

Contested enslavement: the Portuguese in Angola and the problem of debt, c. 1600-1800.¹

Abstract

The Portuguese were keen slave traders on the west central coast of Africa in the early modern period, but governors in Angola appear to have been increasingly unhappy about certain aspects of enslavement in relation to debt, and in particular that of children. Slavery for debt was uncommon in early modern Europe, where three arguments, drawn from Roman law, were usually cited by way of justification: birth; war; and self-sale. Cavazzi, an Italian Capuchin missionary travelling around Angola between 1654 and 1665, suggested several similarities between the legal justifications for slavery in Africa and Europe, but also pointed up a major difference: while in Angola in the early modern period enslavement could result from a number of instances of default, in Portugal at the same time - and in Europe more widely – debtors tended to find themselves imprisoned if they defaulted on a payment, rather than enslaved. This paper will consider the nature of debt enslavement in Angola in the early modern period, and how it impacted on the transatlantic slave trade.

Keywords

Africa, slave trade, Portuguese empire, debt, legal history

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Article

Huns, e outros, se experimentassem a humanidade das Nossas Leis, não havião de procurar outro abrigo.²

It is now over ten years since Lauren Benton's model of "institutional world history" delivered a significant challenge to a historiography that had previously set African judicial practice apart from its European counterpart. In arguing for the continuing relevance of a global approach to the development of the early modern Atlantic economy, Benton sought to relate that growth to the presence of a unified south Atlantic legal regime that relied for its success on two important features. In both the European trading nations and the West African societies touched by that trade, legal systems were sufficiently pluralistic to allow "parallel and independent adjudication"; in addition there was "a homology between European and African legal practices that relied on either substantive or structural similarities," and more especially in relation to enslavement. Portuguese and African mechanisms of judicial enslavement may not have been "precisely the same"; what was important was that they "coexisted, with substantial similarities, through the first three centuries of Atlantic contact and commerce."³ Jurisdictional complexity and fluidity were comparative features of legal systems across Africa and Europe, and flexible responses by Europeans to aspects of indigenous legal practice could no doubt prove beneficial in pushing forward slave trading opportunities.⁴ However, there were also differences in legal philosophy and practice that complicate the notion of Benton's single legal regime which may themselves have aided and abetted the development of the slave trade. One example has been a feature of the historiography for over twenty years. In 1992, John Thornton claimed that there were crucial differences in respect of landholding that can be used to explain "the Atlantic slave trade and African participation in it." Briefly summarised, African law sought to establish claims on the products of labour rather than land.⁵

This article will explore yet another difference. Although Thornton and Benton have agreed upon the basic similarities evident in legal forms of enslavement across Europe and Africa in the early modern period, there is one area in which there was a marked divergence: though slavery for debt was still possible in West Africa, in Western Europe it had virtually disappeared in the medieval period.⁶ Although many of the visitors and employees of European commercial trading companies noted this anomaly, they were unable to do little more than report its existence. For the Portuguese in Angola the situation was different. Here, they were more than mere traders of goods; they were a colonising force, forging out their own sovereign territory, and intent on asserting and upholding their own legal system. Official Portuguese documents make it clear that concerns about enslavement for debt in Angola – evident from the mid-seventeenth century at least – grew in significance during the eighteenth century. Efforts to restrain the practice were hampered by the boundaries of effective Portuguese reach, and there was neither the ability nor the willingness to impose Portuguese law on an indigenous population that was beyond such control; there the *leis gentílicas*, or local customary laws, prevailed.⁷ Nevertheless, the Portuguese had agreed to protect their free born vassals from unjust forms of enslavement, and as the eighteenth century progressed, and complaints about the level of such practices in the colony expanded, tensions between the different legal systems and their acceptable mechanisms of enslavement became increasingly evident. The Portuguese found themselves at the forefront of attempts to regulate the worst excesses of a system of distraint that tied dependents, relatives and even neighbours to the liquidation of outstanding debts. Their task was made considerably more difficult by the social composition of Angolan society, and the overwhelming importance of the slave trade in the region's economy. In consequence, this article argues that indigenous forms of personal execution on the body - the ability to recoup a range of outstanding debts and obligations through sale into slavery – fostered the development of a pervasive

compensation culture that was driven by an expanding Atlantic demand for slaves. The article begins with an examination of Portuguese attitudes to enslavement, and moves to consider the context of slavery in Angola, the local system of legal compensation (*mucano*), and the use of dependents as human pawn. For the Portuguese authorities at least, the answer was to extol the superiority of their own legal philosophy, and to attempt to impose it. Legal appeals were possible, and by the later eighteenth century the antipathy of the colonial authorities towards enslavement for debt was clear and absolute. Despite these actions, however, the use of the body as a form of debt liquidation remained a stubborn characteristic of African law throughout the period of the slave trade.

1. Debt and slavery

The Portuguese were not unfamiliar with enslavement *per se*. Unlike other parts of North Western Europe in the sixteenth and seventeenth centuries, slavery as an institution remained “traditional and customary”, in Portugal, as in most of the Mediterranean world.⁸ The division “in Roman as in Portuguese law” between the free and the enslaved rested on a set of laws that was first brought together in the fifteenth century, in an attempt to regularise the complex jurisdictional overlap between surviving Roman and Visigothic codes, customary law and royal decree; by the seventeenth century this code had undergone two substantial revisions.⁹ What remained constant throughout, however, was the importance of the Roman law tradition. A university law degree whether canon or civil, focused on Roman and ecclesiastical law, the works of the medieval glossators and the commentaries of prominent jurists.¹⁰ Little was to change until the middle of the eighteenth century, after which broader antipathies towards all forms of enslavement were increasingly part of the Atlantic debate.¹¹

