Eduardo Silva, *Negociação e conflito. A resistência negra no Brasil escravista* (São Paulo, 1989); Sidney Chalhoub, *Visões da liberdade. Uma história das últimas décadas da escravidão na Corte* (São Paulo, 1998); and Manolo Florentino (ed.), *Tráfico, cativeiro e liberdade. Rio de Janeiro, séculos XVII–XIX* (Rio de Janeiro, 2005).

6. In this respect, slavery in Brazil differed largely from that in other societies in the Americas, especially the United States. See Manolo G. Florentino, "Sobre minas, crioulos e a liberdade costumeira no Rio de Janeiro, 1789–1871", in *idem*, *Tráfico, cativeiro e liberdade*, pp. 331–357.

7. See, for example, Kátia de Queirós Mattoso, *To be a Slave in Brazil, 1550–1888* (New Brunswick, NJ, 1986), and Mary C. Karasch, *Slave Life in Rio de Janeiro 1808–1850* (Princeton, NJ, 1987).

8. However, before 1871 the prerogative of having a *pecúlio* or the possibility for slaves to buy their own freedom was entirely their master's prerogative. See Chalhoub, *Visões da liberdade*, and Regina Célia L. Xavier, *A conquista da liberdade* (Campinas, 1997).

9. See Zephyr L. Frank, *Dutra's World: Wealth and Family in Nineteenth-Century Rio de Janeiro* (Albuquerque, NM, 2004), and the more recent João José Reis, *Domingos Sodré: Um sacerdote africano – Escravidão, Liberdade e Candomblé na Bahia no século XIX* (São Paulo, 2008).

Throughout the period of slavery, slaves could "bargain" for manumission through *coartação*, or arrangements involving "conditional" or "onerous" freedom.[10] All of those arrangements made attaining freedom conditional on certain constraints or periodic payments, or both. Two examples captured in the records of Desterro's notaries, and separated by almost thirty years, give a good idea of the kinds of negotiations and provisions involved in arrangements of this nature. The first one concerns Joaquina Benguela, a slave whose name suggests that she may have arrived in Brazil as part of the Middle Passage from the coast of western central Africa. She received her writ of freedom (*carta de liberdade*) from her owners on 28 November 1831 in the following terms:

> I and my wife above signed declare that, among the other goods we have, we own a slave woman named Joaquina Benguela, who for the good services that she has done to us – to my wife before the marriage and to me after it – we give her this Writ of Freedom for the amount of one hundred and ninety-two thousand réis,[11] and [we declare that we] have received from the same slave the amount of eighty-three thousand two hundred réis […] and she must serve us until she has finished paying the [rest] […] with four thousand réis monthly of her personal service, or as soon as she can satisfy this sum, becoming [then] entirely free, and to depend on us while her behaviour is convenient to us [and] if it is not as it used to be until now, she will go where it is better suited to her.[12]

The other example is from October 1860. Another woman – this time a Brazilian-born (*crioula*) named Rufina Teresa de Jesus – received conditional freedom from her master, but subject to a whole set of negotiated forms of compensation:

> I Francisco Antonio de Oliveira [Margarida and my wife Dona [Libania] Rosa do Livramento, declare that we possess a *crioula* slave named [Rufina] Teresa de Jesus, from whom we have decided to receive the sum of four hundred thousand réis (400$000) […], […] [the same] *crioula* becoming free, but obliged, however,

10. There are many studies of the wide range of forms of manumission (including *coartação* or "writs of freedom") in Brazil. The following are among the most important: A.J.R. Russell-Wood, *The Black Man in Slavery and Freedom in Colonial Brazil* (New York, 1982), and Peter L. Eisenberg, *Homens esquecidos. Escravos e trabalhadores livres no Brasil. Séculos XVIII e XIX* (Campinas, 1989).

11. "Réis" (or more often "mil-réis" – 1,000 réis) was the Brazilian currency in the nineteenth century. It is very difficult to give an equivalent in other currencies (the value of the réis changed over more than thirty years too), but as an approximation we could use a reference from Carvalho de Mello (cited in Frank, *Dutra's World*, p. 197, n. 40), who reports that in 1873 the annual cost of maintaining a slave worker in Rio de Janeiro was 211$400 (211,400 réis), including costs of food. Working as an unskilled agricultural labour, the same slave could be rented for 334$800.

12. "Lançamento de petição e escritura de alforria da preta Joaquina Benguela como abaixo se declara", *Livro 4 do 2º Ofício de Notas da Cidade do Desterro (1829–1833)* (Notary – Joaquim Francisco de Assis e Passos), 28 November 1831, fls 132v and 133.

> to provide all services in our home for a period of [six] years and three months, and also to give us during the same period the sum of eight thousand réis each month. And, after consummating this deal, she will [then] enjoy her complete freedom, as if she had been born from a free womb.[13]

These conditional and onerous writs of freedom had an almost "contractual" quality, in the sense of implying an obvious negotiation between masters and slaves. The manumitted aimed to secure an arrangement that could provide him or her access to the valuable world of legal freedom. For the master, financial compensation was inseparable from attempts to maintain a relationship of dependence and subordination. However, there were major differences between those freedom arrangements and the actual contracts we will be studying here. The first is that the manumitted slaves entered into those arrangements with their former masters as an extension of their previous relationship, now with a new name. Second, from a formal point of view, manumission was a unilateral gift made at the sole discretion of the master and dependent on his or her will. There was no formal freedom until the conditions established had been fulfilled, and the master was under no obligation to fulfil any kind of further condition. The manumission was a one-sided act and, under Luso-Brazilian law, could, as a gift, be annulled at the donor's will.[14]

The labour contracts we examine here were directly associated with those earlier and customary arrangements; the fundamental difference relates precisely to the distinctive character of their "contractual" dimension.

THE PARADIGM OF CONTRACT IN A SLAVE SOCIETY

The paradigm of "contract" was the most distinctive feature of the new juridical organization of labour management under the market system. The "free contract" became the fundamental model of labour arrangements in a society organized by the rules of "free" competition, which supposes labour is a commodity for sale in the market. In theory, relations between workers and employers are defined no longer in terms of dependency, protection, and coercion, but as a "mere 'convention', that is to say a contract between two parties known as a wage".[15] That new dimension certainly emerged in the nineteenth century as the fundamental paradigm to regulate transactions between workers and their employers.

