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Toby Green, King's College London

toby.green@kcl.ac.uk

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Baculamento or Encomienda?

Legal Pluralisms and the Contestation of Power in Pan-Atlantic World of the Sixteenth and Seventeenth Centuries

Introduction: Microhistories pan-Atlantic flows and legal pluralisms

In 1636, Manuel Alvarez Prieto, a New Christian, came before the Inquisition tribunal in Cartagena. As with all Inquisition cases, the interrogation began with Alvarez Prieto being asked about his origins and career history. He had been apprenticed to the slave trader Lope Henriques de Guzman, living with him in [Upper] Guinea for seven or eight years, before returning to Spain, and then settling in Lisbon. After four years in Lisbon, Alvarez Prieto embarked for Angola and from there sailed to the Rio de la Plata, from where he made his way to Salvador da Bahía. From Salvador he returned to Angola before going to Cartagena, traveling to Puerto Rico and then to Seville and Lisbon; from Lisbon to Cabo Verde and Upper Guinea, thence to the Moroccan coast and back to Upper Guinea, from where he returned to Lisbon. In Lisbon he spent another four years, where he got married to the daughter of the well-known slave trader resident in Cacheu, Alvaro Gonçalves Frances.

Eventually, Alvarez Prieto returned to Cacheu and then crossed the Atlantic with a cargo of enslaved Africans to Cartagena, where the Inquisition caught up with him.¹

The study of such microhistories in the Atlantic world has become a useful narrative way for historians to explore the overlapping identities that emerged in the early Atlantic world. The recent emphasis on the “biographical turn” has shown how such stories can illuminate the broader processes that have so often drawn the attention of historians.² The mobility of individuals such as Alvarez Prieto – whose career, rooted in Iberian imperialism, spanned West Africa, the Americas, and Iberia – reveals that the Atlantic emerged as an integrated network of human experiences, as well as an abstract system of trade and connections. As Roquinaldo Ferreira has shown, such cases run throughout the interconnections of Angola and Brazil from the mid-seventeenth century to the mid-nineteenth century; and as a recent article shows, this pattern dates from even the sixteenth century in both Upper Guinea and West-Central Africa.³

The case of the New Christian Alvarez Prieto may also be taken as representative of the pan-Atlantic legal frameworks that took shape around the turn of the seventeenth century in the Iberian colonial worlds. In this article, these frameworks exemplify the legal pluralism of the early Iberian colonial worlds, where jurisdictional definitions of both Iberian and indigenous legal systems from the Americas and Africa were overlaid upon one another in order to create a system of law that codified the abuses of power of the Iberian colonial

¹ Archivo Histórico Nacional, Madrid (hereafter AHN), Inquisición 1620, Expediente 15, folios 55v-56v. For a more detailed account of the life history of Gonçalves Frances, see Green, Toby, “Pluralism, Violence and Empire: The Portuguese New Christians in the Atlantic World”, in Bethencourt, Francisco ed., *Cosmopolitanism in the Portuguese-speaking World* (Leiden: Brill, 2017).

² Lindsay, Lisa A. and Sweet, John Wood eds., *Biography and the Black Atlantic* (Philadelphia: University of Pennsylvania Press, 2013).

³ Ferreira, Roquinaldo, *Cross-Cultural Exchange in the Atlantic World: Angola and Brazil in the Era of the Slave Trade* (Cambridge: Cambridge University Press, 2012); Green, Toby, "Beyond an Imperial Atlantic: Trajectories of Africans from Upper Guinea and West-Central Africa in the Early Atlantic World", *Past and Present* 230 no. 1 (February 2016): 91-122.

worlds. The connected networks linking both Africa and the Americas in this period ensured that this was a framework that applied to legal cases on both sides of the Atlantic.⁴

Examples of this sort of “pan-Atlantic jurisdiction” are many. In the Inquisition trial of Alvarez Prieto, for instance, it was relevant to the inquisitorial lawyers to take evidence from those who had known the defendant in West Africa as well as in the New World. Indeed, in many of the cases tried by Inquisitors in Cartagena in the 1630s, legal depositions taken in West Africa were transcribed and included as part of the evidence heard in the New World.⁵ This practice suggests that, when it comes to Iberian colonial law, and the legal conditions surrounding enslavement and the formation of subjectivities in both West Africa and the New World, pan-Atlantic jurisdictions were widely recognised in this period.

Nevertheless, this pan-Atlantic framework varied according to indigenous concepts of law, for these too were required in the emerging legal pluralism. Drawing on concepts from indigenous legal categories, as well as colonial ones, offered a path to ensure that the new domains of power would be internalised by indigenous peoples. In this way, colonial officials aimed to influence local identities, with new legal frameworks taking part in the creation of new subjectivities, or ideas of personhood and identity. A core argument presented here is that these legal domains are of fundamental importance to understanding the emergence of subjectivities in Atlantic Africa during the era of the slave trade.

Pan-Atlantic legal pluralism played a key role in the transformation of Atlantic identities. In his book *Colonial Encounters*, historian José Lingna Nafafé notes that the formation of new types of subjectivities and discursive practices was one of the key features unifying historical experiences in West Africa in the seventeenth century.⁶ And as Lauren

⁴ On the connected networks linking Africa and the Americas, see for instance Wheat, David, *Atlantic Africa and the Spanish Caribbean, 1570-1640* (Chapel Hill: University of North Carolina Press, 2016).

⁵ E.g., AHN Inquisición Legajo 1608, Expediente 27 fols. 7v-16r, 31v-32r, 33r-35v – the case of Juan Rodríguez Mesa.

⁶ Nafafé, José Lingna, *Colonial Encounters: Issues of Culture, Hybridity and Creolisation* (Frankfurt: Peter Lang, 2007), 2.

Benton has shown, the formation of colonial identities in the Iberian colonial worlds was fundamentally connected to the development of new plural legal frameworks. Benton is possibly unique among legal historians in taking seriously the importance of African legal practices in interacting with Iberian practices in shaping legal pluralisms in both the Americas and in colonial domains in Africa such as Angola. As Benton notes, the Iberian worlds before the colonial expansion were already plural, with a “coexistence of multiple legal authorities” bridging the religious and secular legal worlds of Christians, Jews and Muslims.⁷ Subsequently, complementing (and complementary) diasporas, slave capture in warfare, and the influence of Islam, all created what she identifies as homological legal frameworks linking African and Iberian communities in the early Atlantic world.⁸ Benton’s work, as such, draws parallels between legal structures on both sides of the Atlantic, and in discussing the emergence of maroon communities in the Americas, she recognises the importance of this framework. Indeed, in the case of enslaved Africans in the Americas, Herman L. Bennett and James H. Sweet have illustrated the agility with which Africans negotiated plural jurisdictions very clearly. Bennett’s work for New Spain shows just how thoroughly enslaved Africans used the legal frameworks of the colonial state, and also of the Catholic Church, to form an “Afro-Creole consciousness,” which was both shaped by this framework and yet challenged it.⁹ In the case of Brazil, Sweet shows also how far this analysis informed the choices and actions of Africans and those of African descent in colonial society.¹⁰

⁷ Benton, Lauren, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (New York and Cambridge: Cambridge University Press, 2002), 38.

⁸ *Ibid.*, 51-55.