Of prime importance were the enslavement practices set down in the codes of Justinian, emperor of the eastern Roman Empire in the sixth century.¹² Here it was recognised that slavery was not a natural state: “People are brought under our power as slaves either by the civil law or by the *jus gentium*. This happens by civil law if someone over twenty years of age allows himself to be sold with a view to sharing in the price. By the *jus gentium*, people become slaves on being captured by enemies or by birth to a female slave.”¹³ The principle of inheriting slave status through the maternal line was confirmed and strengthened during the medieval and early modern periods, but the legality of war as a means of enslavement came under considerable scrutiny.¹⁴ Aquinas’ concept of “just war”, developed in the late medieval period, asserted that a war could only be considered legitimate if it had right authority from the monarch, sufficient cause, and right intention.¹⁵ There had been little disagreement about extending this concept to cover actions taken by Christians against Muslims in the Middle Ages, as Catholic monarchs sought to recover the Iberian peninsula from the grip of Islam. However, the rise of the transatlantic trade, and the colonisation of the Americas, raised significant questions about the validity of war as an enslavement mechanism, as deductive scholastic logic clashed with the reality of new world humanistic experience.¹⁶ Fernão de Oliveira and Bartholomé Las Casas both argued that European traders in Africa and the Americas, who bought individuals enslaved by a range of unjust methods that included unlawful wars, did not have right and legitimate title to those slaves.¹⁷ Although Russell-Wood has indicated that the debate in Portugal over black slavery “never equalled that in Spain over the enslavement of Amerindians”, he nevertheless notes that the topic was “a recurring theme in Portuguese letters from the fifteenth to the nineteenth centuries”.¹⁸ In any case, the strength of the arguments put forward in support of Amerindian freedom were to have severe ramifications in Africa. From the later sixteenth century, legislation enacted by Portuguese and Spanish monarchs in the Americas that sought to prevent the enslavement of

Amerindians had the unfortunate consequence of making the Atlantic trade in unfree labour all the more necessary.¹⁹

Just as the legitimacy of war as a form of enslavement came under attack in the early modern period, so did that of self-sale. Envisaged initially as a punishment under Roman law, voluntary sale and the sale of children did receive limited support from some Jesuit philosophers in the sixteenth century, as they deliberated over the writings of Thomas Aquinas.²⁰ That support was to be progressively undermined from the later seventeenth century nevertheless, as the ideas of Antonio Vieira marked the beginning of a significant sea-change in understandings of the idea of the body as a commercial commodity.²¹ In any case, such enslavement – along with the pledge or sale of children – had only been acceptable in cases of extreme necessity.²² Again, as in the case of war, the debate was driven by the exigencies of a particular historical context: that of free Indians in the Americas who were understood to have been tricked into offering up their liberty.²³ There were, however, real concerns about the sale of dependents by Indians who placed “more value on a wedge or a knife than on the liberty of a nephew or a closer relative”; such concerns were mirrored over a century later in the Angolan documents.²⁴

The Portuguese legal system departed from African practice on enslavement in respect of two key features. The Justinian codes did not allow for slavery to be used as a judicial punishment. Penal labour was a feature of early modern European law, and a term on the galleys was common across much of Europe from the fourteenth century, where galley-men many well have worked out their sentence in the company of slaves.²⁵ Captured “Moors”, for example, were enslaved and committed to the galleys to serve alongside the *forçados*, male criminals and sinners sentenced by the state and the Inquisition to a period of time at the oars, but Christians could not legally be enslaved by their co-religionists.²⁶ The fact that the Atlantic slave trade was justified by reference to an all-encompassing

Christianising mission probably allowed enslavement to be adopted initially as a form of preferential life-saving for “infidels”: slaves were often described as “*resgates*,” Duffy has claimed, to signal they had been rescued from death.²⁷ Debt as a source of enslavement was no longer part of European practice for Christians either. It had been a significant feature of slavery systems in ancient western society and remained so in many others.²⁸ But in Western Europe debt slavery had increasingly come under attack as a result of changes in first Roman, and then Germanic law, that sought to prevent the enslavement of the freeborn citizen in the early medieval period.²⁹ In West and West Central Africa, slavery for debt appears to have been a widespread practice, at least in non-Muslim areas, as a result of the particular ways in which it was possible to execute liability on the body of the debtor.³⁰

Debt is usually recovered on the body in one of three ways. The first involves the sale of the debtor in order to repay an outstanding loan; in this case the debtor becomes a slave, the whole of his person having been exchanged in the repayment of his debt. It is also possible to attach the labour services of the debtor to the creditor for the repayment of the amount outstanding. Often referred to as debt bondage, servitude or temporary slavery, in this case the attachment is time limited, the debtor having to work only until the debt has been discharged. Finally creditors can imprison their debtors until payment is forthcoming, the most common form of execution on the body to be found in Western Europe by the early modern period. In Portugal by the fifteenth and sixteenth centuries, for example, debtors were detained in public jails, although the prohibition of this form of action from 1774 saw numbers go into decline.³¹ Similar methods for dealing with debtors appear to have been in operation in the Portuguese colony of Brazil. In Rio de Janeiro sanctuary was offered to debtors by the Benedictines and the Carmelites, even though royal orders disallowed the practice, and the fact that the *Misericórdia* brotherhood similarly “was forbidden by statute

from helping anyone gaoled for debt,” suggests that imprisonment was the usual system of distraint.³²

Detention in jail had been an extension of the process of private imprisonment or house arrest existing in the medieval period in which debtors were detained by their creditors in order to encourage them or their families to pay. A comparable form of personal imprisonment – often referred to as panyarring in the sources of the European trading companies – can also be seen in operation in West and West Central Africa during the period of the slave trade.³³ Unlike its European counterpart, however, where recovery of debt could only be made through the sale of goods and chattels, in Africa bodies could also be distrained and sold to pay off debts. Panyarring was not simply about the coercion of debtors in Africa, but also their “liquidation”. The idea of *servitude* for debt retained a place in European public debate until well into the nineteenth century, and was utilised as a method of attracting labour to the colonies, especially when slavery became illegal.³⁴

Enslavement as a form of execution on the body therefore constituted the major difference between European and African mechanisms of debt recovery. The operation of that recovery, however, served to compound this disparity. For what appears to have been more unacceptable to European observers than enslavement for debt *per se* was its communal reach. Liability in Africa extended beyond the bodies of debtors to take in those of their dependents, kin and neighbours; at times even whole villages could be held responsible for the debts of their fellow residents.³⁵ Yet communal distraint had never been a major feature of the Germanic or Roman medieval legal inheritance, at least as far as the non-mercantile community were concerned.³⁶ How then did this key difference play out in Angola?