13. "Registro do título de liberdade condicional que segue", *Livro 23 do 2º Ofício de Notas da Cidade do Desterro (1860)* (Notary – João Antonio Lopes Gondim), 3 December 1860, fls 3v.
14. See *Ordenações Filipinas*, IV, "Tít. 63: Das doações e alforria que se pode revogar por causa de ingratidão" (Rio de Janeiro, 1870), pp. 863–864.
15. See Robert Castel, *From Manual Workers to Wage Labourers: Transformation of the Social Question* (New Brunswick, NJ, 2003), p. 165.

Labour "freedom" was itself defined as the possibility for two autonomous, self-owned individuals to establish a contract between themselves. We will not be discussing the lengthy debate concerning the emergence of this "contractual paradigm" as labour regulator here,[16] but we certainly agree that – owing to its intrinsic characteristics – the implementation of a "free" labour market did not take place anywhere in either a homogeneous or an uncontested form. On the contrary, an enormously complex and extensive field of contention emerged regarding the meaning of this "freedom". Even self-ownership – defined as the "minimal, objective criterion of nineteenth-century free labour" – was hardly unambiguous in the "modern" Western societies that "have afforded a variety of conditions and statuses, apart from legalized chattel bondage, where juridical self-ownership was obscured or qualified and where an individual's right to sell or alienate his or her labor power in the marketplace was therefore limited".[17] In this context, "free labour" was definitely a very vague idea, and its empirical reality was translated into configurations that varied from the ideal type of the independent employed worker to a myriad of labour arrangements that combined different degrees of "freedom" and financial compensation for labour with elements of coercion (physical and pecuniary), protection, compulsory and contracted labour, and even forms similar to slavery, such as servitude due to debt. As a result of the conflicts over its meaning and scope, "free labour" was at the very least an ambiguous reality and at times an uneasy fiction, even in countries such as Britain and the United States in the nineteenth and the early decades of the twentieth century.[18]

On the other hand, in slaveholding America, the notion of "contract" was central to various emancipation projects throughout the nineteenth century. In Brazil the slow process of emancipation was constructed in parallel with the gradual insertion of legislation that aimed, more than

16. See Robert Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge, 2001), and, by the same author, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture* (Chapel Hill, NC, 1991). See also Jonathan A. Glickstein, *Concepts of Free Labor in Antebellum America* (New Haven, CT, 1991); Thomas C. Holt, *The Problem of Freedom: Race, Labor, and Politics in Jamaica and Britain, 1832–1938* (Baltimore, MD, 1992); Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge, MA, 1998); and Frederick Cooper, *Plantation Slavery on the East Coast of Africa* (New Haven, CT, 1977).

17. See Glickstein, *Concepts of Free Labor in Antebellum America*, p. 1.

18. This is illustrated, for example, in the work of Gunther Peck, *Reinventing Free Labor: Padrones and Immigrant Workers in the North American West, 1880–1930* (New York, 2000), which shows that in the American West, in a region and period that US historiography usually considers paradigmatic of the American entrepreneurial spirit, the notion of free labour involved important ambiguities; labour relations centred on the *padrones* and were based on the coercion and protection that were used, not by rude and primitive employers, but by modern entrepreneurs.

anything else, to discipline and order the country's labour market, including the contingents of immigrant workers and those leaving slavery.[19] All labour laws – and a number were gradually introduced from the early 1830s – were of special concern to labourers on the plantations (not the urban workers) and were linked to increasing concerns among legislators and plantation owners about the threat to the supply of labour if African slavery were to be ended. Even though the political projects aiming at the gradual, pacific, and planned end to slavery in Brazil were in many ways an effort to deal with political pressures from the slaves themselves, we must agree that this effort was also guided by a clear attempt to effect a compromise between the paradigm of contract and the paternalistic ways that shaped relations between masters and their slaves, ex-slaves, and dependants.

Portuguese colonial law, which remained in force in Brazil after independence, treated the problem of labour relations in a very restricted form. The part relating to civil law (which remained in force in Brazil until the beginning of the twentieth century)[20] dealt with relations between servants and their patrons or masters, stipulating the forms and levels of payment for wages and services. This legislation covered no other forms of labour apart from domestic service, and even then it applied only within very restricted parameters.[21]

19. The idea of an "emancipation process" in Brazil was actually the argument produced in the nineteenth century by that part of the white abolitionist movement which defended the gradual process to abrogate slavery. However, the idea of a gradual and pacific abolition conducted by well-intentioned legislators is being increasingly challenged by the Brazilian scholarship on slavery, which is showing that, by introducing new laws in that field, what legislators were trying to do was to delay abolition as long as they could in order to protect their investments and to retain a logic of dominance over and dependence on the part of their former slaves. See Chalhoub, *Visões da liberdade*, and the same author's *Machado de Assis Historiador* (São Paulo, 2003). See too Joseli Nunes Mendonça, *Entre a mão e os anéis: a lei dos sexagenários e os caminhos da abolição no Brasil* (Campinas, 1999).

20. The *Ordenações Filipinas* (Philippine Code) from the sixteenth century onwards. Volumes III and IV contained the civil law. See *Ordenações Filipinas*, I–V; Cândido Mendes de Almeida Edition (Rio de Janeiro, 1870). The new, republican, Brazilian Civil Code (*Código Civil*) did not replace the *Ordenações* until 1916 (Law no. 3.071, 1 January 1916). On the difficulties facing legislators in creating a civil code for an independent Brazil, see Eduardo S. Pena, *Pajens da Casa Imperial. Jurisconsultos, escravidão e a lei de 1871* (Campinas, 2001), especially ch. 1.

21. It is important to note that colonial Portuguese and imperial Brazilian labour laws were always very synthetic. Even black slave labour was never subject to a different set of laws to manage it, even though many legal regulations on slaves and slavery were implemented during the colonial and independence periods. See Silvia H. Lara, "Legislação sobre escravos africanos na América portuguesa", in José Anrés-Gallego (ed.), *Nuevas aportaciones a la historia jurídica de Iberoamérica* (CD-Rom, Madrid, 2000). The case of Britain and the British Empire after the Masters and Servants Acts was completely different: see Douglas Hay and Paul Craven (eds), *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill, NC, 2004).

