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Slaves, freedmen, free African descendants, non-free, blacks, *ingênuos*: Education legislation concerning the black population in nineteenth century Brazil

Surya Pombo de Barros¹

Abstract

This paper seeks to discuss the relationship between the legal framework for education and the black population in Brazil, seen through the prism of history of education. It analyzes how this segment of the population has been depicted in laws and imperial ordinances related to instruction, while highlighting the changes and continuities regarding permissions and prohibitions in the access to school enrollment and attendance. Whole sets of laws and regulations were perused regarding primary and secondary education of nine provinces and seven others indirectly, in search of terms that make reference to the legal or racial condition of welcome or unwelcome students. When monitoring the changes in the use of terms throughout the nineteenth century – slaves, non-free, freedmen, blacks, descendants of free Africans, *ingênuos* – in different provinces, we encounter prohibitions and permissions for the enrollment and/or attendance of blacks between 1835 (when prohibition against enrollment of non-free people was first mentioned) and 1887 (when the last prohibition of slave enrollment occurred). We use Thompson's perspective in regarding the law as a result of disputes and customs in order to offer explanations about the relation between the black population and education when Brazil was an empire. We conclude that the relationship between legal order and education sheds light on the history of education with respect to the presence/absence of blacks in public schools during the Empire.

Keywords

History of education – Nineteenth century – Black population – Legislation.

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Escravos, libertos, filhos de africanos livres, não livres, pretos, ingênuos: negros nas legislações educacionais do XIX

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Resumo

Pretende discutir a relação entre o ordenamento jurídico da educação e a população negra como um aspecto da história da educação brasileira. Analisa como esse segmento da população apareceu em leis e regulamentos imperiais sobre instrução, destacando permanências e mudanças nas permissões e proibições no acesso e frequência à escola. Foram lidos conjuntos integrais de leis e regulamentos da instrução primária e secundária de nove províncias, e indiretamente o de outras sete localidades, em busca de termos que referenciem a condição jurídica ou racial dos alunos permitidos e dos indesejados. Acompanhando as mudanças nas denominações ao longo do período século XIX – escravos, não livres, libertos, pretos, filhos de africanos livres, ingênuos – nas diferentes províncias, destacam-se interdições e permissões para matrícula e/ou frequência negra entre 1835 (ano das primeiras menções à proibição de matrícula a não livres) e 1887 (última proibição à matrícula de escravos). Utiliza a perspectiva thompsoniana da lei como resultado de disputas e costumes a fim de sugerir explicações sobre a relação entre população negra e instrução no Império. Conclui que a relação entre ordenamento legal e educação ilumina a história da educação no que se refere à presença/ausência negra na escola pública do período Imperial no Brasil.

Palavras-chave

História da educação – Século XIX – População negra – Legislação.

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Introduction¹

The assertion that blacks were absent from the receiving end of education efforts in the period that precedes the twentieth century has already been verified in Brazilian education historiography and is a matter that has already been settled. Research on different locations articulates legal condition (slave, free, freedmen, *ingênuo*²) or racial condition (*negro*, *preto*, *pardo*)³ with other analytical categories conducted in different fields (BARROS, 2012), demonstrating that debates about instruction, education and schooling do not prescind from the presence of blacks, or even slaves. It is possible to verify that, however unequally when compared to other segments, the black population was not absent from the institutionalization of education throughout the nineteenth century, thanks to private initiatives such as brotherhoods or associations, attendance in classes ministered by private teachers – paid by their own black families or white people –, or their presence as public and private school students.

However, there are still studies that do not consider the racial perspective in the history of education (RIBEIRO, 2007; MAESTRI, 2004; ARANHA, 2006). One of the impediments of black schooling has supposedly been legislation, which forbade school enrollment and attendance in the nineteenth century, thus banning blacks from schools. The allusion to this prohibition also appears in texts by

the black militant movement⁴ as well as contemporary education legislation⁵.

The aim of this study is to discuss how and when the black population was depicted in the education legislation of different Brazilian provinces. We have consulted legal texts and sought to identify the references to blacks, a term we use for analytical ends, for it includes slaves, freedmen, descendants of free Africans, non-free, *pretos*, *ingênuos* – terms that appear in the legislation which was consulted. The law is hereby understood through Thompson's (1987) perspective, as a result of disputes among different segments of society and not only as a mere imposition of one group over another. According to Faria Filho (2011, p. 257), "as demonstrated by Thompson [...], it is crucial to relate all legislative practice and the products of the law with the wider context of social relations in which they are included and which they contribute to produce".

According to Thompson,

the law may also be seen as ideology, or as particular rules and sanctions which stand in a definite and active relationship (often a field of conflict) to social norms; and, finally, it may be seen simply in terms of its own logic, rules and procedures – that is, simply as law. And it is not possible to conceive of any complex society without law (1987, p. 350).