II. Slavery and law in Angola

After taking the port of Ceuta on the north African coast in 1415, Portuguese traders and explorers moved steadily southwards, following the West African coastline, in search of

new commercial opportunities. The first shipment of slaves seized from the northern coast of Mauretania was landed in the southwestern Algarve in 1444. Trading relations were established with the ruler of the Sonyo province of the kingdom of Kongo by the late fifteenth century, and informal contact with the Ngola, the ruler of the Ndongo kingdom, had been established by the 1520s. The decision to colonise the more southerly territory that was to become Angola was not made until the 1570s, however, after the Kongo trade was threatened by the incursion of the warring Jaga peoples. This marked a huge change in policy for the Portuguese in relation to West Africa. Now, instead of trading by agreement with local rulers, they were intent on carving out a land of their own, territory that was to be under the sovereignty of the Portuguese Crown, and throughout which Portuguese law was to be upheld.³⁷ However, as in Brazil, there was a general reluctance to assert any jurisdictional claims beyond the Portuguese community of soldiers, settlers and crown agents. The complexity of the jurisdictional landscape in Portugal itself – church courts, locally-appointed magistrates, military and royal judges, and some self-regulating religious communities – ensured that the Portuguese were not only aware of a range of judicial practices, but cognisant of their value.³⁸ They were also familiar with a largely decentralised approach. In Portugal in the seventeenth century, for example, “most disputes were never brought before the formal courts, but were processed through a quasi-judicial system operated at *concelho* [township] level” by local magistrates without formal legal training, although decisions could be appealed to the crown courts.³⁹ A similar strategy is clearly visible in Angola, where the Crown was called upon to intervene periodically when there were claims of serious abuse.⁴⁰ In this sense the exportation of Portuguese law to Angola allowed for a less unitary outcome than its application might suggest, and clearly provided opportunities for enslavement in the interstices of the African and European systems.

Accounts by Europeans confirm the early significance in Angola of birth, war and judicial punishment in the creation of new slaves; all these methods appear to have been acceptable to the Portuguese authorities. According to one of the earliest, by Father Garcia Simões in the 1580s, Angolan slave markets were in the business of selling individuals captured in war and their descendants, alongside those judged guilty of an illegal act that attracted the death penalty.⁴¹ The criticisms of the Jesuit and Dominican fathers had also become part of the frame of reference. By 1612, the unknown author of a message that was probably intended for King Philip III of Spain [Philip II of Portugal], could claim that “modern theologians” accepted only four justifications for enslavement: “infidels who are captured in just wars”; perpetrators of serious crimes “condemned by their Rulers”; self-sale; and the sale of children by fathers “who have legitimate need.”⁴² How influential advancing philosophical debates on the iniquities of slavery were over the course of the seventeenth century is difficult to estimate, but it is certainly possible to identify a change in Portuguese metropolitan attitudes to enslavement from the mid-eighteenth century.⁴³ Sebastião José de Carvalho e Melo, later to become the Marquês de Pombal, prohibited the importation of African, Asian and Brazilian slaves into Portugal from 1761, although his decision has generally been understood as an economic rather than humanitarian one: his actions were driven by a desire to encourage the transportation of slaves into Brazil.⁴⁴ As Blackburn notes, however, it was also “a contribution to modernising Portugal”, and may have been influenced “by the appearance of *O Etiope Resgatado* by Ribiera da Rocha in 1758, a work which insisted that the actual slave systems grossly violated the Christian concept of just bondage.”⁴⁵ Portugal was, at any rate, among the earliest European countries to abolish domestic slavery: black slaves living in Portugal were freed from 1773.⁴⁶

By the 1770s discussions of acceptable enslavement practices in the official Angolan material had moved to focus on two key aspects of the process: war and judicial punishment.

That those who are taken in wars properly ordained, are legitimately slaves; and that they also are slaves, who have been sentenced by their Princes, or Sobas [chiefs] that govern them in slavery, because being their vassals, they are subject to their laws, and by these are legitimately sentenced.⁴⁷

Such ideas are confirmed by the reports of missionary priests, such as Abbé Proyart. As he noted in the 1770s, masters were not permitted to sell those born in the kingdom, unless they had been convicted of certain crimes. Most were enemies who had been taken in war.⁴⁸

From at least the mid-seventeenth century the way in which African creditors were able to liquidate their debts had drawn European criticism. Cavazzi de Montecúcolo, an Italian missionary travelling in and around Angola between 1654 and 1665, baulked at the way communal ideas on debt liability were brought to bear on the African population.

There is another abominable way to proceed, mainly on the part of the forceful.

When someone has difficulty in paying his debts and flees to another place, then they take any inhabitant of his village as hostage, so that the relatives of the prisoner pay the debt in order to release him; and there is nobody that punishes this forcefulness!

But if nobody [lends an ear?] to rescue that wretch and innocent, he is sold as a slave and, by means of this inhumanity, covers the debt of the other.⁴⁹

By the eighteenth century, such practices were not unusual. Jan Vansina claimed that among the Ambaca, matrilineages were often first to lose members, but liability could be stretched much further to include co-residents and householders; the doctrine of collective responsibility ensured “there was always someone to be seized.”⁵⁰ What did not appear just to European visitors was the system of collective liability that was applied in the case of default.

As Cavazzi's comments make clear, this was not a familiar European practice, the seizure of property being the more usual form of distraint.