After Brazil's independence from Portugal in 1822, it embarked on moves to draw up labour legislation.[22] A law enacted on 13 September 1830 was concerned especially to regulate labour contracts that involved delimiting periods for immigrants, deadlines, and salary advances. That law – which regulated service contracts – was fairly insubstantial and did little apart from establishing the general framework within which contracts could be entered into: setting no time limits, and without addressing working conditions and guarantees for workers, its main concern was to preserve the investments made in the workers (especially those brought to Brazil through immigration companies). Under this law of "contracts", the ideal image of a contractual relationship as a free agreement concerning work and financial compensation between worker and employer as equivalent partners was introduced in a context in which labour relations had previously been defined by subordination and coercion, and the expectations already embedded in previous arrangements were required to be preserved in the new ones.[23]

The 1830 law on service contracts (or service hiring) never fully accomplished what lawmakers either intended or expected. Perhaps this is because in the next two decades the importance of slave work increased instead of diminishing (it was not until 1850 that Brazil's Atlantic slave trade ended). Nor was the law useful in creating a favourable legal framework to attract foreign workers either. Growing immigration – especially of Portuguese workers to be employed in commerce and urban activities in cities such as Rio de Janeiro and Belém, and German labourers, who created colonies in the hinterland of southern states such as Santa Catarina and Rio Grande do Sul – happened concurrently and with little regard to immigrant labour laws. The written labour contracts – if they existed at all – were apparently not included in the records of Brazil's notaries.[24]

22. *Collecção das Leis do Império do Brazil de 1830. Parte Primeira* (Rio de Janeiro, 1876), pp. 32–33.

23. On the impact of the idea of the "free contract" in this context, see Henrique Espada Lima, "Sob o domínio da precariedade: Escravidão e os significados da liberdade de trabalho no século XIX", *Topoi*, 6:11 (2005), pp. 289–325.

24. There has, so far, been no historical reference to the existence of these contracts, nor any scholarly study of them. On foreign immigration to Brazil in this period, especially Portuguese, see Luiz Felipe de Alencastro, "Proletários e escravos. Imigrantes portugueses e cativos africanos no Rio de Janeiro, 1850–1872", *Novos Estudos*, 21 (July 1988), pp. 30–45. Alencastro has demonstrated the impact of Portuguese immigration to Brazil after the definitive end of the Atlantic slave trade in 1850, especially in urban areas such as Rio de Janeiro. The Portuguese immigrants worked not only on the farms and plantations, but especially in the tertiary sector and in urban occupations. Those immigrants went to Brazil as *engajados* (engaged) – a condition very similar to the "indentured servants" in the British colonies: "In exchange for expenses for the passage by boat, double what was usual, the engaged – who provided as security themselves, their goods, and their heir's possessions – could disembark in Brazil,

In 1837, Brazilian lawmakers tried again and sanctioned a new, more detailed law to deal with labour contracts only with foreign colonists, covering adults as well as children.[25] That new law was wider and more complex, and implemented in the context of new treaties made with the United Kingdom in relation to the end of the Atlantic slave trade. Once more, the law chiefly targeted immigrant agricultural workers, and was not in principle applicable to Brazilian workers. This legislation would regulate labour contracts in agriculture until 1879.[26] The 1837 law provided, at least partially, some legal guarantees to workers that their contracts would not entirely be governed by the will of those contracting their labour. The challenge to lawmakers was to forge a legal compromise between the logic of contracts and the prerogatives of masters (after all, most of them were slave owners themselves), and at the same time to organize a labour environment sufficiently different from slavery to attract immigrant labourers, while preserving slavery as it was. The solution found excluded all domestic labour as well as the labour contracts held by "nationals" – that is, the majority of poor, free, and freedmen and women – whose "management" remained, at least in principle, directly informed by the patterns of dependence and subordination found in slave relations rather than being guided by contractual logic.

To the Brazilian-born, legal coverage remained ambiguous. When, in 1860, the Brazilian Emperor asked the Justice Section of the Council of State – an advisory body – to advise as to which law actually regulated the hiring of labour involving nationals, it responded by attributing that competence to the Imperial Commercial Code, a new law from 1850, and not the 1830 law.[27] The Commercial Code defined, in article 226, "trade

though not without the authorization of the ship's captain and the ship's representatives. The former could establish a contract 'with one or more patrons' who would refund to the ship's owners the costs of the passage and of the upkeep of the *engajados* during the Atlantic crossing." See Alencastro, "Proletários e escravos", p. 36.

25. Law 108, enacted on 11 October 1837. See *Collecção das Leis do Império do Brasil de 1837*, Parte I (Rio de Janeiro, 1861), pp. 76–80.

26. See Maria Lúcia Lamounier, *Da escravidão ao trabalho livre (a lei de locação de serviços de 1879)* (Campinas, 1988). It is important to note that the 1879 law on "agricultural service rent" would be the last attempt to regulate labour in Brazil on a contractual basis and applied exclusively to agricultural activities. Only a few contracts found on the island of Santa Catarina referred to this law and they were not much different from those found in urban areas and which dealt with domestic labour, for example. The reason is probably linked to the fact that the agricultural activities in the more rural areas of the island involved cassava and other minor crops that could be managed by a small number of workers. In this context, we can suppose that no distinction was made between domestic and farming activities. We can also presume that more detailed historical research on Brazilian plantation areas after 1879 might reach different conclusions.

27. See "Resolução de 26 de Maio de 1860", in José P.J. da Silva Caroatá, *Imperiaes Resoluções tomadas sobre Consultas da Secção de Justiça do Conselho de Estado. Desde o anno de 1842, em que começou a funccionar o mesmo Conselho, até hoje, I Parte* (Rio de Janeiro, 1884), pp. 876–877.

hire" as including the hire of "anything" or any service, provided at a defined time and price. In the case of work, it covered "contract work" provided for a defined time and not wage labour.[28] Consequently, the legal status of all remaining remunerated urban occupations and domestic work was unclear. However, the juridical apparatus created to deal with other transactions and other workers supplied the legal language and, eventually, the legal principles that could provide a logical basis for other contracts relating to national workers as well as "barbarian Africans"[29] and their descendants, free and freedmen and women, living in Brazil.

Despite the fact that it was not until 1871 that a specific law was implemented to deal with the contracts of freed persons, many contracts existed before that date and they adopted the language and logic of those early laws. Those contracts are absent from the notarial records before the 1840s. Although no specific law regulated them, their connection with the new juridical order can be found in the legal language and juridical principles they employed. The contracts were simply impossible before this language and principles had been formulated in the Brazilian context.