⁹ Bennett, Herman L., *Africans in Colonial Mexico: Absolutism, Christianity and Afro-Creole Consciousness, 1570-1640* (Bloomington: Indiana University Press, 2002); *idem.*, *Colonial Blackness: A History of Afro-Mexico* (Bloomington: Indiana University Press, 2009).

¹⁰ Sweet, James H., *Recreating Africa: Culture, Kinship and Religion in the African-Portuguese World* (Chapel Hill: University of North Carolina Press, 2003).

However, while Benton does much work relating experiences in Africa to those in the Americas, there remains a lack of engagement with the actual experience of these plural legal frameworks in the Atlantic African context. Indeed, while a number of scholars have shown how the subjectivities of enslaved Africans and their descendants emerged through the appropriation and contestation of legal categories in the New World, such work remains to be done for precolonial Atlantic Africa.¹¹ This study proposes to address this gap with a preliminary attempt to outline some of the issues at stake; drawing on a limited range of materials, it is hoped that other scholars will engage this work with further debate. The primary focus is Atlantic Africa, though this also requires much discussion of the transition from, and connections to, Native American communities in the New World.

The concept of legal pluralism is very important in this argument. Benton's analysis makes it clear that legal pluralism emerged in contexts of colonial rule, where there was a need to "limit legal change as a way of sustaining social order" and to incorporate elements of existing legal frameworks with those of the colonial order in order to create overlapping concepts and jurisdictional claims.¹² In other words, early modern colonial orders had to recognize the limits of early modern colonial power. Technologies of control and domination were not as advanced as they would become in modern colonial regimes, so a mixed regime of power had to incorporate legal institutions from the colonised, not only to function, but also so that the manifestation of power could be internalised and shape new identities. Subjectivities in the new colonial settings were thus shaped by the juxtaposition and attempted integration of different legal codes.

¹¹ See especially Bennett, *Africans in Colonial Mexico*; also O'Toole, Rachel Sarah, *Bound Lives: Africans, Indians, and the Making of Race in Colonial Peru* (Pittsburgh: University of Pittsburgh Press, 2012), 35-63, for an analysis of the way in which enslaved Africans deployed their understanding of colonial legal categories to shape identities and claim rights.

¹² Benton, *Law and Colonial Cultures*.

This process is of course very relevant for scholars of African history, since historians of modern Africa have shown how an understanding of the concept of “legal pluralism” is vital for examining the transformation of identities in colonial Africa, and for understanding the nuances of legal frameworks in postcolonial Africa.¹³ Much less work has been done, in contrast, on the question of legal pluralism in precolonial Africa. In his 2012 book, to be sure, Roquinaldo Ferreira does note that the cases of the *tribunais de mucanos* show that a framework of legal pluralism existed in seventeenth and eighteenth century Angola.¹⁴ However, much remains to be done in this area, especially relating to the question of the pan-Atlantic structure and the role of “travelling concepts.”

The dual examination of Portuguese and Spanish domains of law in this paper requires some explanation. While Portuguese and Spanish legal domains remained distinct throughout the colonial period, there were significant overlaps, especially in the era of Iberian Union (1580-1640). Indeed, as Sanjay Subrahmanyam has pointed out, by the mid 1500s colonial legal practices between the two Iberian empires were already becoming blurred.¹⁵ In the case of the South Atlantic, David Wheat’s book shows that the trans-Atlantic slave trade offered a mode to link up the two empires, and indeed Wheat argues that slave production in West Central Africa and the Spanish Caribbean were complementary aspects of a single, unified history.¹⁶ Thus it is not anomalous to take the two Iberian empires together in this context; rather, the historical realities and evidence demands it. While this conclusion might suggest the need to look beyond the Atlantic domain, to show the connection to Iberian

¹³ Karekwaivanane, G.H., *Legal Encounters: Law, State and Society in Zimbabwe, 1950-2008* (Cambridge: Cambridge University Press, 2017); Ntephe, Peter, *Does Africa Need Another Kind of Law? Alterity and the Rule of Law in Subsaharan Africa* (School of Oriental and African Studies, University of London, Unpublished PhD dissertation, 2012); Saho, Bala K., *Contours of Change: Muslim Courts, Women, and Islamic Society in Colonial Bathurst, The Gambia, 1900-1960* (East Lansing: Michigan State University Press, 2018); Burrill, Emily S., Roberts, Richard L. and Thornberry, Elizabeth eds., *Domestic Violence and the Law in Colonial and Postcolonial Violence* (Athens, OH: Ohio University Press, 2010).

¹⁴ Ferreira, *Cross-Cultural Exchange in the Atlantic World*, 13-4.

¹⁵ Subrahmanyam, Sanjay, “Holding the World in Balance: The Connected Histories of the Iberian Overseas Empires, 1500-1640”. *American Historical Review*, 112, (1) (2007), 1359-85, 1373.

¹⁶ Wheat, *Atlantic Africa and the Spanish Caribbean*, 73.

domains in Asia or the Indian Ocean, this is beyond the scope of an article like this – although again, it is hoped that this might prompt further work in this area.¹⁷

This article proceeds with three further parts. The first looks at the continuities in legal practices connected to slavery in the New World, New Spain (Mexico) and Brazil, showing the relevance of legal pluralism and of indigenous concepts in this framework. The second section links Atlantic Africa and the Americas in the early seventeenth century, showing that there were important continuities that shaped the perception of slaves and the practices of enslavement on both sides of the Atlantic. The section also examines how a shared practice and jurisprudence of slavery emerged in African and American Atlantic ports by 1650. The argument is that this shared jurisprudence was grounded on shared financial interests, and that the plural legal framework which emerged was a requirement of “doing business.” The third and final part focuses on a well-known case from the Inquisition in seventeenth-century Upper Guinea as a prism through which to look anew at the question of pan-Atlantic legal pluralism.

I: Altepetl or Encomienda? Legal pluralisms in the Early Americas

This analysis should begin in the New World, where the context of legal pluralism in the shaping of colonial identities and mentalities is already well established, by Benton among others. As already noted, in the context of enslavement in the New World, the work of Bennett in plotting the path of legal consciousness and agency in colonial Mexico has revealed how important the intersection of existing patterns of law and colonial authority is for understanding the formation of colonial subjectivities. It is nonetheless important to emphasize that there were overlapping concepts and influences that ran between Spanish and

¹⁷ For recent work on the connected histories of Iberian colonialism in the Americas and the Philippines, see Seijas, Tatiana, *Asian Slaves in Colonial Mexico* (New York: Cambridge University Press, 2014).

Portuguese empires, which influenced practices especially between 1580 and 1640. In some important ways, these were rooted in initial responses of the Spanish to their empire in the first decades of the sixteenth century.

In his book on practices of slavery in pre-Columbian America, the anthropologist Fernando Santos Granero argues that the creation of systems of enslavement of Native Americans in the Iberian empires was not solely a colonial product, but rather also followed the integration by observers of “mutual recognition of resemblances between respective forms of servitude [that] facilitated the passage from one to the other.”¹⁸ That is, indigenous forms of dependence and servitude were integrated with and adapted to the new colonial conditions; and in some contexts, such as among the Taíno, there appear to have been relatively few major alterations to existing social structures in the immediate aftermath of the conquest.¹⁹ Moreover, just as the perception of analogous patterns of servitude and dependence between Europe and pre-Columbian America was important in constructing the economy of Native American labour in the Iberian empires, so too were the perceived parallels between enslaved Africans and indentured Native Americans in the minds of raiders, traders, and colonists. Native Americans in *encomiendas* were not “chattel slaves” and hence not legally defined as property. Very complex legal frameworks emerged and pretended to protect indigenous rights during the sixteenth century, even during an era of utter demographic devastation; and yet in the minds of colonists, mine overseers, and plantation owners, the distinct legal categories and requirements of enslaved African and

¹⁸ Santos Granero, Fernando, *Vital Enemies: Slavery, Predation and the Amerindian Political Economy of Life* (Austin: University of Texas Press, 2009), 7.