The Europeans that live in these regions do same thing, although in a way that, after all, looks less unjust. They do not take anyone at random, but only the slaves of debtor, judging that, being part of his wealth, they can be lawfully retained, if they are neither mistreated nor troubled.⁵¹

Little of the older historiography displayed more than a passing interest in the role of debt as an enslavement mechanism in West Africa, that of war having captured the imagination as the most common method of slave production.⁵² Nevertheless, there are exceptions. As long ago as 1970 - as part of a discussion of the systematic corruption of the judicial process - Walter Rodney argued that from the seventeenth century the failure to repay small amounts of debt on the Guinea coast could lead to arrest, conviction and sale; by the later eighteenth century, debts constituted the "most common pretexts for ensnaring victims for the Atlantic slave trade."⁵³ Joseph Miller, too, referred to the coercive removal of slaves by way of debt recovery and the seizure of defaulting African debtors.⁵⁴ Difficulties in evidencing instances of debt enslavement continue to impede the progress of those interested in its effects, but more recent work on Angola, much of which draws on contemporary court records, is beginning to raise the profile of this particular form of enslavement. Mariana Candido's work on Benguela, for example, has argued that "even strong states and rulers could not continuously employ their armies in the process of capturing people while neglecting other fronts"; they had to turn to new methods of enslavement that favoured tribute, raiding, and the use of debt and judicial condemnation.⁵⁵ Roquinaldo Ferreira, too, while accepting the dominant role of war in West Central Africa in the first half of the seventeenth century, has argued for a shift by the eighteenth to a more commercialised

system of slave production. His desire to investigate methods that “did not rely on perennial and large-scale military violence” has led him to place a new emphasis on kidnapping and the illegal sale of pawns.⁵⁶ Interestingly this shift away from war is reflected in the views of commentators on the ground, who in addition provide evidence of the close link between debt and the judicial process. While as late as 1777 colonial officials could still claim that war constituted the primary mechanism of enslavement in Angola, by the end of the century, frivolous cases of trespass and tort that required enslavement as compensation were cited as the most common methods in operation.⁵⁷ That there was something problematic in the functioning of the enslavement process - including the operation of justice - is clear in the documentary sources from an early point in time. During the 1580s, Garcia Simões had already noted that there were checks on the sale of the enslaved in the markets, “in order to know if any of them are free, for which there is a big penalty for those selling them.”⁵⁸ Jesuit commentators believed that dubious practices were commonplace in Ndongo as early as 1600, and the records of the Portuguese authorities confirm that they were aware of claims from at least 1650 that African chiefs, in seeking to fulfil their tribute dues, were condemning their subjects to captivity “for some petty crime.”⁵⁹

Together with the earlier work of José Curto, these new studies reveal not only the “wide range of experiences of enslavement that emerged in the context of West Central Africa,” but also that many of these experiences were justified in relation to concepts of obligation or indebtedness. Curto, for example, highlights instances of illegally sold pawns, cases in which thieves were sold to cover the cost of compensation, individuals who were kidnapped in retaliatory payment for the enslavement of others, and those enslaved specifically for the purpose of debt recovery.⁶⁰ Since the ability to accumulate wealth was often interpreted through the lens of magic, witchcraft accusations too were sometimes a cover for debt.⁶¹ Nor should war be excluded from this taxonomy. The failure of the *soba* of

Kiambela to pay his taxes in 1725 was interpreted by Captain José da Nóbrega as a just cause for war; in the ensuing battle the *soba* and hundreds of his subjects were captured, even though not all were declared by Nóbrega to the Crown. Yet in the court case that was brought against him in 1728 the attack was declared illegal, and Nóbrega was found guilty of benefitting personally from the incident by falsifying his tax record.⁶² Despite a supporting legal philosophy, a claim of debt was insufficient grounds on which to justify such wholesale enslavement of a vassal by a representative of the Portuguese government. The Portuguese authorities, as will be revealed later, were keen to challenge what they understood as illegal forms of enslavement.

The problem in evidencing the full extent of debt-related cases comes not only from the failure of the buyers of slaves to create any taxonomic record (even if they themselves knew) of their purchases. We also need to understand how notions of financial reparation for a range of illicit activities, as well as straightforward cases of default, could be readily calculated in slave currency within a legal system that supported and even encouraged the use of the body to recover debt. As Abbé Proyart reported in the late eighteenth century, robbery was not punished with death, “but he who is taken in the act of stealing, even things of the smallest value, is condemned to become the slave of the person he has robbed, unless he can make it up with him, by furnishing him with a slave in kind or in value.”⁶³ Debts should not be understood as relating only to contractual commercial agreements, therefore, but instead as part of a broader set of political and socio-economic obligations that regulated patterns of behaviour.⁶⁴

Concepts of civil and criminal obligation were deeply embedded in African customary law.⁶⁵ Indeed, as Vansina has argued, the idea of debt (*kongo*) was central to the law of the Ambundu. Theft could then be seen as a tort or injury, and assault as a form of trespass, allowing illegal acts to establish a legal obligation that had to be extinguished

through some form of financial restitution. This could be calculated in slave value, either through the provision of a slave, or through sale of the offender into enslavement.⁶⁶ Though there was no single currency medium in Angola in the early modern period, slaves may have been the most important unit of calculation from the late sixteenth century, and references to payment in slave value are visible in the court records during the eighteenth and nineteenth centuries.⁶⁷ In the hundred years after 1750 most of the cases coming before the *sobas*' courts in Ambaca involved defaults on commercial loans, adultery or theft. Cadornega had already referred to the right of a husband to claim a penalty for adultery (*upanda*) in c. 1680, and as Vansina noted for the eighteenth century, actions of "theft or adultery were exclusively handled as a breach of property and cases were settled by the imposition of heavy fines"; such cases, moreover, were frequent.⁶⁸ The concern of the colonial authorities was not so much the recurrence of these actions, since they too were antagonistic towards incidences of theft and adultery. For them the problem was more closely associated with the instrumental way in which African law appeared to interpret chance events, "knowing the obligations that the negros assign to their friends", claiming the right of *Quituxi* [judicial fine] "even to things that happen by chance such as fire, the tumbling of homes, and loss or falling down of trees."⁶⁹ There was a further issue of concern. The Portuguese authorities took a clear moral tone in relation to what they saw as the profiteering nature of the trade in bodies, and Governor Antonio de Mello was no exception. In 1800 he railed against the sale of family members and the reduction to slavery of individuals for what he saw as minor civil transgressions:

as soon as the Negros are civilised they will know it to be a great absurdity for a father to sell his son in exchange for alcohol, a smoke, or blue cotton cloth, an husband his wife, an uncle his nephew, an insolvent debtor a less powerful neighbour,

by similar means, or otherwise by reducing a man to other captivity, because he came to warm himself at his fire, because in tilling he stole a root of manioc, or an ear of maize, because passing by his house, or through the lands of his lord, in which he was attacked by some natural illness that by chance also others experienced the same or similar, or through [other] causes as frivolous, ridiculous and barbarous as those to which I have referred from which proceeds the biggest part of the Negro captives that others come to sell, and that we buy and transport to Brazil.⁷⁰