We will address different conditions of blacks in education laws as an element of dispute by the school. We will compare provinces and different moments of the imperial period, contextualizing changes and continuities of the racial terms used, prohibitions, permissions,

1- I would like to thank Gabriela Pellegrino Soares, Ana Luiza Costa and Pedro Augusto L. Sabino for the criticisms, which I sought to review. And Solange Pereira da Rocha, who has been insistently inquiring: "could blacks go to school in the nineteenth century?"

2- Term used to describe a slave's child, born no earlier than 1871, deemed free with the Law of Free Birth.

3- Racial terms in Portuguese and English differ in meaning. When we use "black" (*negro* in Portuguese), we refer to all categories presented in the text, a generic term equivalent to Afro-descendant. "Preto" is the equivalent of "Negro" in English, a term that is currently used pejoratively but was used in the nineteenth century. The term "pardo", which can also be seen in the sources, is equivalent to its English counterpart "mulatto".

4- "Seven official acts that decreed the marginalization of the negro people in Brazil" (SANTOS, s.d.): "Act 2 – SUPPLEMENTARY LAW TO THE 1824 CONSTITUTION, referring to education, receives the following addendum: '... according to the imperial legislation, *negros* could not attend schools, because they were thought to suffer from contagious diseases'.

5- See Diretrizes Curriculares Nacionais para a Educação das Relações Étnico-raciais e para o Ensino de História e Cultura Afro-Brasileira e Africana (BRASIL, 2004, p. 7).

disappearances and reappearances of categories that compose the black population in laws and regulations referring to public education, in order to thoroughly discuss an alleged uniformity concerning education.

In Brazil's nation-building process, education was viewed as an essential asset by elite groups and escalating middle sectors, "who understood the people's education as a necessary vehicle for aligning the nation, which experienced material progress, to the 'cultured countries'" (MARTINS, 1990, p. 324). In order to do so, conforming to a legal body became crucial. The 1824 Constitution determined that: "Primary education is free for all citizens" (BRASIL, 1824). Slaves were excluded from citizenship. A specific law versed on education was passed in 1827: "in all cities, villages and populated places, there will be as many primary schools as needed" (BRASIL, 1827). It moreover defined issues related to payment and teacher training, educational content and teaching methods, among others. There was no mention about the type of student expected, for whom the primary schools were meant, or to whom they were forbidden.

The Additional Act of 1834 altered the Constitution and was a "fundamental and decisive milestone in the organization of Brazilian education" (CASTANHA, 2006, p. 174), creating the Provincial Assemblies, which included among their attributions legislating about public education. Since then, issues such as creating schools, how schools would be organized, training teachers, faculty performance, inspection, teaching methods and educational content were discussed locally and included in laws and regulations. Also regarding students, legislators determined who could (or could not) enroll in and/or attend public schools based on criteria of gender, age, health condition (carrying or suffering from a contagious disease) and legal or racial status (free, freedmen, slave, *ingênuo*, black, descendant of free African). Analyzing this construction helps us understand the

institutionalization of education and sheds light on the possibilities and experiences of the black population.

One of the difficulties of the research phase was gaining access to the irregularly available legislation: some were fairly accessible (in publications), others could only be consulted in local state files (thus unviable, considering the article's limits). We worked with complete collections of nine provinces: Ceará, Maranhão, Rio Grande do Norte, Paraíba, Mato Grosso, Minas Gerais, São Paulo, Paraná and Rio Grande do Sul. Some locations could only be accessed indirectly, rendering it impossible to conduct a diachronic analysis and resulting in irregular references in comparison to the regions of the first group – Alagoas, Sergipe, Bahia, Goiás, Rio de Janeiro, Espírito Santo and Santa Catarina –, which were studied by researchers who analyzed (and transcribed) part of the aforementioned legislation. In other regions, such as Amazonas and Pará, not even that was possible due to the absence of history of education studies on the black population. No published studies about education and black population in the nineteenth century were found in these regions. Or, even if research about this issue exists, it does not make reference to legislation – as is the case in the state of Piauí. The documental *corpus* will be referenced to while each province is presented⁶.

We organized this article into four sections: the 1830s and 1840s; 1850s and 1860s; 1870s; and 1880s. This classification is not solely based on chronology, rather on specific traits of each movement and how the legislation converses with broader matters within each period – concerning education, workplace, slavery and racial relations. Lastly, in the final considerations, we raise analytical possibilities, highlighting gaps and outlining conclusions.

⁶- Seeking greater fluidity in the text, we decided to cite the document in which each law or regulation can be found, since practically all legislation used here is filed.

The 1830s and 1840s: mandatory versus outlawed

During the 1830s, a period distinguished by “much experimentation and transformation in the Empire’s political and administrative realm, including intense participation by different social segments, which permanently mark the state building process and founding of the Brazilian nation throughout the nineteenth century” (ANDRADE, 2013, p. 1), the first laws and regulations addressing education were being discussed and approved and attendance and/or enrollment of some categories were already being banned.