¹⁹ Deagan, Kathleen, “Reconsidering Taíno Social Dynamics After Spanish Conquest: Gender and Class in Contact Studies”, *American Antiquity*, 69, (4) (2004): 597-626.

conscripted Native American labourers were in practice frequently overtaken by the imperative for them to secure workers for the new extractive industries.²⁰

This link to indigenous forms of servitude and dependence does not imply some kind of legal or moral equivalence. Rather, these legal idioms offered an indigenous lexicon through which to interpret the new systems of power, and, for the colonising power, a framework through which to attempt to make legal theory match realities on the ground. This article shows that existing Native American and African legal frameworks were transformed under the new systems of colonial power and domination. Hence the place of indigenous legal frameworks does not somehow justify the violent transformations that took place, but rather serves to explicate the process by which they occurred.

It is useful to begin with New Spain, which was the first mainland American colony to experience significant colonial demands for native labour. While the *encomienda* was a resolutely Spanish institution, it had important parallels with institutions in the Portuguese empire. As Subrahmanyam suggests, indeed, by the middle of the sixteenth century Portuguese initiatives in Brazil and the *Estado da Índia* drew consciously on the practice of the *encomienda*, even after the New Laws of 1542 had reformed this form of labor organization.²¹ Hence while this article does not propose a specialist analysis of the *encomienda*, it recognises the importance of this institution as prefiguring some of the transformations that subsequently occurred on both sides of the Atlantic.

The *encomienda* emerged as a way of melding colonial labour requirements and indigenous practice. As the doyen of Mexican historians Sílvio Zavala noted, there were important continuities from indigenous labour practices in the early Spanish colony.

Colonists were keen to employ native practices for organizing labor for their own use

²⁰ On these overlapping views of African and Native American labour, see O'Toole, *Bound Lives*, 17-9, 27; see also Lane, Kris, "The Transition From *Encomienda* to Slavery in Seventeenth-Century Barbacoas (Colombia)", *Slavery and Abolition*, 21, (1) (2000): 73-95, 83.

²¹ Subrahmanyam, "Holding the World", 1371.

following the conquest of Tenochtitlán in 1521. Even during the siege, Cortés used native labor to build a ditch from Texcoco to the lake around Tenochtitlán, to repair ditches, and to build houses for the Spaniards.²² It is important, moreover, that this deployment of Native American labor depended substantially on existing Nahua institutions. Here the work of historian James Lockhart is important, especially his argument that the basis of the grant of the service of people known as the *encomienda* was the Nahua *altepetl*, traditionally a sovereign political unit (akin to a city-state) led by noblemen who commanded the labor of its members. As Lockhart shows, the organization of the “benefits” of the *encomienda* to the colonist depended crucially on the power wielded by the *altepetl*’s governor over his subjects.²³

Ways in which *encomenderos* consciously attempted to reproduce pre-existing labor relations are clear in the early documents. In 1530, for instance, the *encomendero* Juan Núñez Sedeño complained that Hernán Cortés had deprived him of his “*encomendados* [forced laborers],” who “could have been of profit and service [to him], with gold and maize and cloth and cocoa and food and slaves and the houses which they would have built for him, as the *indios* are accustomed so to do...”²⁴ Meanwhile, witnesses in a 1533 case regarding the tributes owed from the towns of Totolapa and Atlatlahuca cited pre-conquest tributary requirements as evidence for their demands, showing the continuity in practices of labor procurement and service.²⁵

This reproduction of existing labor relations was important to the Spanish since, as Timothy Yeager shows, it allowed them to draw on a framework that differentiated the labor

²² Zavala, Sílvio, *El Servicio Personal de los Índios en la Nueva España, Vol. 1, 1521-1550* (Mexico City: El Colégio de México, 1984), 511-4. See also Lockhart, James, *The Nahuas After the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth Through Eighteenth Centuries* (Stanford: Stanford University Press, 1992), 60, 110, for a discussion of the substantial number of slaves in pre-Columbian New Spain.

²³ Lockhart, *The Nahuas After the Conquest*, 28-9.

²⁴ Zavala, Sílvio, *Tributos y Servicios Personales de Índios para Hernán Cortés y Su Familia (Extractos de Documentos del Siglo XVI)* (Mexico City: Archivo General de la Nación, 1984), 10.

²⁵ *Ibid.*, 111-2.

service of *encomendados* from the longstanding Iberian legal concept of slavery itself, since *encomenderos* had no property rights over their vassals or over land.²⁶ Much of this continuity was therefore secured through attempts to deploy indigenous legal categories. An important example of this appropriation of familiar arrangements is the *macehual*, a bonded laborer analogous perhaps to a serf in medieval Europe. Early post-conquest documents refer often to *macehuales* in the context of labor, and the appointed native governors called them “our *macehuales*.”²⁷ However, the reality was that the labor that the Spaniards demanded of the *macehuales* was radically different to that which had been demanded before the conquest, which revealed the way in which the category was being transformed by the new context of conquest and the changing power relations. In one case, the conquistador Matías Sánchez was accused of such bad treatment of the *macehuales* that “his land has become depopulated and the *macehuales* are going elsewhere...because they are horrified at what is asked of them and of the size of the burdens which they are asked to carry”. In other words, the moral economy of pre-conquest labor relations, which implied restraint and mutual dependence between noblemen and *macehuales*, was unchained by the new legal and labor context of the Spanish conquest. While attempting to match new labor demands to old frameworks of law and labor, the bounds of those frameworks were stretched, beyond breaking point, as the *macehuales* fled men such as Sánchez.²⁸

This discussion of the conditions in New Spain already reveals some important aspects of legal pluralism in the early pan-Atlantic world. The deployment of indigenous categories such as the *macehual* and the *altepetl* did not mean that pre-conquest conditions of power were also reproduced. What the nesting of legal frameworks achieved – in this case the indigenous within the colonial – was often the stretching of indigenous concepts in an attempt

²⁶ Yeager, Timothy J., “*Encomienda* or Slavery? The Spanish Crown’s Choice of Labor Organization in 16th-Century Spanish America”, *The Journal of Economic History*, 55.4 (1995): 842-59.

²⁷ *Ibid.*, 122.

²⁸ *Ibid.*, 20.

to smooth over the violence and injustice of the conquest. As we shall see, this is a pattern with many similarities in areas of Atlantic Africa.