Similar claims, voiced in this instance by Vincent José Duarte, could still be heard almost half a century later in the Duque de Bragança district. The reason for this, in Duarte's view, was clear: "The great revenue of the heathen comes from slaves."⁷¹

III. *Mucanos*

A culture of justice geared towards compensation for illegal acts that can be liquidated on the body has a considerable capacity for increasing its production of slaves; all that is required is the ability to demonstrate the existence of some form of obligation, and calculate the attendant compensation in slave value. This appears to have been enacted by those intent on enslavement in Angola via two methods. On the one hand there is evidence of the use of a number of quasi- and extra-legal tactics by the large and disparate population of commercial traders; on the other, the jurisdictional overlap of the *capitães mores* [captains] allowed them to utilise the *leis gentílicas* as a weapon of enslavement. Both elements presented the Portuguese authorities with major difficulties.

Looking first at the role of the commercial traders, Ferreira has argued that demand for goods in the *sertões* [hinterland] "shaped social and legal dynamics in such a way that coastal merchants, internal authorities, and, principally, itinerant traders could make claims against *sobas* and ordinary people that resulted in enslavements of questionable legality."⁷² The category of itinerant traders, which drew much of the official criticism, extended to

include enslaved and free *pombeiros* employed by Luandan merchants, freed Africans, ex-soldiers and a whole range of exiled convicts, known as *degredados*; many appear to have been prepared to bend or circumvent the law.⁷³

Given the background of many of the individuals, this is perhaps unsurprising. Indeed, in terms of its white population, Angola was little more than a penal colony, extensively settled by exiled criminals. Although the original charter had made provision for European immigrants, from the very beginning the high death rate and poor living conditions proved to be a disincentive to settlers.⁷⁴ The practice of posting *degredados* to conquered areas as soldiers, sailors and settlers had begun in the early fifteenth century, and from the late seventeenth century judges in Brazil were encouraged to exile their vagrants and criminals to Angola too.⁷⁵ Numbers swelled from the later eighteenth century as Angola's firmly established reputation as a penal settlement, in place before the end of the seventeenth century, encouraged officials to send the sharply increased number of persons exiled from Portugal from the 1750s to the colony.⁷⁶ Though many, at least initially, were required by the military, such men found it relatively easy to turn their hands instead to petty slave dealing or other related activities.⁷⁷ The problem was clearly recognised, and at least one governor attempted to take remedial action.⁷⁸ Angola became the dumping ground for other "undesirables" too. Whole Romany families were deported to Angola on the orders of the metropolitan authorities, and it was not just the state that was involved in exporting its deviants to Angola.⁷⁹ A range of sins brought before the Inquisition could also be punished by exile, and the Bishop of Lisbon had the authority to exile debtors owing more than 200 *réis*.⁸⁰ Many of the priests in the Society of Jesus who were granted land in Angola to support their activities also appear to have been corrupt, having been sent out from Portugal as "religious *degredados*."⁸¹ Such policies took their toll. Between 1764 and 1772 – as part of his mission to energise and improve the colony - Sousa Coutinho, then Governor, made

“frequent and cogent pleas” to his superiors in Lisbon to bring an end to “the sentences which burden this kingdom with prostitutes and degradedos of the worst type, [for] the experience of more than two centuries shows that such [sic] shipments have been useless and often dangerous.”⁸² No action was taken, and by the 1780s Melo e Castro, the Portuguese Secretary of State, felt able to characterise most of Angola’s European population as “wicked and vicious people”.⁸³

Regardless of the veracity of Melo e Castro’s characterisation of the majority of Angola’s European population, their status as convicted offenders had already positioned them as willing to operate outside the confines of Portuguese law. Colonial authorities were therefore largely incapable of preventing recourse to private justice by unscrupulous individuals who recognised and seized upon opportunities to enrich themselves through exploiting an underlying philosophy of debt recovery that chimed closely with their interests. Records from the 1670s note that the sharp trading practices of whites, *pombeiros*, mulattos and Negros *com calções* were a source of great concern in the interior: by using various pretexts and trading on credit such men were “admitting *themselves* Judges of Mocanos, that turns out to be Judges of Debt,” playing *sobas* off against one another for maximum gain, resulting, it was claimed, in the captivity of many free people.⁸⁴ In the records of the colonial administration, cases of civil justice involving the assessment and payment of fines or outstanding debts were often referred to as *mucanos*. Part of the assessment and punishment of a range of customary transgressions, the term *mucano* was used to refer both to an illegal act and to the action of compensation for it: “delict, crime, fault, plaint”; such cases fell under the jurisdiction of African chiefs.⁸⁵ Yet claims relating to instances of itinerant traders “erecting tribunals, conducting hearings and issuing sentences,” appeared again in the official documentation in 1756.⁸⁶

The failure of the Portuguese authorities to address the extra-legal activities of traders applying *mucano*-style justice in the Angolan hinterland was mirrored by their inability to control the dispensation of law in the areas nominally under their jurisdiction. For administrative purposes the colony of Angola was divided into several districts under the control of the Governor. The capital or central focus of each district was the *presídio* or captaincy – a fortified settlement with a small garrison run by the *capitão mor* [captain], with the assistance of a number of junior officials. Each district was then subdivided into chiefdoms run by *sobas*, local chiefs and vassals of the Portuguese crown who paid tribute.⁸⁷ The Portuguese recognised the *leis gentílicas*, but those living in the *presídios* were subject to Portuguese law, even if its application was often inefficient.⁸⁸