Minas Gerais⁷ was a pioneering province. In addition to school being mandatory, a Law passed on March 28, 1835, determined that “Only free people may attend public schools and shall be subject to its regulations”. In Goiás⁸, the first law concerning education, from June 23, 1835, as in Minas Gerais, required parents to offer primary education to boys, and stressed that “Only free people may attend public schools, and shall be subject to its regulations”. In Espírito Santo⁹, “there was an 1835 law that ‘forbade anyone from teaching slaves to read and write, skills, and crafts’” (FRANÇA, 2006, p. 37).

In 1836, the province of Rio Grande do Norte¹⁰ approved the Statutes for Primary Schooling in the Provinces. When addressing enrollment, it determined that:

Teachers shall not admit students *who are not free* in their classes. Female teachers, however, may receive *slaves*; for the sole end of teaching them domestic skills, albeit not including them in enrollment, as per

article 16, under penalty of losing their license for one month [*italics added*].

Article 16 referred to the material that each enrolled student should receive and the information that should be filed by the teachers. Even though the law stated that female slaves could only be admitted for learning domestic skills, an explicit reference to slaves in the legislation about primary school is exceptional: we did not find anything similar in other locations. This uniqueness was followed by another. In 1837, a law was sanctioned to ban slaves in public schools and revoke the article from the previous statute:

Banning admission of slaves in public schools.

Art. 1 – It is hereby prohibited to accept people who are not free in public classes.

Art. 2 – The second part of Article 10 of the Provincial Law from November 5, 1836, under n. 27 and further dispositions.

What explains this specific law that suddenly bans the presence of “people who are not free” in public schools, the only existing law referring to public schools in the Empire? Was there a demand for classes by slaves and/or slave owners? Did free families complain about slaves sharing the same space as their daughters? The legislation on its own cannot answer these questions, but, along with other sources, may help understand the relationship between slavery and education in that province.

In Mato Grosso¹¹, the first law on education, from 1837, followed the example of the regions above, i.e., the mandatory nature of schooling reserved to the free: “Only free people may attend public schools and shall be subject to its regulations”. As for the province of Paraíba¹², the first education law, from 1835, did not mention who could or could not enroll. However, on May 6, 1837, it established that

7- The compilation about Minas Gerais belongs to Marileide L. dos Santos (2013), to whom I am very grateful for sending her still ongoing work. I am also grateful to Sandra Caldeira for having intermediated our interaction.

8- For Goiás, we used the laws transcribed in the article “A ordenação do ensino público goiano (1889-1930)” by Ana Maria Gonçalves (2006).

9- Because we could not obtain the complete legislation of this province, we extracted the references from França (2006). The author does not transcribe the laws and regulations in its entirety.

10- The educational legislation from the province of Rio Grande do Norte is available in Bastos, Stamatto, Araújo and Gurgel (2004).

11- The legislation of Mato Grosso was extracted from Sá and Siqueira (2000).

12- For Paraíba, we consulted Cury and Pinheiro (2004).

“Teachers will only admit free people into their classes”. What could have prompted this prohibition? Was there a demand for schooling by the slaves? Could the example of other provinces have influenced Paraíba legislators? How did the discussion on the education of slaves circulate in the Brazilian Empire? While the legislation on its own cannot answer these questions, it allows hypotheses to be raised.

In same year, on the other side of the Empire in Rio Grande do Sul¹³, we find two mentions of slaves. The law that created the College of Mechanical Arts established that: “Any young men, excepting slaves, who intend to learn the skills taught by the College shall be equally admitted in the classes (...)”, even if the desired background of the institution included orphans, the vulnerable poor, and children of indigent parents. The Primary Education Law from São Pedro do Rio Grande do Sul emphasized that, in addition to those suffering from contagious diseases, “Those banned from attending Public Schools. 2. Slaves and *pretos*, even those who are free or freedmen”. In 1837, the first provincial law from Pernambuco¹⁴ attempting to regulate public education “rendered public schools restricted to free people in general” (SILVA, 2013, p. 213).

From that year to the end of the 1840s, we did not find any reference to the students’ condition. However, in 1848, the first Statutes of the City of Natal Atheneu denied enrollment to whoever could not read and write or was infected with contagious diseases. Additionally, “Those who do not meet the following requirements may not be enrolled in the Atheneu, in the discretion of the Director: §1º *Ingênuos* or freedmen”. In other words, slaves could not be enrolled in that institution, but *ingênuos* or freedmen could.

13- For Rio Grande do Sul, we consulted Arraiada and Tambara (2004). They mentioned only the number of the law and the year in which it was approved and warned that “This assortment of documents [...] does not intend to be exhaustive; [...] it reflects a selection [...]” (p. 10).