An important new context that added to the transformation of existing indigenous institutions was the presence of increasing numbers of enslaved African persons in New Spain. Their legal constitution as slaves under Iberian law created a certain slippage in indigenous concepts, as Lockhart notes. The *Nahua* word *tlatlacotin* was the original term that best approximated that of slave; but while there was much discussion among Spanish legal authorities as to whether *Nahua tlatlacotin* should be identified with the Spanish concept of slave, *Nahua* documentation of the first half of the sixteenth century shows that the *Nahua* themselves referred to African slaves as *tlacotli*.²⁹ Given that the type of labor enforceable upon African slaves and *tlatlacotin* was very different, this created new emphases within the original term, creating a certain conceptual hybridity. Thus as the sixteenth century unwound, new relationships of power and authority were increasingly transforming indigenous labor concepts and creating a mixed environment for their use. Nevertheless, there were many continuities, especially in the way in which the *encomienda* relied on indigenous systems of dependence and labor organization.³⁰

In the Iberian New World context, therefore, there was a vital intersection of perceptions and legal frameworks surrounding the labor demanded of both Africans and Native Americans. Nor was connection limited to the case of New Spain. As Kris Lane has shown, in Barbacoas (southwest Colombia) the labor performed by Native Americans was almost completely replaced by that of enslaved Africans between 1620 and 1700 after the granting of new *encomiendas* from Quito in the 1620s.³¹ Meanwhile, as Alida Metcalf has shown, this practical and perceptual slippage was especially significant in the Brazilian

²⁹ Lockhart, *The Nahuas After the Conquest*, 508 n.80.

³⁰ Zavala, Sílvia, *La Encomienda Indiana* (Mexico City: Editorial Porrúa, 1973), 45.

³¹ Kris Lane, "Transition."

context, where Portuguese colonists originally derived from their experiences in Atlantic Africa concepts of slavery, which they then applied to the Tupinambá.³² The Brazilian context for understanding the emergence of pan-Atlantic plural legal frameworks is also vital when we recall that Native Americans performed the initial labor on the sugar plantations of Bahía, and that it was only after 1590 that enslaved African labor took over this task. Thus if Santos Granero is correct, and the intersection of European and Native American perceptions of dependence and labor were important for the foundation of New World systems of enslaved labour, Brazil from the 1590s onwards was a vital legal and structural context into which enslaved African labour was inserted.

Into the Brazilian context we should also note the importance of the intersection of the ideological construction of captivities and legal frameworks. Here, as Metcalf notes, the African context was also important. In the context of enslavement in Africa, the place of slaves as captives was fundamental, and indeed was a crucial legal context that went right back to the beginnings of the Atlantic slave trade from Senegambia to Portugal in the fifteenth century. Here, scholars have argued that Portuguese chroniclers deliberately emphasized the Muslim religion of Senegambian captives, so as to present a continuity from the context of legal enslavement and “just war” which was long established in the Mediterranean. The creation of this paradigm would be very important in subsequent legal frameworks relating to the enslavement of Africans in the Iberian colonial context.³³

The perception that enslaved Africans in the New World had come from captivity in Africa – and were therefore justly enslaved – was a key ideological buttress of the emerging

³² Metcalf, Alida C., *Go-Betweens and the Colonization of Brazil, 1500-1600* (Austin: University of Texas Press, 2005), 159.

³³ Baxter Wolf, Kenneth, “The ‘Moors’ of West Africa and the Beginnings of the Portuguese Slave Trade”, *Journal of Medieval and Renaissance Studies*, 24, (3) (1994): 449-69, 468; Blumenthal, Debra, *Enemies and Familiars: Slavery and Mastery in Fifteenth-Century Valencia* (Ithaca and London: Cornell University Press, 2009), 41; Saunders, A.C. de C.M. “The Depiction of Trade as War as a Reflection of Portuguese Ideology and Diplomatic Strategy in West Africa, 1441-1556”, *Canadian Journal of History*, 17, (2), (1982): 219-34.

slave trade by the early sixteenth century. An anonymous letter written some time shortly after 1613 suggested that enslaved Africans “never launched uprisings, and this is because they are born and raised as Captives in their lands, and are sold as such by those who are their masters.”³⁴ This idea of enslaved Africans as “captives” is enduring in literatures from the Americas, with many wills from north-eastern Brazil in the later seventeenth century describing slaves as “captives [*cautivas*]”.³⁵

In Brazil, as in New Spain, the presence of enslaved Africans alongside Native American laborers created an important new context for the transformation of existing concepts. In the late John Monteiro’s pathfinding analysis of Native American slavery in São Paulo, he reminds us that while there were relations of dependence in pre-Columbian Brazil, the evidence is that there was very little social hierarchy in Tupinambá communities, since chiefs would perform manual labor alongside their people.³⁶ Missionaries such as the Jesuit Manuel Nobrega claimed that there had been no slavery in pre-Columbian Brazil, and such captives as there were tended to be kept for religious sacrifice, and certainly not economically productive labor.³⁷

Nevertheless, in spite of this fundamental difference, over time the colonial Portuguese institution of slavery in Brazil became very similar for both Africans and Native Brazilians, as Monteiro shows. The structures of forced labor for Native Americans in the region of São Paulo were not, Monteiro notes, that far removed from those related to Africans in the sugar-producing zones of the north-east.³⁸ Indeed, this becomes explicit in documents relating to the terrible *bandeiras* in the 1620s, slave raids of the Paulistas on the Guaraní

³⁴ Archivo General de las Indias, Seville, Indiferente 2795.

³⁵ Arquivo da Santa Casa da Misericórdia, Salvador, Maço 41, Livro do Tombo (2), fol. 315r.

³⁶ Monteiro, John Manuel, *Negros da Terra: Índios e Bandeirantes nas Origens de São Paulo* 46-8. (São Paulo: Editora Schwartz Ltda., 1994), 28.

³⁷ Eisenberg, José, “A Escravidão Voluntária dos Índios do Brasil e o Pesnamento Político Moderno”, *Análise Social*, 39, (170) (2004): 7-35, 12.

³⁸ Monteiro, *Negros da Terra*, 130.

living in the Brazil-Paraguay borderlands. Victims of those raids were sold as slaves in Espírito Santo, Rio de Janeiro, and Bahía alongside enslaved Africans brought from Angola through the slave trade. Ships indeed left the port of Santos, near São Paulo, “filled with ‘peças’ [Guaraní] destined for the sugar mills of Pernambuco”.³⁹ At the same time in Bahia, the term *peças* was also being used for captives taken in the slave raids dispatched by Portuguese officials into the interior from Salvador, even though this term had derived from that used for enslaved Africans.⁴⁰

In sum, by the first part of the seventeenth century, models of enslavement had emerged in both Portuguese and Spanish America that borrowed from Native American and European ideological and structural frameworks, and also from Iberian experiences in Africa. While in Spanish America the legal frameworks surrounding indigenous people offered more protection in theory, in practice slippages were common. This amalgamation of concepts created a plural and pan-Atlantic institutional framework for coerced labor grounded in just war and a system of dependence, which, as Santos Granero suggests, was designed to extract as much of the “vital energy” of the enslaved as possible.

II: *Baculamento or Encomienda? Transitional legal structures in Atlantic Africa*

The pan-Atlantic context of the American transformations noted so far emerges very clearly in conceptual slippages between America and Africa during this period. A key case in point is the *pombeiro*. Derived from the term *mpumbu*, meaning market in Kikongo, *pombeiro* was a term used by Portuguese colonists in Angola, by the early 1600s, to refer to itinerant African agents who took goods on credit from coastal traders in order to then trade in inland fairs and return with enslaved persons to sell to slaving ships on the coast. However, as Metcalf and

³⁹ Taunay, Afonso de E., *Historia Geral das Bandeiras Paulistas* (São Paulo: Typ Ideal H.L. Canton, 1924), 2: 93.