In the district of Ambaca by the later eighteenth century, the courts of the *capitães mores* applied Portuguese legal standards and dealt with serious crimes; they were also involved in the settlement of disputes between *sobas*. However, Vansina claimed that the administrative authority held by the *capitães mores* allowed them the option to intervene in other cases on a summary basis if so inclined, and their social background may have encouraged them to do so.⁸⁹ The problem was recognised from the early seventeenth century. As Fernão de Souza, former governor of Angola, claimed in 1631, the *capitães mores* were judging “according to the African law (*leis gentílicas*) and not according to the political (civilised) laws.” There was also official recognition that the system of *mucanos* was being exploited, with De Souza calling for all *mucano* cases to be judged instead by the *ouvidor geral*, or chief magistrate, to avoid the “great injustices” that were occurring.⁹⁰ In 1692 yet another governor - this time Gonçalo da Costa de Meneses – called for a legal expert of *corregedor*, or chief magistrate status, who had been appointed by the king; only when a properly trained judge was employed to deal with *mucano* cases could faith in Portuguese justice be restored.⁹¹ Further accusations appeared in 1715 and 1719, when the *capitães*

mores were accused outright of enslaving free people for their own benefit, of paying little attention to the justice of their actions and, most importantly, of disobeying royal orders.⁹² This was not unimportant, for the upholding of law was understood to be crucial to the success of the imperial mission. An impartial application of the law by honest public officials was thought necessary to the well-being of the realm: failure to deliver this would reflect badly on the perception, and thus the viability, of Portuguese rule among non-Europeans.⁹³ Some action does appear to have been taken. Regulations issued in 1698 sought to prohibit the use of customary laws by the *capitães mores* on the grounds that colonial officials were unwilling to allow participation in the use of legal sanctions borne of obligations they thought unjust.⁹⁴ A court of appeal too was clearly in operation, for in the same year the task of arbitrating such appeals was passed to the Junta das Missões, originally established in 1681 to promote missionary work in Angola.⁹⁵ Transferral of responsibility for appeal decisions did not stem the flood of claims. Dom João Manuel de Noronha, in taking up the position of governor of Angola in 1716, added the treatment of *mucanos* to his list of manifesto pledges; complaints had been received the previous year about enslavements that did not correspond with the law of the king.⁹⁶ But, as noted above, complaints about illegal enslavement appeared again in 1719, and in 1738 the death of Padre Jozeph de Gouca, the court interpreter, occasioned a telling remark from Rodrigo César de Meneses: his comments referred to “the incessant *mucano* cases that are customary in this city”.⁹⁷ In 1765, clearly cognisant of the fact that their orders were being ignored, the Portuguese authorities reissued the regulations on jurisdictional limits that had been applied to the activities of the *capitães mores* as early as 1698.⁹⁸

The *mucano* system was, as Ferreira has aptly described it, “an essential part of the highly decentralised machinery of enslavement in Angola.”⁹⁹ The colonial authorities did try to tackle the corruption embedded in the system, since any type of unjust enslavement was

problematic. From an early point in their occupation, the Portuguese had adopted a system of vassalage to manage subdued polities, and as subjects of the Portuguese Crown, such vassals were entitled to protection.¹⁰⁰ The appeal court in Luanda provided an opportunity for those sentenced to enslavement under customary law to challenge such decisions and from the mid-eighteenth century it was even possible for poor litigants in Luanda to access free legal aid.¹⁰¹ Not all cases of enslavement brought to appeal had been the consequence of attempts to apply the prevailing local understandings of non-payment of debt; others drew on the principle of inherited status, for example.¹⁰² The remit of the appeal court, nevertheless, was essentially to provide a route to justice for those who were free born, by offering such individuals the opportunity to evade attempts at enslavement that did not fall within the remit of acceptable Portuguese practice.¹⁰³ Originally such judgements about compensations for misdemeanors, trespasses or criminal acts had been verbal, “realized from person to person without any paperwork involved.”¹⁰⁴ By the eighteenth century, however, this had changed, and increasingly they were written down, primarily it seems to prevent repeated appeals to successive Portuguese governors.¹⁰⁵ Ferreira has indicated that by the beginning of the nineteenth century this court had increased its scope to incorporate elements of punishment and reparation.¹⁰⁶

Portuguese agents were working within a framework in which there was more than one schema of legalised slavery, and a number of disputes shed light on the challenging and contested nature of the use of the body as a form of restraint. Many appear to have relied on deception to establish obligation, and it was often this that the Portuguese authorities were keen to root out. A report from the *presídio* of Pungo Andongo in 1792, for example, highlighted the plight of black porters who were especially at risk of corrupt methods of enslavement. According to the author, “the *pardos* and blacks with *calçados* and some whites who live in the sertão” were all guilty of making their African porters work for them without

pay.¹⁰⁷ Moreover, when the porters asked to borrow small amounts of money they were required to bind themselves for the debt. After two or three years of long-distance work, during which time they had received no pay and their debt had not been reduced, the black porters, unable to pay their debts were apparently branded “and treated as slaves, despite the fact that they were free.”¹⁰⁸

In a similar case reported in more detail by Curto, José Manuel, a slave trader, borrowed money from António Leal do Sacramento in order to pay a debt to an African soba taken up out 1816, pledging his personal services as security until the debt was repaid. Despite the considerable amount of work he performed, Sacramento thought it insufficient and planned to sell Manuel into slavery to recoup his debt. Manuel, with the help of his family, claimed the privilege of “original freedom.” He argued that he had agreed to work for Sacramento as his servant but he remained a free man; he could not therefore be sold into slavery. Something of Sacramento’s intentions may be gleaned from his refusal to accept settlement of the debt by Manuel’s family, demanding instead a prime male slave as compensation.¹⁰⁹ The case also revealed the contradictory positions of the colonial officials involved. Sacramento drew on support from the Governor of Angola Luiz da Motta Feo e Torres, who agreed to confirm Manuel as his slave; Manuel, on the other hand, relied on the subordinate Governor of Benguela Manuel de Abreu de Mello e Alvim to push forward his claim to freedom. Both were assisted in addition by their family and friends. In *Way of Death*, Miller claimed that a strong sense of competition for offices and authority by family groups led to a series of business and political alliances that could descend into feud. The result was a “kaleidoscopic unpredictability” that offered the unscrupulous creditor considerable room for manoeuvre.¹¹⁰ In this case it appears that issues of political authority were attended by powerful commercial interests set against the Benguelan administrator. Decisions on the nature of debt liability could be confused and contradictory, even among

agents of the Portuguese Crown, but Mello e Alvim was prepared to take his decision before the King. The diametric legal positions on debt recovery are revealed in the descriptive terminology adopted throughout the entire case: Manuel was “deemed either a slave by Sacramento and Motta Feo or a freeman by Mello e Alvim and his kin.”¹¹¹