14- A legislação de Pernambuco não está digitalizada. Retiramos as leis de SILVA (2013), num Article sobre obrigatoriedade escolar. Portanto, nem todo o conjunto de leis é citado pela autora.

Free and non-free people, slaves, people under slavery, *ingênuos*, freedmen, *pretos*: there were many interdictions in the 1830s and 1840s. Unique situations occurred, such as the provincial law from Rio Grande do Norte, approved solely to ban enrollment of people under slavery, in a context in which interdiction generally was included in general laws and regulations. The expression *people under slavery* is also different from those found in other periods and provinces – as the years went by, the term became *slaves*. In Rio Grande do Sul, the prohibition against attendance of slaves and *pretos* defined an aspect of the history of education, which later served as reference to the remaining provinces (FONSECA, 2007), but while analyzing subsequent legal requirements in the same province, or during the same period in other regions, we realize that it was not the only possibility in the relation between black population and schooling in the nineteenth century.

The 1850s and 1860s – the primacy of slave prohibition

The 1850s was marked by the 1854 Couto Ferraz Decree, which regulated primary and secondary school at the Court. Among other aspects, it established, regarding primary schools, that “The following shall not be allowed to enroll or attend schools: §3º. Slaves”. The ban also included secondary education: Article 85 reiterated: “Enrollment or attendance in school shall not be admitted to individuals under the condition of Art. 69”.

However, despite the reputation it acquired in historiography, the Decree is not the first order to ban slave enrollment. In Alagoas, “the provincial Public Education Regulations excluded those who were subject to captivity from the right to schooling, such as the 1853 Decree, which declares ‘those who suffer from contagious diseases and slaves may not attend public school’” (SANTOS, 2013, p. 67). In Minas Gerais, though *non-free* people were banned in 1835, the 1854 Regulation stated that *slaves*

“shall not be enrolled, nor attend classes”. It is worth noting the emphasis on the prohibition: in addition to not being enrolled, slaves were also not allowed to attend classes. Were there slaves attending classes without enrollment, which was banned since 1835? Why reinforce the ban? Thompson (2008, p. 86) states: “At the interface between law and agrarian practice we find custom. Custom itself is the interface, since it may be considered both as praxis and as law”. Would the education of slaves be the custom in this case? In other provinces, would repeating the prohibition be the norm or an attempt to establish a norm?

In the province of Maranhão¹⁵, the first prohibition against slaves appeared in 1854. Like the law in Minas Gerais, also before the Couto Ferraz Decree, the Public Education Regulation from Maranhão declared that “The following shall not be allowed to enroll: § 4^a. Slaves”. Also in the north region of the country, in Pernambuco, the 1851 Regulation “banned access of Africans to public classes (whether or not they were *free or freedmen*)” (SILVA, 2013, p. 214, italics added). In 1855, a new decree was passed. Silva cites the president of the province: “according to José Bento Figueiredo himself, in a report, he was inspired by the Couto Ferraz Reform [...] – and made just a few changes to adapt it to local conditions – for two reasons: because he considered it wise and proper maintenance of the ‘[...] teaching unit throughout the Empire’” (2013, p. 216).

Despite these examples, which shed light on the impact of the Couto Ferraz Decree, there is undeniable influence at Court. During the same period, many provinces included the ban on slave enrollment in texts similar to the Decree and legislation from Minas Gerais and Maranhão, by including slaves among the banned individuals. In Santa Catarina¹⁶, the first ban against captives appeared in 1854: “teachers will receive as pupils all individuals who, in order to acquire elementary education,

are presented to them, except captives, and those suffering from contagious diseases”. In Mato Grosso, the Primary Education Regulation, from the same year, placed two banned categories in the same article: “Those suffering from contagious diseases and slaves shall not be admitted for enrollment”.

The following year in Maranhão, the 1855 Regulation of the House of Craftsmen was approved for poor and abandoned boys. Like the College of Mechanical Arts of Rio Grande do Sul in the 1830s, the latter must be free: Article 3 determined that “The following shall not be admitted, even if included in the conditions of Article 1: §2o. Slaves”.

The province of Paraná was created in 1853 and approved the first law referring to education the following year, establishing compulsory primary education. In it there was no mention of who could (or could not) be a student, nor was there in 1857, when a law was passed authorizing the government to create “asylums for the destitute of mixed sex” for both sexes. However, that same year, there was a new regulation that specified those who should be excluded from enrollment. In addition to “boys suffering from contagious and mental illness, unvaccinated children under 5 and over 15, and incorrigibles, according to Article 39, enrollments are free and the following individuals are excluded: [...] §3 Slaves”.

With aspirations similar to the institution in Maranhão, the College of Craftsmen was created in 1858 in the province of Rio Grande do Norte. Its first regulation explicated that “in order to be admitted as a student, the person must be poor and helpless, must not be under the age of 10 or over the age of 15, and must display satisfactory sanitary conditions”. But this was not enough, for it declared that “Slaves shall not be admitted, even if included in the provisions of Article 2”. One month later, a new Regulation was passed, reiterating that slaves were banned.