REGULATING FREED LABOUR

The other aspect of the laws on labour contracts is illustrated in the "Rio Branco Law" of 1871.[30] This was the first Brazilian law strictly intended to deal with freedmen labour and was proposed by legislators as the main step towards the gradual and controlled end of slavery in Brazil, while respecting the property "rights" of slave owners. The 1871 law freed all children born to slaves as from that date, and regulated and gave new juridical substance to manumission through labour hiring or "service rental" contracts (*contratos de locação de serviços*). The 1871 law dealt with many aspects of the former slaves' work; it dealt for instance with the labour of the freeborn infants born to slaves, who were to remain with their mothers – their "free" but unpaid labour would belong to their mother's masters until they reached the age of twenty-one. On the other hand, those slaves who could pay for their freedom could submit a demand for manumission directly to the judicial

28. See "Título X. Da Locação Mercantil" (Arts. 226–246), "Código Commercial do Império do Brasil" (Law no. 556, 25 June 1850), in *Collecção das Leis do Império do Brasil*, 1850, pp. 57ff.

29. An expression used in the 1830 law relating to the possibility of free Africans immigrating to Brazil, a possibility deemed undesirable by legislators.

30. Named after José Maria da Silva Paranhos Junior, the Baron of "Rio Branco" and First Minister at the time. See Law no. 2040 – 18 September 1871, in *Collecção das Leis do Império do Brasil de 1871*, XXXIV, Parte 2, pp. 147–151. This law is also known as the "Free Womb" Law.

authorities, without requiring their master's consent. Their "freedom", however, would be directly controlled by the authorities:

> In general, the slaves freed under this law will be subject to government inspection for a period of five years. They are commanded to hire out their services or they will be forced by the authorities to work in public facilities, if living in idleness. This enforcement will not be applicable, however, if the freedman can show his labour hiring contract.[31]

There was a wide gap between the letter of the law and its application. There is no doubt that the real world was far more complex and conflictual than the law suggests. The main proof of that lies in the fact that the law itself produced a new situation of juridical ambivalence which led slaves to use it to expand their own demands and ended up undermining Brazilian slavery from within, long before slave owners and legislators had drawn up their plans. The 1871 law entitled slaves to earn money and to buy their freedom without their master's consent, by petitioning the judicial authorities through a legal custodian. In addition, in its ninth article, it revoked the old "ordination" that allowed masters to annul manumissions in cases of ingratitude. In doing so, the law dealt an almost fatal blow to the main source of the masters' power over their slaves. All kinds of conflict had risen concerning these new entitlements of slaves.[32] The "Rio Branco Law" on contracts was certainly inspired by the many contracts entered into by ex-slaves in the decades before, giving a new and improved juridical foundation to this kind of arrangement. It certainly gave them new boundaries too, including the seven-year limit on the duration of contracts. That accounts for why the number of such contracts in notarial records rose considerably after 1871.[33]

The important issue we want to underline here, however, is that the new contracts under the 1871 law had much in common with the earlier ones, and were inspired by other laws. They were characterized not just by the fact that they tried to regulate labour; they also established a new set of parameters within which the slaves, freed persons, their "masters",

31. Law no. 2040 – 28 September 1871, art. 6, §5.

32. Chalhoub's argument on the importance of the 1871 law in the context of the struggle by slaves (Chalhoub, *Visões da liberdade*) has been developed further by other historians including Pena, *Pajens da Casa Imperial*, and Elciene Azevedo, *Orfeu de Carapinha. A trajetória de Luís Gama na Imperial Cidade de São Paulo* (Campinas, 1999).

33. See Table 1. A good example of the growing importance of the contracts following the "Rio Branco Law" is their relationship to the writs of freedom: without much change in the average number of those records compared with the early period, the total number of manumissions found in Desterro's first and second notary offices between 1871 and 1888 is 416 for 148 contracts (those numbers do not correspond to the total number of manumissions and contracts recorded, only to the surviving ones, since we have no records from the second notary for the years 1873, 1874, mid-1876–1878, mid-1881–mid-1882, and mid-1887–May 1888, and only one surviving book from the first notary, covering 1886–1887).

Figure 1. Many African and African-Brazilian women – especially freedwomen – worked as greengrocers in the streets of Rio de Janeiro and many other Brazilian cities in the nineteenth century. For slave women, this activity was a possible way of earning money to buy their freedom. *Photograph: Marc Ferrez (1843–1923). Mulheres no mercado (women on the market), Rio de Janeiro, c.1875; Coleção Gilberto Ferrez/Acervo Instituto Moreira Salles, Brazil. Used with permission.*

former owners, and new employers started to think about their own reciprocal relations.

CONTRACTS AND THE PRECARIOUSNESS OF FREEDOM

The first labour arrangement registered by a former slave on the island of Santa Catarina was recorded in notarial papers from the district of Lagoa da Conceição and is dated 10 February 1841.[34] It was a "deed of debt and obligation" (*escritura de dívida e obrigação*) between the freed "black man", Antonio, an African from Benguela, and a man named José Gonçalves Pereira, who had lent him the sum of 350$000 réis, money used by Antonio to pay for his freedom, and, as the note said:

> […] for satisfaction and protection of such debt and its payment, has mortgaged his person and services, and from now on committed himself to serve and obey

34. This is the first contract to have survived on the whole island. There is a lack of documentation from the Desterro notary offices between 1833 and 1847, though one can suppose earlier contracts existed. However, based on the remaining documents, we can assume there were no such contracts before 1833.

> with promptness, humility, subordination, and submission for sixteen years to the above José Gonçalves Pereira [who will give him] daily sustenance, and clothes as if it is done to a slave […].