A final example cited by Ferreira reveals something of the detail and complexity that was involved in debt cases. Joaquim Victorino, manumitted in 1777 by his master for good service, found himself threatened with re-enslavement in 1780 by a judge in Luanda, after his master’s death left the latter’s estate encumbered with debts. Victorino decided he had to petition the King. His case appears to have relied on two main threads of argument. Firstly, the fact that his letter of freedom had entitled him to become his own master “as if he had been born free” allowed him to claim that as a free born individual he could not be enslaved in this way; second, the fact that he had become free before the assets of his former master had been seized meant he could not – as he was not his property - be sequestered as part of his estate.¹¹²

IV. Pawn

By the later eighteenth century the distaste of a growing number of colonial officials for debt enslavement is discernible in the documentary sources.¹¹³ What appears to have animated them most, however, was the apparent ease with which individuals were prepared to allow dependents and wider kin members to lose their freedom. According to Ferreira it was security for debt, rather than its recovery, that lay at the heart of illegal enslavement in the late eighteenth century. By the early nineteenth, colonial officials recognised that many children “were used as collateral for credit by their parents or relatives.”¹¹⁴ Offering a dependent as a form of surety – a human pawn - whether as a pledge for the debt, or as a way to repay the interest on an outstanding debt, appears to have been a recognised practice in

Africa for some time.¹¹⁵ We probably know most about pawnship in West Africa as a result of the work of Lovejoy and Richardson, but it was also evident in other regions and at other times.¹¹⁶ Children increasingly featured as security for debt in trading relationships off the Gold Coast in the eighteenth century, for example.¹¹⁷ In West Central Africa during the Atlantic trade, human pawns were used to secure debt in Ambaca, in the Imbangala state of Kasanje, in the emerging Ovimbundu polities, and among the Cokwe, as well as in the neighbouring kingdom of Kongo, although little is known about the practice before the arrival of Europeans.¹¹⁸ Once again, however, this represented a divergence from best practice in Europe. If in the early medieval period a pledge had “almost always [been] a person, not a thing”, often exchanged for the performance of a deed or for safe passage, by the seventeenth century, it was highly unusual for free people to be given as security for loans.¹¹⁹ The use of hostages as pledges for the performance of a promise remained a feature of cross-cultural relations, but Portuguese law had recognised the use of movable goods as payment for outstanding debts since the thirteenth century.¹²⁰

The problem for the Portuguese authorities in Angola emerged when pawnship shaded into slavery, and there were at least two significant ways through which this could occur. The first relates to default. Pawns were not slaves, and as long as the debt was satisfactorily repaid, they were able to retain their free status.¹²¹ In Ambaca there is evidence of the sale of pawns in the eighteenth century where lineages had been unable to redeem their members, but as *sertanejos* and *pombeiros* expanded their operations, rising levels of debt were attended by a heightened risk of default.¹²² There was also likely to have been an increased risk of enslavement as a result of greater numbers of court judgements. Heywood’s work indicated that before the twentieth century amongst the Ovimbundu, judicial obligations to the kin of an injured man could be discharged through becoming a pawn or slave in his household.¹²³ We know that traditional pawnship arrangements could and did shift free

individuals into enslavement under certain conditions, but this was less likely given the indefinite nature of many indigenous credit agreements.¹²⁴ And even if debt had resulted in enslavement, most enslaved debtors, in the absence of high levels of European demand, would have remained in their localities where there was at least the possibility of freedom at some point in the future.¹²⁵ Shipment to the Americas removed that opportunity for the vast number of those enslaved in Angola.

While some Jesuits had argued for the right of parents to pawn or sell their children in cases of extreme necessity in the sixteenth century, Portuguese officials appear from the seventeenth to have been prepared to provide protection against such eventualities for their allies. As early as 1650, the colonial administrators had released their African vassals from the high tribute payments required by the Portuguese Crown in the wake of the Dutch occupation, aware that they had been reduced to paying such taxes through sale of their children and relatives.¹²⁶ Portuguese activity may not have been driven exclusively by child-friendly philanthropic aims. The fact that *sobas* reduced to vassalage by the military operations of the Portuguese army in 1639 were required to pay their tribute in *peças de índias* reveals one of the key aims of the colonising forces - to garner a stock of prime male slaves and avoid receipt of young children and the elderly, who did not attract good prices.¹²⁷ By the mid-eighteenth century plans to dislodge the “old-style slave contractors . . . from their quasi-monopolistic ‘abuses’” and the accompanying shift in attitudes towards long-distance slave traders may have also have had some impact.¹²⁸ According to Sousa Coutinho, who as Governor at this point did much to try and regulate the exploitation of indebtedness as an enslavement mechanism, the problem was often related to instances of debt protection that were secured on the body of a *dependent*, rather than the debtor. This put the individual, often a child or another member of kin, at risk of being sold into slavery if the debtor defaulted. Nor was the problem simply a commercial one. In 1768, Coutinho claimed that

despite repeated orders to the contrary, Jesuit priests from the province of Ambaca continued to extort a range of death duties from the local Negros, to the point at which those unable to pay were being forced to pawn their children to cover the debts.¹²⁹ His answer was to ban the use of free human pledges to secure or recover civil loans, and attach severe penalties to its practice.