In Minas Gerais, the 1859 Regulation conditioned primary school admission to the number of houses nearby where *free*

15- For Maranhão, see Castro (2009).

16- For Santa Catarina, we used laws and regulations transcribed from Sebrão (2010).

people dwelled: "The main importance of the settlements with reference to the creation of the aforesaid vacancies (...) consists of them being composed of a greater number of contiguous houses in the same given space, and inhabited by free people of either sex". Regarding the lyceum in Minas Gerais, during the same year the term *slave* was used again referring to those who were debarred entry: "The following shall not be enrolled nor attend classes of the lyceum: § 2 Slaves".

Five years after the regulation that banned enrollment of captives, the Primary Education Regulation in the province of Santa Catarina, passed in May 1859, repeated the text: "Teachers will receive as pupils all individuals who, in order to acquire elementary education, are presented to them, *except captives*, and those suffering from contagious diseases" [italics added]. The following month, the Secondary Education Regulation of the province reproduced the same prohibitions, but switched the term *captives* to *slaves*: "Those who shall not be allowed to enroll include slaves, those suffering from contagious diseases, and those expelled for bad behavior by order of the President of the Province" [italics added].

Unlike Minas Gerais, Santa Catarina and Rio Grande do Sul, in many places, regulations banned enrollment of slaves only in the primary level but were never mentioned in the secondary level. Would banning primary education be enough? In other words, was the exclusion of slaves in the secondary level such a consensus that there was no need to determine it by law? Why was this different in the first three provinces, i.e., why did regulations concerning secondary school need to be explicit? Was there risk of slaves trying to enroll in secondary school?

It is worth noting that, in 1857, the Primary and Secondary Education Regulation from the province of São Pedro do Rio Grande do Sul determined that: "The following shall not be allowed to enroll or attend schools: [...] §3. Slaves". In 1859, new regulations modified the 1857 one, but did not mention who could

or could not be enrolled and attend classes in this province. In the same year, the Regulation Concerning Underage Students of the Provincial Class War Arsenal, an institution from Rio Grande do Sul, focused on abandoned orphans, children of poor convicts and banned several categories, such as "underage boys suffering from contagious diseases, idiots, epileptics, those who are not robust or do not enjoy good health". Among them, slaves: "The following shall not be allowed to enroll. 2. Slaves". However, in the same province, we found the Santa Leopoldina Asylum Regulation for poor, orphaned, vulnerable girls and daughters of poor convicts. In 1858, this document banned the enrollment to: "*girls carrying diseases, unvaccinated girls, ages 2 to 6*" [italics added]. It did not mention slaves. Was there a gender distinction? Why were slaves not allowed to be students of the War Arsenal while this prohibition did not exist for girls, even though these institutions were aimed at similar social segments? Was there a need for specialized female, albeit slave, labor? Was there any correlation between the loophole created by the law in Rio Grande do Norte in 1836, allowing for the enrollment of female slaves (and revoked the following year)?

A College of Craftsmen was also created in the province of Paraíba in 1859. Its Regulation, passed in 1865, banned some categories, but did not indicate captives, as did the first education law in the province. However, it determined that a large set of information was registered by the director at enrollment:

Art. 31 – When a boy presents himself bearing the President's approval, the Director will enroll him as a pupil and register him in the appropriate book. Each pupil will be entered in a page of the registration book. The page will contain, firstly, the pupil's name and registration number, then his/her age, parental information, birth place, *color and other characteristic traits*, name of

person or authority who requested his/her admission, and date of the President's decree that ordered the enrollment. Then the subjects of the classes in which he is enrolled, workshops he attends, sick leaves and discharges, licenses, absences, and prizes [*italics added*].

Did the prediction of "color and other characteristic traits" indicate that non-whites were expected in the Paraíba institution?

Minas Gerais began the year of 1860 with a new regulation that reinforced prohibition. Pursuant to Article 56, among others "The following shall not be enrolled: [...] §2. Children under the age of 5, and slaves". In Bahia¹⁷, the first instruction reform occurs in 1860. This regulation was altered in 1862, "slaves were explicitly banned from attending primary schools" (CONCEIÇÃO, 2007, p. 40). In Rio Grande do Norte, the 1865 Regulation determined that: "teachers of subsidized private schools are required to teach noticeably poor students for free who want to attend the same schools". However, Article 97 of the same document reinforces emphasizes those who were not allowed enrollment: "§ 4 – Those who are not free".