⁴⁰ Neves, Juliana Brainer Barroso, *Colonização e Resistência no Paraguaçu – Bahia, 1530-1678* (Salvador: Universidade Federal da Bahia, Unpublished Master’s Dissertation, 2008), 46-8.

Montero note, by the early seventeenth century, the term was also in use in Brazil to describe hired slave raiders. In one 1624 case, as Monteiro notes, a document refers to *pombeiros* attacking and enslaving Guaranís at the behest of Paulista *bandeirantes*.⁴¹

The way in which the concept *pombeiro* migrated from Angola to Brazil makes it clear that by this time, ideas were being used in very different contexts from those where they had originated; where in Angola it referred to trade related to slaves, in Brazil it referred to slave raiders. At the same time, it is important to recognize that there appeared to be good reason for this transfer of ideas, for often the concepts referred to very similar processes. Indeed, the roles of *pombeiros* in Brazil were very similar to those in Angola at the same time. Metcalf describes “one *entrada* into the sertão in the 1590s traded horses, guns, gunpowder, bullets, drums, and silk battle standards to Indians in return for slaves”, something which bears striking similarity to the actions of *pombeiros* in Angola.⁴²

These examples show the reality of “travelling concepts” (much beloved by social scientists of the twenty first century) at a much earlier time than previously considered. Here we have cases of a category derived from Kikongo, internalized among Portuguese colonists amid the violence of early slave trading networks in Angola, and then transferred to Brazil. The *pombeiro* example already begins to show the nature of pan-Atlantic categories in the early Atlantic world as they switched between Africa and the Americas. However, thus far, this article has related primarily to the construction of systems of New World slavery; what is important now is to inquire as to how the legal conditions of precolonial Atlantic Africa and the jurisdictional structures related to slavery and other forms of coerced labor in the New World were connected.

⁴¹ Monteiro, *Negros da Terra*, 66; see also Metcalf, *Go-Betweens*, 313 n33.

⁴² *Ibid.*, 192.

A beginning to an answer may lie in recalling the microhistory of Manuel Alvarez Prieto. Here was someone heavily involved in the systems of enslavement – and their legal justifications – in the Iberian worlds. He spent prolonged periods living in various parts of Atlantic Africa – both Angola and the Guinea-Bissau region – as well as in what are now Argentina, Brazil, Colombia and Puerto Rico in the New World. Numerous other inquisitorial cases from the period show that such trajectories were far from uncommon. With so many Atlantic traders circulating among multiple continents, it becomes apparent that structures and legal frameworks developed in the New World were also important when it came to the transformations of structures of dependence in Atlantic Africa; moreover it was doubtless through wandering persons such as Alvarez Prieto that concepts such as the *pombeiro* also began to travel.

A discussion of Angolan history shows how physical movement and the circulation of Atlantic legal concepts were related. In his classic work *Kingdoms of the Savanna*, Jan Vansina noted that one of the early governors of Luanda, Bento Banha Cardoso, had imposed the idea circa 1610 “that every chief in Ndongo should be “given” to a Portuguese who would “rent” him for a fixed annual sum from the government and be entitled to whatever tribute – undoubtedly in slaves – he could get from his chief.”⁴³ These allocations of African authorities to Portuguese “rentiers” constituted the system of *baculamento* which is widely noted in the first half of the seventeenth century for Angola in documentation that makes it clear that such *baculamentos* were fundamental to the administration of the colony. These “vassal tributes” were abolished by law only in 1650.⁴⁴ The initial growth of the policy derived partly from the longstanding Portuguese concept of *vassalagem* (vassalage) and went with the expansion of the Portuguese militarized occupation around Luanda in the early

⁴³ Vansina, Jan, *Kingdoms of the Savanna* (Madison: University of Wisconsin Press, 1966), 128.

⁴⁴ Heintze, Beatrix, “The Angolan Vassal Tributes of the 17th Century”, *Revista de História Económica e Social*, no. 6 (1980): 57-78, 71.

seventeenth century. As Heintze notes, under Bento Banha Cardoso's governorship (1611-1615), over 80 *sobas* (chiefs) were conquered and placed in a tributary relationship of *baculamento*.

This relationship between Iberian military conquest and the vassalage system is significant because it shows an intersection of different legal frameworks. While the framework of *vassalagem* mattered to the Portuguese, the adoption of the *kimbundu* term *baculamento* (from the *kimbundu*, *bakula*, to "pay tribute") shows also the attempt to integrate Angolan vassal tributes within existing frameworks of dependency. Thus what the case of the *baculamento* suggests is something quite similar to that which Roquinaldo Ferreira demonstrates in his work on the *tribunal de mucanos*. What emerges is that an Angolan system of vassalage became overlaid on the relationship between conquered land and slavery in the Portuguese colony: it was a plural legal framework that spoke both to Iberian and Mbundu peoples and shaped key aspects of the slave trade as it emerged in Angola. However, the nature of the new system of vassalage developed by the Portuguese would prove to be completely different and mask an accelerating exploitation within the clothes of the existing Kimbundu concept.

The relationship between Portuguese military expansion in the early seventeenth century in Angola and the growth of vassal tributes gives particular pause for thought, as it suggests that the relationship may have been influenced at least in part by the *encomienda* system in the Americas. This period was after all the time of the joint Portuguese-Spanish monarchy, when such legal influences could easily have found their way from the Spanish Americas to Portuguese Luanda, following the itinerant lives of figures such as Manuel Alvarez Prieto. Indeed, as we shall now see there are striking parallels between the *encomienda* and *baculamento* systems that give strong support to the idea that a pan-Atlantic

legal pluralism linking Africa and the Americas was emerging by the early seventeenth century.

The first similarity is the contextual place of vassalage within Iberian conquest, in both New Spain and Angola. For New Spain, Zavala cites one document from four residents of Mexico City urging that *encomienda* grants include Native Americans specifically as vassals, “because giving them as vassals, the Spaniards who have them will treat them like their own children.”⁴⁵ As we have already seen, this vassalage system was encouraged so that the colonists would integrate these vassals through existing Nahua frameworks of dependence and labour mobilization, just as occurred later in Angola with the *baculamento*. Furthermore, in both New Spain and Angola, the existing frameworks of dependency were transformed under Iberian colonialism, so that the pre-existing *macehuales* and those subject to *bakulas* became transformed into persons who were essentially akin to the Atlantic category of slave.

Some specific documents related to the *baculamentos* make these parallels of conquest and vassalage very clear and instructive. One official report from 1607 reported the origins of the *baculamento* tributes in stark terms: “I have been informed that Paulo Diaz de Novaes [the founder of Luanda in 1575, and originator of the Portuguese military campaigns in Angola] gave *Sobas* [chiefs] to the Portuguese who accompanied him...since he had no other means to pay them their salaries and give them provisions”.⁴⁶ In other words, this arrangement is an almost identical framework to the initial *encomienda* grants in New Spain in the 1520s, where loyal colonists were “given” native governors, who were expected to mobilize their followers to provide services.

⁴⁵ Zavala, *La Encomienda Indiana*, 50: “porque dándose [los indios] así por vasallos, los españoles que los tuviesen los tratarán como a sus propios hijos.”