Beyond that, if Antonio became sick his new patron would pay for treatment, and each time his illness lasted longer than eight days those days would be added to his duration of service. Despite other conditions whose purpose was to try to keep the freedman from changing his mind and entering into a contract with somebody else, Gonçalves agreed to allow Antonio to work Sundays and holidays for himself.[35]

A slightly different tune marked the arrangement made on 28 January 1848 by the freed "black woman" Maria Leocadia and Captain Fernando Antonio Cardoso in the city of Desterro. In her contract, Leocadia redeemed a debt from a previous contract of 300$000 réis. To pay it, she contracted her services for a period of ten years, and was also obliged:

> […] in the position of natural keeper of her daughter Joaquina aged seven months, more or less, to keep her in the power of the creditor for a period of […] twenty years, also counting from the first of this month, with the creditor being obliged to feed her, dress her, and give her the necessary education, for which he shall require no money and this favour shall compensate the services of the girl during the said period.[36]

Finally, in another contract, also drawn up in Desterro, dated April 1849, a twenty-five-year-old woman, also an African, called Thereza, contracted her services to "Dona" Filisberta Coriolana de Souza Passos. This time there was a debt of 100$000 réis, which the former slave had contracted to buy her freedom. In exchange for that money she committed herself for a period of no less than twenty-five years, agreeing to work "as if she were a captive" and to accompany her employer, or anyone indicated by her, "to anywhere she was sent". In addition, she agreed not to contract herself out to anyone else during that period. In exchange, she would receive from her employer clothes, sustenance, and care in cases of illness.[37]

Reading those agreements, one is inevitably prompted to ask whether they can actually be classified as "labour contracts". After all, those

35. "Escritura de divida e obrigação de serviços, que faz o preto Antonio, escravo [que] foi de Maria Rita da Conceição, por fallecimento do Vigario Francisco Rodrigues Pereira, como abaixo se declara", *Livro 1 de Notas do Cartório de Paz da Freguesia de Nossa Senhora da Conceição da Lagoa (1876–1879)* (notary – Alexandre Correia de Mello), 10 February 1841, fls 4, 4v, and 5.

36. "Escriptura de loucação de serviços que faz a preta liberta Maria Leocadia ao Capitão Fernando Antonio Cardoso", *Livro 11 do 2º Ofício de Notas da Cidade do Desterro (1849)* (notary – João Antonio Lopes Gondim), fls 41, 41v, and 42.

37. "Escriptura de loucação de serviços que faz a preta liberta Theresa, a Dona Filisberta Coriolana de Souza Passos", *Livro 12 do 2º Ofício de Notas da Cidade do Desterro (1849)* (notary – João Antonio Lopes Gondim), fls 10 and 10v.

arrangements had much in common with other deeds and mortgages, as well as with the conditional and onerous manumissions discussed earlier. In fact, they were not straightforward contracts of exchange involving work and wages, but monetary debts redeemed by means of services contracted out. Their initial goals were to create a legal warranty recognizing a debt and to protect the creditor's loan, but they were more than that. From a formal point of view, they can be compared with the public records of debts and mortgages. Unlike in those cases, however, freedmen and women had nothing more to offer than their own work and were forced to run up debts to secure their "freedom". In contrast to manumissions, contracts were not unilateral acts but agreements the terms of which were written down in a notarial record and required the formal agreement of both parties. The references to customary obligations to servants, such as caring and clothing, were guided not only by custom; they were variable and could even be excluded from some agreements. The same applied in relation to free Sundays and holidays. Those variations naturally formed an important context for negotiation, and those negotiations could sometimes be hard-fought.

Even the worst arrangement cannot be regarded as a new enslavement – they were desperate choices made by freed persons. What they testify to is active negotiation regarding the terms of the labour performed under this new condition of "freedom". They also testify to the fact that the content of that "freedom" was neither obvious nor undisputed. Those early arrangements are fine examples of the sources discussed here. Their "contractual" substance arose from all those features that made them formally and legally different from the other settlements and agreements found in the notarial records. An analysis of the material drawn from the many contracts such as those referred to above, with their different clauses and different arrangements, tells us something about the workers engaged through them.

Despite the variety of contract forms, they all share a number of features: all of them define the freedman or woman as financially indebted and the contract as an agreement on a monetary debt, always linked to manumission. The use of subordinate and subservient language and the attempt to prescribe the behaviour and attitudes expected from the debtors towards their creditors and those creditors' families is almost always present, and can be compared, for instance, with expectations concerning the slave's subordination. On the other hand, some commitment by the creditor to meeting the expenses of "sustaining", "dressing", and "curing" were present in the vast majority of contracts. How can we explain the variation in the provisions contained in these deeds? What do they reveal about the distinct circumstances in which former slaves found themselves when trying to face the challenge of articulating a possible labour arrangement in the highly uncertain situation of having a debt that actually served as a type of ballast on their freedom?

The new "freed" situation did not appear in a homogeneous form for everyone: the mother, probably single and with precarious ties apart from those through slavery, saw herself forced to promise her work and that of her daughter when still young for the next twenty years in exchange for an ambiguous undertaking to ensure her daughter received a "proper education". The twenty-five-year old young woman practically re-enslaved herself for the next twenty-five years of her existence. How does one compare that situation with those in which workers negotiated much more comfortable arrangements? How does one compare such situations with the – certainly exceptional – case of the freed "creole" Antonio Martins da Rocha, who in 1869 signed a contract to provide services in which he committed himself to repay a debt of one *conto de réis* (one million réis) to the businessman and local notable Joaquim Augusto do Livramento in return for providing nothing more than his services "selling water" for eight years, obliging himself to hand over 100$000 réis every month during the entire period?[38] This case of a former slave committing himself to mobilizing resources of such magnitude – to repay in eight years an amount several times the value of the work that could be performed by an adult slave – while also committing himself to a draconian work arrangement certainly reveals much about the paradoxical situation in which he experienced his "free" labour.

The fact is that the only certainty for those freed was that they would be confronted by a new social situation marked by precariousness, while rarely being endowed with the tools and resources necessary to cope with it. That precariousness could appear in an abrupt and irremediable form at every corner: through sickness and indigence, accidents at work, invalidity, widowhood, being orphaned or abandoned, and a solitary and unassisted old age. In all of those situations, the uncertain world of "free" labour was ineffective in supplying reliable support in itself. The often long and difficult path to freedom frequently led to a highly uncertain situation which could, in many ways, carry threats unknown in slavery. What we found in the contracts we analysed was not so much a simple understanding of the exchange of work for financial compensation as something of a new life arrangement incorporating many dimensions, most connected with efforts to, somehow, face the challenge of a "freedom" that could be full of difficult and unexpected challenges.