Prohibition continued in Minas Gerais until the end of the decade, and the term *slaves* appeared in the 1867 Regulation: "§ 3. The following shall not be allowed to enroll or attend schools: § 3. Slaves". The gradual replacement of the terms also occurred in other provinces. In Goiás, while prohibition was aimed at those who were not free in 1835, the 1869 Regulation for Public and Private Education determined that "The following shall not be admitted to schools: [...] § 2. Slaves". Meanwhile, in 1865, Rio Grande do Norte banned those who were not free, and the term subsequently used also became *slaves*. According to the 1869 Regulation of this province, "The following

shall not be allowed to enroll or attend school: [...] § 4º Slaves".

In Sao Paulo, although the first law organizing public education is from 1846¹⁸ (PROVÍNCIA..., 1846), reference to the black population in this province only appeared in the 1869 Provincial Education Regulation. As seen in Article 90, "teachers shall allow attendance, in their schools, during the school year, of individuals who are not included in the prohibitions of this regulation". It then continues: "The following shall not be allowed to enroll: [...] § 4. Slaves".

The province of Santa Catarina, through the 1869 Regulation, also emphasized prohibition against slaves, replacing the term *captives* from the former law. According to Article 66: "The following shall not be allowed to enroll or attend schools: §1. Boys/children suffering from contagious diseases. §2. Slaves".

We consider that the view that the Couto Ferraz Decree "provided a guiding model to abide by in the provincial capitals for the other local governments" (AURNHEIMER FILHO, 2008, p. 1) should be discussed in regards to the enrollment of slaves in public schools. Although the Court was "a privileged space where political action occurred in the imperial government" (AURNHEIMER FILHO, 2008, p. 1), banning slaves in public classrooms was already specified in previously existing provincial laws and regulations, including those dated from same year as the decree. Prohibition reproduced in the majority of provinces suggests that this debate traveled the Empire and that the rejection of slaves in school spaces, already announced in the 1824 Constitution, had been reiterated for decades. *White fear* (AZEVEDO, 1987) had not disappeared along with slave revolts in previous years. Rather, in the 1850s, discussion about the workforce and the fate of the slaves was even more consolidated. The Eusébio de Queiroz Law, which banned trafficking and

17- For Bahia, we consulted Conceição (2007).

18- The Sao Paulo legislation was consulted in the NIEPHE - Núcleo Interdisciplinar de Pesquisa em História da Educação website: http://www.usp.br/niephe/bancos/legis_lista.asp - Accessed on October 20, 2014.

freed captured slaves, brought another element for the composition of society: free Africans, who experienced an ambiguous social and legal situation, since they were legally free but mediated by the state or private bidders (MOREIRA, 2003). The explicitness of the word slave in provinces that had already banned non-free men, as well as the inclusion of this category for the first time in other provinces during the 1850s and 1860s, reveal a facet of the dispute involving the *negro's* position in Brazilian society. It is a dispute because insisting in prohibition can also be interpreted as an attempt by the establishment to introduce a custom: did the demand for schooling by black people (albeit slaves) pose a threat and, therefore, need to be regulated?

The 1870s: night schools and the Law of Free Birth

The 1870s were years of intense transformation within Brazilian society. In the realm of education, the role of the Liberals composed “a social and cultural environment that provided valuable discussions and controversies regarding education and were necessary for creating a modern and free country, and also provided a wealth of initiatives and accomplishments that powerfully guided a movement towards the schooling of Brazilian society” (HILSDORF, 2003, p. 50). The Republican Manifesto of 1870 (HILSDORF, 2003), which revived the debate on the importance of education for nation building, and the approval of the Law of Free Birth in 1871 are some of these historic milestones. Singularly in education legislation, the prohibition of slaves remained throughout all the provinces that passed laws and regulations in that decade. On the other hand, this was the period in which the night school was introduced in Brazil. Would this be a reflection of a need to provide education for the black population, including slaves? For people, “primary instruction, religious morals and learning skills were aimed at maintaining a

hierarchy of knowledge and social positions, in an attempt to control their circulation and uses” (COSTA, 2012, p. 19). Therefore, during the last decades of the nineteenth century, “measures such as night schools for workers, institutions for teaching crafts, orphanages for underprivileged children, etc., were implemented, not without conflicts and obstacles, as ‘salvation’ and ‘regeneration’ strategies for the ‘ignorant’ masses who made up the population in the empire and provinces, in addition to control for the protection of ‘good society’” (COSTA, 2012, p. 19). In the 1870s education legislation, we can see how these issues appear in the dimension of the black population.

In Paraíba, an 1870 law created a primary night school for males that did not ban any type of student. But in other provinces, exclusion remained. In Alagoas, “the September 1870 Regulation ratifies the prohibition in its Article 7: ‘Enrollment shall not be admitted to those younger than six and older than 15, slaves, and those who suffer from contagious illnesses’” (SANTOS, 2012, p. 67).