⁴⁶ Arquivo Histórico Ultramarino (hereafter AHU), Conselho Ultramarino (hereafter CU), Angola Caixa 1, doc 3^a: “Segundo sou informado Paulos Diaz de Novaes dava Sovas aos portugueses q com elle andavão pa delles cobrarẽ e não cobrarão pa sy os tributos que pagavão ao el Rey de Angola por não er outro Remedio delle pagar seus soldos e mantimentos...”

When it comes to legal frameworks, the parallels are also very clear. An important and little-studied comparative point is that related to conversion. Just as the intellectual buttress of the *encomienda* was that the *encomendero* was to take charge of the spiritual lives of “his” people, so conversion to Catholicism was an important aspect of the dependence of *sobas* through vassalage. An Mbundu oath of allegiance for new *sobas* known as the *undamento* was carried out through which *sobas* pledged their allegiance to the Portuguese King, after which, as the Governor Fernão de Sousa said in the late 1620s, “they were handed over to two [Jesuit] priests who go to catechize him and make him Christian.”⁴⁷ Thus the moral justification underpinning the vassal tributes in both New Spain and Angola was that of conversion and salvation; however the place of a Mbundu ceremony of allegiance within this Christian framework is testament to the legal pluralism which underpinned these transformations.

How can we be sure that these vassalage tributes incorporated more than the concept of *bakula*, or that they claimed continuity from indigenous practices? One document from the 1620s is very clear on the matter. Titled a “declaration of the tributes which are asked from the *sobas*,” it includes the following statement regarding the “*loando*,” which is “a tribute acknowledging vassalage, from a vassal to a master, that the *sobas* paid to the King of Angola [the African polity that the Portuguese regarded as being conquered]...and these tributes are the same as the *baculamentos* which are paid to the King Our Lord, so that no *loandas* can be asked from the *sobas* because they pay *baculamentos*.”⁴⁸ A document of 1627 is even more specific, arguing that as the *soba* of Mbwila always paid vassalage to the King

⁴⁷Heintze, Beatrix, *Fontes Para a História de Angola do Século XVII: Memórias, Relações e outros Manuscritos da Colectânea Documental de Fernão de Sousa (1622-1635), Volume 1* (Stuttgart: Franz Steiner Verlag Wiesbaden GMBH, 1985), 204: “e undado o entregaraó aos dous padres da Caompanhia que vaõ para o catequizarem e fazerem cristão”. On the *undar*, *ibid.*, 280-1.

⁴⁸ *Ibid.*, 279: “Loando he tribute em reconhecimento de vassalagē, de vassalo pera senhor, que os sovas pagavão El Rei de Angola...e a este tributo respondē os baculamentos que pagaõ a ElRei nosso senhor pelo que se não pode pedir loanda aos sovas porque pagaõ baculamento”.

of Angola, “and always gave him *bakula* for the lands that he held in this Kingdom, with even more justice should he pay tribute to Your Majesty [the King of Portugal]”.⁴⁹

The closeness of the similarities between the contexts of Angola and New Spain give rise to serious consideration of the emergence of this pan-Atlantic legal structure. On both sides of the Atlantic, this structure was related to conquest, evangelization, and coercion of indigenous peoples through the appropriation of indigenous concepts and relations, as well as to the subsequent transformation of these concepts through new labor demands. As in New Spain, the consequences in Angola were stark; as in New Spain, indeed, a smallpox epidemic swept through the population, in 1626, and as the Governor of Angola, Fernão de Souza noted shortly afterwards (in a text which could have been found almost word for word 70 or 80 years earlier in New Spain), “the chiefs [*sobas*] are too seriously wounded, and it has become impossible for them to pay the tributes which have grown up since some are very poor, and they have lost many people through smallpox, and through the very serious molestations and vexations which they receive from the captains of the *presídios* [forts]”.⁵⁰

This discussion of legal pluralism in the Angolan context builds on the work about the pan-Atlantic cultures of slavery in the Iberian worlds advanced by Ferreira. The suggestion here is that this discussion of the *baculamento* and the *encomienda* shows how beyond the mobilities and interconnections, it is important to consider the legal structures that shaped the framework of slavery on both sides of the Atlantic. Moreover, this was a legal process grounded in more than a common context. Beyond shared experiences on both sides of the Atlantic of both free and enslaved Africans, of warfare, conquest and evangelization, and the shared experiences and conceptual frameworks of slave traders, fundamental to this legal process was the existence of shared financial interests that spanned the ocean. That debts

⁴⁹ Ibid., Vol. II (1988), 183-4: “e pois Boilla o fara d’El Rei de Angola, e sempre lhe baculara po las terras que possue deste Reyno, cõ mais justo titulo o devia fazer a Vossa Magestade”.

⁵⁰ Ibid., 1: 377-8.

often had to be called in from one side of the ocean to the other, meant that a shared and mutually acceptable legal framework was required. That such a pan-Atlantic legal structure of “property rights” went beyond Angola is suggested by the fact that by the 1640s, letters of manumission from Veracruz were accepted as legal in Cacheu.⁵¹

Often, this transfer of assets from one continent to another emerges in wills and testaments. A good example is the will of the rich trader Diogo Ximenes Vargas. Ximenes Vargas died in Cabo Verde in 1623, leaving his estate to the Jesuits on the island – much to the irritation of his creditors. Having property in both Cartagena and Cabo Verde, it was necessary for his executors in Cabo Verde to write and ask that all the monies owed to Vargas in Cartagena be sent as swiftly as possible by his agent there, Duarte de Leão Marques.⁵² Moreover, it soon became apparent that Vargas owed debts to people residing in the Indies, and that many people there owed money to him.⁵³ Indeed, often, when people died in the Guinea-Bissau region, their wives would be residing in the Americas, leading to complex legal cases.⁵⁴

In short, pan-Atlantic financial interests linking various parts of Atlantic Africa – primarily Angola and the Guinea-Bissau region – with the Americas meant that legal instruments were recognized by courts on both sides of the ocean. In Atlantic Africa, this legal framework came into contact with existing African legal frameworks related to vassalage and dependency, and created a plurality of jurisdictions which those living near Atlantic trading posts would begin to navigate in shaping new identities. That the same conjuncture of law and conquest had already been in place for almost century in various parts

⁵² Instituto dos Arquivos Nacionais da Torre do Tombo, Lisbon (hereafter IAN/TT), Cartório dos Jesuitas, Maço 37, doc 21, fol. 1v.

⁵³ *Ibid.*, doc. 22, fols. 1r-v; doc. 29, fol. 1r.

⁵⁴ See e.g. the case of Pero Rodrigues, who died in Gêba (Guinea-Bissau) in 1641 – AHU, CU, Guiné, Caixa 1, doc. 45.

of the New World gave colonists in Angola an immediate conceptual starting point in the era of Iberian Union, just as the experiences of Atlantic Africa had given Portuguese colonists a conceptual starting point in Brazil a century earlier. This overlapping framework of law and power helped then to shape pan-Atlantic frameworks of law, conquest, and subjectivity long into the 17th century.

III: The Inquisition Trial of Crispina Peres and Legal Subjectivities in the 17th Century

This section of the paper explores the question of overlapping legal jurisdictions and perceptions of power in the seventeenth-century African Atlantic through a specific case. It is the fairly well known Inquisition case of Crispina Peres, which Philip Havik wrote about very interestingly in his 2004 book.⁵⁵ Working closely with this text in recent years has inspired many of the commentaries of this article, since it produces folio after folio that speak of the strategic maneuverings that took place between overlapping legal jurisdictions in the Guinea-Bissau region.