Often, the paradigm of "transition" from slavery or bondage to freedom, which attempts to explain the complex transformation of the juridical status of labour in the nineteenth century, has failed to address

38. "Escriptura de locação de serviços que presta o crioulo liberto Antonio Martins da Rocha ao Doutor Joaquim Augusto do Livramento na forma que abaixo se declara", *Livro 31 do 2º Ofício de Notas da Cidade do Desterro (1868–69)* (Notary – Leonardo Jorge de Campos), fls 88 (deed dated 31 May 1869).

adequately the central question regarding the qualitative attributes of that freedom.[39] On the other hand, this is exactly what can largely be understood from the labour contracts discussed here. If the boundaries between "free" and "unfree" labour could be slippery, in the written contracts we find testimonies to the defining opportunities for freed persons and their patrons to trace lines and negotiate the meanings of those boundaries. That is why we should underestimate neither the importance of legal freedom to all those men and women who fought for it, nor the often poor "quality" of the freedom they achieved.[40]

The contracts testify to many things: the access of freed persons to social networks for instance, their working conditions post-slavery, their access to the informal market for loans, their relations with other freed persons (we can find contracts between ex-slaves, with freedmen as patrons and financiers), their relations with their former masters and other free men and women, and the unequal access to material and immaterial resources. What those contracts demonstrate fundamentally is that attempts somehow to control the precariousness that followed and encapsulated freedom were the main motive driving those men and women. Contracts were not necessarily evidence of subordination or passive consent. They provide public testimony to a compromise solution, to the results of active negotiation through which new forms of social organization were articulated and constructed, and new ties of dependence and interdependence were built.

An analysis of the contracts entered into before and after 1871 shows that the juridical language of "contract" gave rise to expectations that were not, however, clearly defined in law. It shows, importantly, that

39. For a critical appraisal of the "traditional narrative of free labour" as a paradigm to explain this "transition", see Steinfeld, *Coercion, Contract, and Free Labor*; F. Cooper, T. Holt, and R. Scott, *Beyond Slavery: Explorations of Race, Labour, and Citizenship in Postemancipation Societies* (Chapel Hill, NC, 2000); and Tom Brass and Marcel van der Linden (eds), *Free and Unfree Labour: The Debate Continues* (New York, 1997). For Brazil, see Silvia H. Lara, "Escravidão, cidadania e história do trabalho no Brasil", *Projeto História*, 16 (1998), pp. 25–38; and Espada Lima, "Sob o domínio da precariedade".

40. It is important to note that historical scholarship on the manumission of slaves in Brazil often highlights its numbers (stressing, for instance, the widespread practice of manumission), and the many possibilities open to securing freedom. The issue of the "quality" of that freedom is only now, however, attracting the attention of scholars. Two early and important exceptions here are Hebe Maria Mattos, *Das cores do silêncio. Os significados da liberdade no sudeste escravista – Brasil, século XIX* (Rio de Janeiro, 1995), and Xavier, *A conquista da liberdade*. See also Keila Grinberg, "Reescravização, direitos e justiças no Brasil do século XIX", in Silvia H. Lara and Joseli N. Mendonça (eds), *Direitos e Justiças no Brasil* (Campinas, 2006), pp. 101–128; Olívia Maria Gomes da Cunha and Flávio dos Santos Gomes (eds), *Quase–cidadão. Histórias e antropologias da pós–emancipação no Brasil* (Rio de Janeiro, 2007); and Sidney Chalhoub, "The Politics of Silence: Race and Citizenship in Nineteenth-Century Brazil", *Slavery and Abolition*, 27 (2006), pp. 73–87.

despite being invented primarily to protect the employer's interests, the laws that the contracts incorporated made it possible for workers to create scope to protect themselves. In a precarious and limited way, the contracts entitled freed persons to a juridical competence that could be understood by them as a "right", a prerogative of which freedom formed an intrinsic part. Unlike slaves, who participated in notarial formalities as objects of a juridical act entered into by somebody else, the freed persons went to the notary as entitled subjects of an agreement that committed autonomous, free persons, who engaged in a relationship defined, albeit in an ideal form, by self-ownership, consent, and exchange. The freedom won was more than symbolic; it could be exercised too, as shown by the possibility of entering into a contract before a notary.[41] Nevertheless, the significance of the freedom intrinsic in that should not blind us to the freedoms that really mattered. Those were very evident in two contracts made by a former slave woman called Rosa.

Rosa's first contract was drawn up in Desterro in November 1874. She went to the notary with her legal custodian, a lawyer named Gonçalves da Silveira, to register a labour contract with Captain José Xavier Pacheco, who had lent her 200$000 réis, the price of her freedom. In this first contract, Rosa committed herself to providing her "good domestic services" for a period of five years, as well as to performing her duties with respect and obedience for the new employer and his family. Captain Pacheco, in turn, committed himself to sustaining and clothing Rosa and her young son, and "to treating her illness if it did not extend beyond one month".[42] Some years later, in February 1877, the same freedwoman went to the notary again, this time in another district of the island of Santa Catarina, to draw up a new contract with a man named Manoel Rodrigues de Abreu, who had lent her the money with which she was able to buy herself out of her former contract. This time, however, the arrangements were quite different: the debt was converted into money – 8,000 réis a month for exactly 2 years. There were no provisions concerning sustenance, clothing, or medical assistance for either herself or her son. She was to meet those costs using money earned from other activities.[43]

41. According to Amy Dru Stanley, in the United States the contract, with all its ambiguities, "transcended the frontiers of the law" to the ex-slaves in the post-emancipation era and became a "symbol of freedom". See Stanley, *From Bondage to Contract*, p. x. The Brazilian case is very different in many ways, but Stanley's observations suggest we need to think about the impact that this idea might have had on ex-slaves, moulding some of their expectations of freedom.

42. "Escritura de locação de serviços que faz a parda Roza a José Xavier Pacheco como abaixo se declara", 30 November 1874, *Livro 37 de Notas do 2º Ofício do Desterro (1874–1875)* (notary – Leonardo Jorge de Campos), fls 3, 30–30v.

43. "Escritura de novo contrato que faz a parda liberta de nome Rosa com o seu credor Manoel Rodrigues de Abreu, como abaixo se declara", 15 February 1877, *Livro 4 de Notas do Cartório*

There is no doubt that many things had changed in the intervening period. Not just the contract, but Rosa's own skills: in the first contract in 1874 she had had to ask her legal custodian to sign for her; this time, she wrote her own name with a steady hand: "Rosa de Lima Bittencourt".[44] It was a skill her new employer did not have. Rosa did more than carry out domestic duties in those years. She also worked hard to become literate, which gave her access to new valuable resources to rearrange her life and improve her working conditions. As her second agreement suggests, she was able to take more risks and be more autonomous. She did that by opting to pursue a labour relationship that, though it might have been more exploitative, was also less similar to the domestic domination that characterized slavery.