In Parana, the 1871 Public Primary Education Regulation established that “for any boy to be enrolled in school, he should be presented by his father, mother, tutor or any legal guardian, and, as soon as he is admitted, the teacher should register him”. It went on: “Enrollment, or attendance in schools, shall not be admitted to: [...] §2. Slaves”. However, the same region created, in 1872, the night school, which, similar to Paraíba, did not ban slaves from enrollment. Also in Parana, the province established, in 1874, compulsory primary education “provided the absence of physical or moral impairment” and did not mention rejection based on other criteria. However, the Province’s Primary Education Regulation, which was passed in September of the same year, brought them back: “Enrollment, or attendance in schools, shall not be admitted to: [...] §2. Slaves”.

Unlike acts passed in Paraíba and Parana, the province of Santa Catarina’s legislation regarding night schools did not extinguish the

prohibition against slaves, but it presented a possibility: the slave owner license. According to the September Seventh Night School Regiment, from 1874: "Enrollment shall not be admitted to: [...] §2. Slaves who do not have permission from their owner". In Rio Grande do Norte, the 1872 Regulation did not ban slave enrollment. The same occurred in Mato Grosso: the 1873 Local Public Education Regulation deemed education mandatory and created night schools in the capital. Additionally, references to the prohibition of slaves in official schools, which were seen in the previous legislation, disappeared. Also in this province, a new Regulatory Law of Public and Private Education was passed in 1875 and also made no reference to slaves among those banned from enrolling. Sao Paulo established compulsory education in 1874, with no mention to student category or night school.

Like Santa Catarina, the province of Rio Grande do Sul, through the 1876 Primary Public School Regulation, maintained the prohibition: "The following shall not be allowed to enroll or attend schools: [...] §2. Slaves". Two months later, a new text was approved that preserved the latter. However, concerning night schools, there was a new wording: the 1876 Provincial Regulation for Night Schools in Rio Grande do Sul, defined the following:

Article 1. The provincial night school is specifically destined for teaching those belonging to less wealthy classes who are unable to attend educational establishments during the day.

Article 2. These classes shall admit adults, *ingenuos or freedmen*, with no other condition besides legitimate means and duly proven honest living.

The province of Maranhão passed the Regulation for Provincial Public Primary Schools in 1877, without any reference to slaves.

At the end of the decade, a reverse movement can be observed. In Mato Grosso, where the prohibition against slaves had been

removed from legislation in the beginning of the 1870s, the 1878 Public Education Regulation now determined: "The following shall not be enrolled in public primary schools: [...] § 2. Slaves".

The Court also included adult education in the 1878 legislation and pointed out for whom it was destined: "Art. 5. Every male older than 14, *free or freedmen*, may enroll, at any time, in night schools [...] (italics added)". Also from the Court, the Decree n. 7247, passed in 1879, determined that education was compulsory, but did not mention slaves, freedmen or *ingênuos*. It is worth noting that, according to the Law of Free Birth, after 1879, slave owners were given the choice to either deliver children, born after 1871, whose mothers were slaves to the state or keep them in their power and educate them. Nevertheless, in Minas Gerais, the Primary Education Regulation from the same year repeated the prohibition against slaves from previous laws from this province: "Art. 35. The following shall not be allowed to enroll or attend schools: [...] §3. Slaves".

What would have caused the mention of slaves to disappear in the early 1870s and its reappearance in the late 1870s in some provinces? Did night classes include them? Could the Law of Free Birth have influenced legislators and caused them to ignore slave prohibition in the years following its adoption? Why – with the exception of specific night class regulations – did the ban return precisely in 1878, when the government should start preparing itself to receive the *ingênuos*? Did night schools constitute a space where slaves were permitted? Did reinforcing prohibition in other schools demarcate the differences among welcome students in each space? Legislation cannot answer these questions on its own, but its analysis points to the importance of further research.

The 1880s: in the throes of slavery, prohibition remains

After 1871, the main area of dispute over the direction of the workforce in Brazil

was legal and political, and this process gained increasing force in the 1880s (MENDONÇA, 1999). This quarrel was also present in the legislation regarding public education. As in previous decades, there was no uniformity among provinces nor continuity within each one until the end of the slavery era with respect to black education.

Although Mato Grosso banned slave enrollment in 1878, this ban disappeared in the province with the Primary and Secondary Education Regulation of 1880. Article 65 transferred the responsibility of selecting students to each teacher:

The school's internal regulations shall establish enrollment conditions, attendance and rules for school exercises, disciplinary measures, examination format and period, teacher bookkeeping, and other objects of this order, which are not expressly regulated herein (SÁ; SIQUEIRA, 2000).

As for Bahia, prohibition is maintained: according to the 1881 Regulation,

Enrollment shall be the responsibility of the teacher, guided by the father, tutor or guardian, who must declare: the name of the boy's parents, his place of birth, *that he is not a slave*, that he is between ages five to fifteen, that he is vaccinated and does not suffer from a contagious disease (CONCEIÇÃO, 2007, p. 49, italics added).