This case was a suit brought against Crispina Peres, one of the most important traders of the Atlantic trading port of Cacheu on the São Domingos river. Peres was the wife of Jorge Gonçalves Frances, the brother-in-law of Manuel Alvarez Prieto whose Inquisition case in Cartagena has already been discussed in this article. Both Crispina Peres and Jorge Gonçalves Frances were members of the emerging *kristón* community of Cacheu, and had Portuguese fathers and Guinean mothers; in Peres's case her mother was a Bainunk from the Bissau-Casamance borderlands. As powerful traders in Cacheu, Peres and Gonçalves Frances were the subject of enmities that led to the denunciation of Peres to the Inquisition. Peres was

⁵⁵ Havik, Philip J., *Silences and Soundbytes: The Gendered Dynamics of Trade and Brokerage in the Pre-Colonial Guinea-Bissau Region* (Munster: Lit Verlag, 2004). Together with Philip Havik and Filipa Ribeiro da Silva, I am currently working on a transcription and translation of the trial that will eventually appear in the *Fonte Africanæ* series of the British Academy.

seized in 1665 by the inquisitorial authorities sent from the Cabo Verde islands and deported to Lisbon, where her case was finally concluded.

An interesting window onto the question of overlapping jurisdictions in this trial can be given by one specific example. One of the most important witnesses in the trial was one of the slaves of Peres and Gonçalves Frances, Domingos de Areda. Areda recounted at one point the story of Julia de Aguiar. Aguiar had been born in the trading port town of Gêba, quite a distance inland from the Atlantic Ocean near the present-day town of Bafatá. Gêba was long a site for the emergence of the Kristón population, as Christoph Kohl's recent work shows.⁵⁶ Aguiar, a "black woman born in the town of Gêba [*preta natural da povoação de Gêba*]" had fled from the town some time before the trial of Peres began. According to Areda she had fled because of an accusation of witchcraft by the local population [*gentios*]. In order to be able to leave for Cacheu, she had paid cloth money (40 strips of cotton cloth, *panos de algodão*) to escape and been given a free passage there.⁵⁷

On the one hand, Aguiar had been born and raised in Gêba. Accused of witchcraft, she had sought to escape to a place where she would be under a different type of legal jurisdiction in Cacheu – a place where distant imperial frameworks such as inquisitorial law could still be brought to bear. And yet in order to reach this different jurisdiction, Aguiar had to pay a fine to the authorities in Gêba to secure safe passage. In other words, here is an example of someone managing to navigate between different legal systems and frameworks; and moreover, deploying her knowledge of these frameworks for her own benefit.

There is good evidence of the relevance of these overlapping legal jurisdictions from an inquisition trial from the same region, dating to the mid-1500s against Antonio Fernandes, the factor of the trading settlement of Bugendo. At court, he claimed that on his arrival in

⁵⁶ Kohl, Christoph, *Creole Identity and National Integration in Guinea-Bissau* (New York: Berghahn Books, 2018, forthcoming).

⁵⁷ IAN/TT, Inquisição de Lisboa, Processo 2075, fol. 28r.

Bugendo in 1547, the “Black elders [*fidalgos*] of the land had made a written petition to him.”⁵⁸ This petition was appended to the inquisitorial case; it provides remarkable evidence of the way that West African political leaders navigated a legal pluralism in which they sought to reconcile their existing legal practices with those that Portuguese and Caboverdean traders brought with them.

These examples help us to return to the question of the formation of new subjectivities, which José Nafafé raised in his 2007 book. The reality of overlapping legal jurisdictions linking West African customary law and Portuguese legal practice was apparent by the sixteenth century, and it was something that Atlantic African kings and peoples navigated to their best advantage. In the earlier case, the political leaders cited by Fernandes sought to use Portuguese legal frameworks to seek military support; in the later case from the Crispina Peres trial, Julia de Aguiar used her awareness of the different legal frameworks as a strategy for improving her personal situation. This political and strategic personal awareness of the plural legal boundaries clearly reflected the new subjectivities referred to by Nafafé, which the rise of port towns such as Cacheu and Gêba had produced.

On closer reading, the Crispina Peres Inquisition trial gives rise to numerous reflections that develop from this approach. The first is that the question of legal enforcement was a serious one in Cacheu. In short, the Portuguese often lacked the political power to enforce their legal jurisdiction in this trading port. As John Thornton noted long ago, the Pepel king would simply order his subjects to occupy water sources every time he wanted to impose his political will on the Luso-African and Caboverdean trading community. Without political control, legal *fiat* is certainly hard to enforce. Law is an expression of political

⁵⁸ IAN/TT, Inquisição de Lisboa, Processo 801; cit. Toby Green, *The Rise of the Trans-Atlantic Slave Trade in Western Africa, 1300-1589* (Cambridge and New York: Cambridge University Press, 2012), 153.

power, which is one reason why considering the legal pluralism of the early pan-Atlantic world is important.

With regard to Crispina Peres, matters were certainly no different. Writing on April 29, 1665, the inquisitorial commissary Luis de Chaves, sent to Cacheu from Cabo Verde, announced that he had managed to arrest Peres. However, he wrote, this was done “not only at the risk of my life, but at the risk of the lives of the whole town.”⁵⁹ The difficulty was such that it “would have been easier to seize the Duke of Cadal, than take this woman.”⁶⁰ Still, the arrest was carried out successfully, and the accused was deported to Santiago de Cabo Verde and thence to Lisbon in 1665. This was when things got intense, or as the priest André de Faro described it: “as the peoples [*gentios*] of the surrounding Kingdoms gathered in ever increasing numbers, to free Crispina Peres from imprisonment, and as her husband and brother, and a daughter of hers, had gone over to the land of the *gentios*, by the demand of this settlement the Commissary [of the Inquisition] was forced to leave in a Ship before the inventory of the goods of the accused had been completed.”⁶¹ Things were none the calmer outside of the pretended Portuguese jurisdiction in Cacheu; as Faro noted, “Sebastião, the African whose testimony has been noted down, is imprisoned in the land of the gentiles, by order of Crispina Peres’s brother, Saying that they will kill him since it is his fault that his sister has been seized.”⁶²

Certain key features of legal jurisdictions emerge from this evidence. On the one hand, it is striking that the inquisitorial representatives sent from the Cape Verde islands had sufficient power to call witnesses and impel them to give testimony, as the large number of witnesses to the trial attest. Portuguese legal authority and practice was clearly something that

⁵⁹ IAN/TT, Inquisição de Lisboa, Processo 2075, fol. 45r.

⁶⁰ Ibid.

⁶¹ Ibid., fol. 61v.

⁶² Ibid., 62r : « testemunha apontada esta prezo, em terra do gentio, por ordem do irmão de Chrispina peres Dizendo que o Ande matar porq’ elle fora cauza de se prender sua irmã”.

was recognized and observed, to some degree, in Cacheu, or else the inquisitor could not have called the trial. Moreover, this legal authority was buttressed to some degree by political power, inasmuch as the inquisitorial envoy Luis de Chaves was able to leave with Peres, even if he did so without much dignity.