THE DISAPPEARANCE OF THE CONTRACTS

Curiously, there is nothing remaining of the probably many labour agreements and arrangements made by free "white" men and women, nationals and immigrants. In Desterro, where the presence of European immigrants, mostly Germans, had been very important since the 1840s, the absence of any registered labour contracts they might have drawn up suggests that the arrangements involving payments and wages, short-term contracts, were not formalized. In this context at least, only former slaves drew up labour contracts, and those had their own logic and features. They involved settlements and long-term engagements, and monetary debts incurred to pay the costs of manumission. With a few exceptions, most contracts related to domestic services. Not surprisingly, most of those contracts post-dated the 1871 law that regulated them. In the surviving documents from the first and second Notary Offices, we found a total of 416 manumission records and 148 *contratos de locação de serviços* for the period September 1871 to 1888, when slavery was abolished.[45] There is no doubt that the contracts became an important part of the slave's and freed person's "legal culture", especially in relation to labour arrangements. This was true certainly for patrons, masters, and former masters. It is not unlikely that the logic of contract had an impact too on the expectations of other workers, whether ex-slaves or not.

After 1888, the contracts disappeared and, when the Republic was proclaimed in 1889, the new government gave little priority to labour

de Paz da Freguesia de Nossa Senhora da Conceição da Lagoa (1876–1879) (notary – José Bernardino Damasceno), fls 9–10v.

44. It is important to note that Rosa's second contract referred in detail to the first, making it possible to locate that and accurately identify Rosa. The same is true of her writing skills: the first contract explicitly noted that she could "neither read nor write".

45. See n. 32.

legislation for a long time. The new "labour market" was constituted by "freeing" itself from the restrictions of the law.[46] The main concern in controlling the supply of labour was overtaken by events, namely the excess of subventioned immigrant labourers seeking agricultural work on the south-eastern plantations, who also flooded the labour markets of the major urban centres.[47]

Only domestic service received any special consideration between the 1880s and 1890s: the end of slavery gave free rein to all kinds of anxieties concerning the presence of "strangers" performing those domestic tasks that used to be the principal duties of slaves in Brazilian urban homes. Nevertheless, despite many attempts to create a body of legislation governing the formal contracting of domestic workers, municipal legislation was implemented in only a limited form, in some Brazilian cities, and to temporary effect.[48] Those anxieties regarding the domestic control of the labour force, once probably a chief concern of slave masters in relation to all their workers, continued in relation to domestic service for many decades. However, all efforts to regulate that labour through public contracts failed. When, with the end of the First Republic (1889–1930), labour legislation re-emerged as a major concern in Brazilian political life, domestic labour was excluded from the new legislation.[49]

Turning to our final question on labour contracts, why did they disappear from the public record? The most obvious response could be that they lacked purpose and sense once slavery had been abolished. That answer does not, however, seem entirely satisfying. Although they were linked to slavery through manumission, the problems of contracting or arranging labour were not unique to former slaves. Indeed, it would be more appropriate to ask why labour contracts did not become more widespread; why they were not adopted as a regulative framework for other labour relations in Brazil's post-abolition era. That was, in fact, a possibility latent in the contracts themselves.

46. A good example is the 1879 law on agricultural service hiring, which was annulled by the new republican "provisory government" in 1890. See Lúcia Lamounier, *Da escravidão ao trabalho livre*.

47. See *idem*, *Da escravidão ao trabalho livre*, especially the last chapter. On the very few and unsuccessful attempts to introduce laws to defend labour, see Boris Fausto, *Trabalho urbano e conflito social, 1890–1920* (São Paulo, 1986), pp. 223–243.

48. See Sandra L. Graham, *House and Street: The Domestic World of Servants and Masters in Nineteenth-Century Rio de Janeiro* (Austin, TX, 1992).

49. In fact, in Brazilian historiography, it is more frequently believed that Brazil's labour laws were really defined after the 1930 revolution that ended the First Republic. Legislation to control labour and to address the social question was a central concern of Getúlio Vargas's government. The most important landmark here is the 1943 Labour Code (Consolidation of the Labour Laws – *Consolidação das leis do trabalho – CLT* – Law no. 5452, 1 May 1943), which consolidated a full range of laws and set up a specific court to deal with labour issues. On the CLT and changes in labour legislation after 1930, see John D. French, *Drowning in Laws: Labor Law and Brazilian Political Culture* (Chapel Hill, NC, 2004).

There is evidence that some of those labour arrangements remained in force beyond the time limits initially stipulated. What disappeared was the notarial record of such arrangements, which probably continued to exist informally.

A unique example of some of the potentialities embedded in those kinds of labour arrangement in the period can be found in the contract made by Victorio, identified as a *crioulo* (a reference to his colour and former status), who on 4 February 1876 went to the notary's office in Desterro to arrange a new labour contract with a man named Manoel Joaquim da Silveira Bitancourt.[50] Silveira Bitancourt assumed Victorio's debt to a previous contractor, and agreed new arrangements with him. The first contract has not survived; nor do we know its terms. Under the new agreement, Victorio would work as a coachman (*boleeiro*), taking people around the city. The deal had very specific provisions concerning Victorio's schedule and responsibilities: he would begin every morning at 5 am by taking care of the horses and cleaning out the stables; from 8 am until 9 pm he was required to work as a coachman and, at the end of the working day, he was to report on what he had done and how much he had received. Victorio would have to cover any discrepancy in the accounts from his own pocket, and pay for any damage to the coach; otherwise he faced prison. In turn, Silveira Bitancourt committed himself to the "daily maintenance, [the provision of] a house to live in, clothes and proper shoes for the coachman", as well as "twenty-five thousand réis monthly" to support Victorio. The term of the contract would be thirty-seven months and eighteen days, after which it "would be renewed [...] if both parties agreed".

Victorio's arrangement with Silveira Bitancourt covered all aspects of a labour contract, including a proper salary. The expectations concerning renewal of the contract allowed the possibility of a written contract without that being tied to the repayment of a previous debt on manumission. However, this contract is unique, not just because it was the only one of 260 covering a period of more than 45 years that included any reference to its continuity, but also because if it really was renewed 3 years later the parties failed to register it with the notary. Informal arrangements became the rule.