The text was similar in Santa Catarina. The 1881 Public Education Regulation repeated the earlier text: "Art. 83. The following shall not be allowed to enroll or attend schools: [...] §2. Slaves" (SEBRÃO, 2010). In the same year, the Public Education Regulation from Rio Grande do Sul, which addressed compulsory education, did not ban enrollment of slaves or other categories. According to Article 42, a teacher was allowed to use school space and furniture to offer night classes if he wished to do so.

By amplifying the process of former years, would night schools be the space allowed for slaves? Similar to the case of Santa Catarina, which did not mention slaves or captives in the 1883 Regulation among those banned from enrollment.

In Paraná, the legislation's allusion to the Law of Free Birth is worth highlighting. The Law n. 769, from 1883, which regulated compulsory education, determined that:

Art. 1: Attendance in primary school is mandatory in cities, villages and settlements for all children ages 7 to 14, for boys, and 7 to 12, for girls.

Sole Paragraph: The provisions of this Article include *ingênuos* of the Law from September 28, 1871. (MIGUEL, 2004).

Despite the uniqueness of this paragraph, as no reference to the 1871 Law was found in other provinces, we may question whether the fact that this pronouncement only appeared in 1883, seeing that the *ingênuos* should have started to be delivered to the state, becomes part of the dispute, characteristic of the decade, between the interests of the state and the slaveholders (MENDONÇA, 1999).

In other provinces, prohibition was maintained. The 1884 Public Education Regulation from Goiás determined that: "The following shall not be allowed to enroll: [...] §4. Slaves" (GONÇALVES, 2006). Two years later, in the same province, the Primary and Secondary Education Regulation did not allude to who could or could not be enrolled in either level. But in Paraíba, during the same year, the impediment remained. According to the 1886 Regulation, "in order to enroll and attend public schools, *one is required to be free*" (CURY; PINHEIRO, 2004, italics added).

Sao Paulo also reiterated the ban against slaves in public schools until the end of the slavery era. However, night classes were granted to slaves, provided their owners gave permission. According to the 1887 Regulation,

enrollment was not allowed to: “§5. Slaves, except in night schools and with the consent of their owners” (PROVÍNCIA..., 1887).

The many ways in which these actors appear or not in education legislation in the 1880s reflect disputes over where these groups belong in Brazilian society. Whether considering the Parana law that ordered primary schools to enroll *ingênuos* to abide by the Law of Free Birth, or the Sao Paulo regulation that required “slaveowner’s consent” to enroll slaves, even if merely at night school, or the Paraiba law that differentiated public schools (forbidden) and night schools (not explicit on who can or cannot enroll), the relationship between education and the black population must be tinted.

The differences and similarities between the provinces that referred to *ingênuos* and slaves in their legal frameworks may help us understand the struggles, conflicts, resistance, conveniences and ambiguities that permeated the existence of the black population in the late nineteenth century in the light of competition for school education.

Conclusions

Unlike some interpretations still prevailing in historiography, it is not possible to state that blacks were banned from schools in the nineteenth century. Even the slave prohibition, present in a large part of education laws and regulations, should be historicized. From the first law passed in Minas Gerais (1835) to the law passed Sao Paulo (1887), it is possible to verify a variety of texts, types of prohibitions, absences, and also permissions, throughout the period which refers to the many possibilities of being black in the Brazilian Empire.

We consequently do not attempt to deny the specificity of being black in a slaveholding society and who were trapped in the master-slave dialectic, “submitted to several legal

restrictions or simply impregnated in the customs of a society dominated by a small white elite” (AZEVEDO, 1987, p. 33). Studies on education of the black population in the nineteenth century relay the difficulties, obstacles and restrictions against the presence of blacks in schools, based on customs, culture and also legislation, even when the law forbade instruction to slaves and not any other category of African descent.

Rightfully aware of the limits of a panoramic study, our aim was to conduct a general, comparative glance. We did not take legislation as all-encompassing regarding relations. While it establishes practices, the law is also a result of processes, disputes and conflicts. It is circumvented, modified and violated – whether it permits or forbids. The requirement to provide schooling for *ingênuos* in Parana, for instance, does not mean that all *ingênuos* in that province had access to schools and, likewise, banning enrollment did not exclude all enslaved persons during all periods of time and in all regions in the schooling process – episodes that are being investigated by many researchers. Besides, during the nineteenth century, a wide range of possibilities coexisted and competed with public schooling in the hegemony of educating pupils – private schools, for example (VIDAL; FARIA FILHO, 2000, p. 21). It is worth noting that the available legislation addresses public schooling, leaving out other educational models.

We emphasize that legislation on its own does not account for all the black experience in the relationship with education during the period beings studied. Furthermore, different sources can and should be consulted: minutes of provincial assemblies, reports by provincial presidents, school inspectors and teachers, the press, among countless others. Legislation is only one of the analytical possibilities with regards to the education of the black population in the nineteenth century.

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