At the same time, the manner in which the envoy Luis de Chaves had to flee with his prisoner speaks volumes. He left without being able to complete his office, at the demand of the townspeople of Cacheu. The *kristón* of Cacheu were clearly concerned as to the rising anger of the peoples of the kingdoms around them, manifested in the large numbers who were gathering. The legal framework buttressing this political power of the kingdoms of Guiné is clear, given that Crispina Peres's brother was clearly using these frameworks to arrest one of the witnesses in the inquisitorial case; thus, though they accepted aspects of Portuguese legal jurisdiction, the colonial framework was trumped by surrounding African legal and political power.

Moreover, at various other points in the trial, the intersection of African political and legal jurisdiction and that of the weak Portuguese local authority becomes clearly framed. One aspect of the case shows that there were parallel and related concepts of enslavement linking Cacheu and the surrounding kingdoms, and a judicial framework which worked alongside the Portuguese one in Cacheu, but was yet different to it. This duality emerges from the evidence of Crispina Peres's slave, Sebastião Rodrigues Barassa, who described how he had at one point tried to flee Cacheu out of fear of the *kristón*, since it was his evidence that had led to Crispina Peres being arrested by the Inquisition. He had tried to escape through the kingdom he calls Cazil, where the king was his wife's cousin; however he was arrested and thrown into irons by the king, who said that Barassa was his wife's slave.⁶³

⁶³ Ibid., fol. 117r. The reliability of this evidence is weak, since Barassa was routinely described as a drunkard by other witnesses; nevertheless, the broader context and structure described by him is probably accurate.

The power of indigenous legal frameworks in the context of trade in this African Atlantic setting is further confirmed by some of the testimony of Crispina Peres's husband, Jorge Gonçalves Frances. He describe at one point how in 1646 he had gone to the Casamance power of Saral and found four members of the Aredas family imprisoned there, as they had been for many years following the death of Domingos and Matheos de Aredas's father, owing to presumed unpaid debts. Gonçalves Frances describes how he had to visit the port four times and write numerous letters and petitions to the King of Casamance before they were freed, which is again testament to the importance of the indigenous legal framework and concepts of debt and inheritance, within the slowly gathering importance of Atlantic traders in the region.⁶⁴

In other words, the conflict over the arrest of Crispina Peres shows in full force the ways in which legal and political frameworks overlapped in Atlantic trading ports such as Cacheu by the middle of the seventeenth century. At the core of this overlapping political and legal framework was a religious one. As noted, this was a time of the rise of the *kristón* community, in which Christianity was one of the core identity constructs of this new class, an embodiment of the new subjectivities referred to by Nafafé. It is in this context that the legal sway of the inquisitorial envoys should be seen – as envoys of the church, and with the church of increasing importance in *kristón* identity, inquisitorial legal power was at least understood, and was becoming important to new articulations of identity.

At the same time, this *kristón* Catholicism was plural, incorporating elements from both the adjacent African and Catholic communities, in keeping with the plural legal and political frameworks that they inhabited. The African elements were in fact the core of the Inquisition trial against Peres, who was accused of fetishism and witchcraft, which went against Catholic practice. Many witnesses noted how Peres participated in actions such as

⁶⁴ Ibid., fols. 122r-v.

sacrifices of animals on the decks of ships prior to sailing, and how “Christian” women in the *vila quente* [popular neighborhood] of Cacheu frequently also worshipped at Guinean religious shrines known as *chinas*.⁶⁵ But Peres understood how these practices were a core part of plural religious practice in her home environment: once in Lisbon, when asked by the inquisitors how she could perform these ceremonies and yet believe in the Catholic God, she replied that she did not understand these things to be a fault in her land, but that if she had been in Portugal she would have held them to be such.⁶⁶

In other words, legal pluralism is reflected here through the way in which individuals such as Peres related their own identities to such religious pluralism. These plural forms of religious practice are already well-known when it comes to the study of early Creole communities in West and West-Central Africa. However, as this discussion shows, it was a pluralism that was also grounded in a plural legal framework, in keeping with the overlapping legal and political jurisdictions which were vital in the making of these Atlantic communities and identities in precolonial Africa.

Conclusion

The argument of this article raises more questions than it provides answers. It is intended as a starting point, not an end-point for research. The analysis is grounded in an understanding of the pluralisms that characterized the first phase of Atlantic exchanges in the sixteenth and seventeenth centuries, and the effects that these may have had on African communities which participated in them. Beyond this, however, it seeks to find a certain commonality of

⁶⁵ *Ibid.*, fols. 13r; 36v.

⁶⁶ *Ibid.*, fol. 163v.

experience and subjectivities or subjecthoods on both sides of the Atlantic where indigenous communities interacted with the violence of Iberian colonialism.

On the one hand, the evidence shows the fundamental relationship of legal and political power. In contexts of weak Iberian political power, such as the Guinea-Bissau region, the hold of indigenous legal authorities – such as the King of Saral petitioned by Jorge Gonçalves Frances – was strong. But where this indigenous political power was eroded, such as in Angola in the seventeenth century, indigenous structures became co-opted by Iberian imperial structures and were transformed through the exigencies of slave traders and their interests in the production of captives. Over time, where African political power remained strong – which was in most of the continent outside Angola – kings and their agents interacted differently with imperial legal structures, and plural legal frameworks and identities emerged that reshaped power in the new economic, political and social context.

As the article also shows, many of these transformations in Africa occurred within a broader, Atlantic framework, influenced by earlier analogous events in the Americas. Institutions of vassalage in Angola were influenced both by the existing Portuguese concept and by the *encomienda*; Iberian colonists co-opted the indigenous concept of *bakula* in the context of conquest and evangelization, and transformed it brutally. Meanwhile, in the Americas, the perception of slavery and the role of Native American labor had, in turn, been influenced by earlier Portuguese experiences in Africa in the fifteenth century, and also by the early presence of enslaved African persons in the New World.

As we have seen, scholars of colonial Latin America have noted the ways in which enslaved Africans deployed colonial legal concepts to contest arbitrary colonial power. An important new context offered by this article is that by the seventeenth century, this legal adaptability coincided with the emergence of a similar awareness of plural legal frameworks

from experiences in Atlantic Africa. Deploying legal frameworks strategically seems to have emerged first in an African context, then to be taken by enslaved persons to the New World.

In the African context, meanwhile, the place of legal pluralism in understanding the emergence of responses to Iberian colonial power may prove important. While there has been a tendency to explore African pluralisms in the Atlantic world through the lens of religious practice and cultural transformation, this article shows that the legal frameworks underpinning these processes are vital. The scholarship on law in precolonial Africa is painfully thin, something which may reflect colonial prejudices regarding history and society in Africa. By contrast, this article shows how concentrating on precolonial African law offers a different perspective on the continent and on the global interactions and reciprocal influences dating back to a distant time.

This argument puts both the more distant and recent African past in a different context. For modern African history, law has been shown by a variety of scholars to be central in understanding the transformations wrought by colonialism. In this paper, however, we see that analogous processes were already underway on both sides of the Atlantic by the 17th century. The composite frameworks of power, resistance and incorporation of outside concepts for strategic advantage were frameworks which many African peoples had long deployed during the era of the Atlantic slave trade, the era of what might be called proto-colonialism, long prior to the formal annexation of the continent in the late 1800s.

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