There are many possible reasons for this "plunge" into "informality". One could argue that it was probably linked to its own effectiveness. From the master's point of view, the lack of interest in establishing any legal record of the contracts might have been linked to the extent to which freedmen were under the control of the law and could be forced to behave in accordance with their patrons' expectations. Though the

50. "Escritura de sublocação de contrato de serviços de outra que faz João Vieira Pamplona a Manoel Joaquim da Silveira Bitancourt como abaixo se declara", 4 February 1876, *Livro sem número (38) de Notas do 2º Ofício do Desterro (1875–1876)* (notary – Leonardo Jorge de Campos), fls 127v, 128, and 128v.

law – including the 1871 law – envisaged the legal enforcement of the contracts, the legal penalties (particularly imprisonment) were difficult to apply, especially in the final decade of slavery, when the institution of slavery was slowly losing its legitimacy, even in the courts.[51] The imprisonment of freedmen and women who refused to fulfil their contractual obligations could give rise to disturbing analogies with the punishment inflicted on slaves which even judges would have had difficulty in dealing with. There is no doubt that the contracts gave rise to all sorts of conflict and litigation. As far as the sources suggest, however, a worker who broke the terms of his contract was treated no differently from any other defaulter.

On the other hand, to the freed persons the persistence of contracts could have other meanings. The word of the law and the commitments enshrined in the contracts registered with the notary might have convinced many of the freedmen and women that their labour arrangements should be treated as genuine agreements committing both parties and including reciprocal arbitration clauses. As all former slaves who had obtained manumission would have known, a written document had force and it might have convinced freedmen that free labour under the contract regime could work in their favour as well.

If it is true that one of the features present in the strategies of freedmen was to amplify their autonomy, moving away from the traps of domesticity, and, at the same time, to guarantee for themselves a minimum level of social welfare (embedded in the reference to nourishment, and medical services and supplies), registering those in a written contract would have created a public obligation on both parties, enforceable before the courts. The oral contract, on the other hand, left the implementation of such obligations and provisions to the dynamics of domestic relations, where implementation was regarded as a discretionary act or an act of charity and not as payment or reward for work, and made conditional on the values insisted upon by the patrons and masters in their negotiations being exhibited by workers, namely obedience and respect. It is possible that the provisions we find in many contracts – such as medical care and medicines, payment for working Saturdays, Sundays, and holidays – might have been incorporated into the expectations of those men and women and their new labour arrangements in the post-emancipation period. That hypothesis certainly requires further research and analysis, but it is true that some of those expectations were included in the demands of workers during their struggles between 1889 and 1930, the period of the First Republic.

Thus, seen through those lenses, the disappearance of labour contracts can be regarded as a sign of the political defeat of an alternative path in the organization of labour in post-emancipation Brazil. Similarly, it can be

51. On the tribunals and even the police as alternatives for slaves trying to obtain freedom, see Chalhoub, *Visões da Liberdade*.

Figure 2. Many freedmen and slaves were employed in various skilled and unskilled urban activities and odd jobs, such as carriers, basket-makers, barbers, tailors, weavers, or tinsmiths. *Photograph: Marc Ferrez (1843–1923). Negro cesteiro (black basket-maker), Rio de Janeiro, c.1875; Coleção Gilberto Ferrez/Acervo Instituto Moreira Salles, Brazil. Used with permission.*

seen an evidence of the growing inability of freedmen to negotiate their labour, the causes of which deserve more comprehensive investigation. In the debate concerning the definition of labour policy, the rule of contract, with all its ambiguities but with all the legal competences to which it entitled parties, was defeated by the imperative of domesticity: an equally ambiguous world, but certainly less favourable to those who lacked a better alternative.

CONCLUSIONS

This essay has endeavoured to understand the boundaries between "free" and "unfree" labour in the slavery and post-emancipation eras using a very particular source: the labour contracts used for and by former slaves in the changing legal and institutional framework of nineteenth-century Brazil. That period was marked not only by the end of the institution of slavery, but also by the juridical re-categorization of labour inspired by the doctrine of "labour freedom" and by the contractualist notions that ideologically characterized the conflicting expectations of Brazilian labourers and patrons in the second half of nineteenth century.

That process was far from being exclusive to the Brazilian context, however. On the contrary, the Brazilian case – with all its diversity and heterogeneity – can be thought of as a modulation in a more general process that touched not just those societies that experienced slavery and the post-emancipation era, but embraced – with all its ambiguities – the restructuring of labour and social relations in places as different as Europe's metropolitan societies and the "colonial" societies of Africa and Asia. Because of that, a discussion of the Brazilian case has strong analogical value for our thinking about this process elsewhere.

One clear example of that analogical value can be found in the re-examination of the evolutionist narrative of labour which often contaminates the debate on these issues. In Brazil, the changing framework of the nineteenth-century context has often also been interpreted through the explanatory model of the "transition" from slave to free labour. This "transition model" was marked by a strong teleologism that took for granted the meanings of those two worlds: the realm of "freedom" and "free labour" on the one hand, and that of bonded and "unfree labour" on the other.[52] That same model was used to explain the rise of labour contracts after 1871.[53] This is – with differences – the same evolutionist approach that can and should be criticized in the debate on the development of "free labour" elsewhere.[54] Demonstrating the limits of and inconsistencies inherent in that model, which ignores the fundamental ambiguities that arose in this changing world, was one of the main aims of this essay.

As the contracts discussed here have shown, the domain of contracted labour was full of ambiguities and hazards for all those involved. We cannot

52. For a discussion of the limits of the "transition model" to explain changes in the world of labour between slavery and the post-emancipation era in Brazil, see Lara, "Escravidão, cidadania e história do trabalho no Brasil".

53. For examples of the application of this "transition model", see Lúcia Lamounier, Da *escravidão ao trabalho livre*; Ademir Gebara, *O mercado de trabalho livre no Brasil (1871–1888)* (São Paulo, 1986); and Lúcio Kowarick, *Trabalho e vadiagem. A origem do trabalho livre no Brasil* (Rio de Janeiro, 1987).

54. See Steinfeld, *Coercion, Contract, and Free Labor*.

assert beyond any reasonable doubt that contracted labour always necessarily constituted a good deal for the freed persons who entered into such contracts, but the same could be said of their contractors. However, what we can confidently affirm is that the world of contract played a fundamental role in realigning the expectations of freed workers (and probably not jut them) and their patrons in labour-related issues. Negotiations and arrangements regarding labour had to acknowledge the new entitlements embedded in the logic of contracts, and the freedmen and women certainly gained a new set of tools to deal with the negative attributes and precariousness of the "freedom" they had won for themselves. The unsettling effect of the written contract was certainly one reason for its post-abolition disappearance, but the blurred boundaries between freedom and servitude persisted in Brazil's labour relations (not only in respect of domestic labour) for many decades after that.