I order that no black, no father, or mother, uncle, or relative, under penalty of five hundred lashes, and of two years in the galleys, can offer, give, or mortgage any child, or relative, friend, or any another free person of either sex, in pledge for debt, which penalty the black, or mulatto who accepts [such a pledge], will incur: and those being white who admit to such negotiations, will be immediately imprisoned, and condemned to five years chained work in the public works.

He noted his reasons for introducing this measure in the preamble to his order: “the Negros of this kingdom are vexed by the *alien* method of mortgaging children and relatives for insignificant debts, that to a great extent lead them to become permanent captives, or to be embarked as such.”¹³⁰ It did not help that individuals appeared to be pawning their children, in the view of Coutinho at least, for what he described as “insignificant trifles.”¹³¹ There was an assumption moreover that that once the law had been properly understood it would be upheld.

The order made public on 7 of November of the last year, prohibiting, the penhorning of Negros free from birth, or their mortgaging for civil debts, has been poorly understood; when they are given the time they will comprehend that it is possible to make only those Negros that were taken in war, or sentenced to slavery by the their laws.¹³²

Yet the order appears to have had little long term impact. Six years later in 1777, regardless of the fact that the Portuguese authorities recognised only war and judicial conviction as legitimate categories of enslavement, at least three mechanisms could still be identified: “As a result of judicial condemnation; for the capture of their children and relatives for debts they contract and have no goods to cover; and for slaves made as a result of being prisoners of war.”¹³³

With the arrival of Manoel de Almeida e Vasconcelos as governor in 1790 the use of the body as security for debt by those who were free was again declared inadmissible.¹³⁴ Vasconcelos was also keen to dismiss customary methods of debt recovery on the body that he considered to be “barbaric.” In doing so he revealed the full extent of his commitment to a Portuguese legal model that denounced entirely any form of distraint executed on the body, and more especially on persons other than the debtor: the binding of a poor man’s wife to work off a debt; a term of slavery for the defaulting debtor; and the enslavement proper of children and relatives for a crime they not only did not commit, but of which they had no knowledge. In addition he noted the excessive unfairness of the compensatory principle involved, when it was possible to gain ten times the value of a debt by demanding a slave in payment.¹³⁵ Vasconcelos reiterated the enslavement policy of the Portuguese authorities with some vehemence. Slavery was to follow only from capture in war or conviction for treason; it was “not applicable to any quality of crime and delict.”¹³⁶ Moreover, he ordered that no one was to be taken for the crimes or debts of someone else.¹³⁷

If the colonial records lend authority to the effectiveness of the crusading zeal of a small number of governors, the court records allow us to reinsert African autonomy into the contested background of enslavement. Curto claimed that “the principle of ‘original freedom’ was general knowledge for Africans who lived within, or maintained direct contact with, the Portuguese colonial world.”¹³⁸ This was certainly recognised by Portuguese officials.

According to Seabra da Silva, “Not only those called vassals but even the uncultivated heathens have recourse in Judgment of Freedoms.”¹³⁹ Such recourse in itself may have been insufficient, however. As Curto’s work revealed, a legal challenge needed support from family, friends and sometimes powerful allies to be successful. Moreover, the existence of two competing legal systems could work in favour of enslavement as well as against. From as early point in his governorship, as the epigraph for this article indicates, Vasconcelos believed that progress lay with an acceptance of Portuguese law.¹⁴⁰ He was unaware that it was not so much the laws themselves that were the root of the problem, as their location within a highly pressurised commercial context that operated to reward the production of slaves.

V. Conclusion

From the beginning of the sixteenth to the middle of the nineteenth century the area identified as West Central Africa produced over five and a half million slaves for the export market.¹⁴¹ In Angola, slaves were the primary export commodity for much of that time, with Duffy claiming they constituted more than 80 per cent of the total volume of exports between 1550 and 1850.¹⁴² His claim is a realistic one, for it seems likely that very little attention had been paid to any other form of commerce since at least the early seventeenth century.¹⁴³ As well as forming the “principal source of commercial wealth for African rulers and middlemen” and a host of itinerant traders, the Portuguese slave trade, according to Newitt, drew in the Church, New Christians, and members of “the upper classes” in Portugal.¹⁴⁴ If some in Angola believed it offered them a singular route to wealth, others were wont to protest that the entire success of the colony’s inhabitants rested on their participation in that particular trade.¹⁴⁵

To understand fully how the colony was able to produce such a staggering number of slaves for export, we also have to understand the mechanisms that allowed this to take place. Some aspects of enslavement law can be framed within a larger south Atlantic legal regime that facilitated slave production, but one distinct element cannot. The differential approach to debt liability operating through African customary law not only allowed creditors to enslave their debtors, but also their dependents, members of their family, friends and even the wider community when necessary. And despite numerous attempts to regulate against it and an appeal process to check its operation, the Portuguese authorities were largely unable to prevent the bastardization of this particular aspect of customary law in view of its relationship with the slave trade. They were hampered on the one hand by a rising tide of commercial activity, much of it supported by tenuous credit agreements, in which ruthless traders were able to draw on principles of customary law to bolster their private acts of justice. In addition, the indigenous *mucano* system, driven by a legal philosophy geared to the payment of compensation for a wide range of misdemeanours as well as criminal acts, provided ample opportunities for unscrupulous individuals to lay claim to a slave. A context in which all forms of debt became reducible to the value of a slave served not only to corrupt the ethos of law, but to make life dangerously unpredictable for all but the wealthiest and most powerful members of Angolan society.¹⁴⁶ There was, as Benton suggested, an element of homology in European and African attitudes to enslavement that made the Atlantic slave trade possible, but there were also vital differences. The notion of indebtedness in its broadest conceptual framework appears to have been utilised purposively and with premeditation to deliver far more individuals into the south Atlantic slave trade than we have as yet begun to recognise.¹⁴⁷ If a narrative requires some sense of order and direction to make it accessible, we should remember that in practice decisions on enslavement rarely rested on a clear division between Portuguese and African law any more than they did on Portuguese and African activity. The

administrators who managed the colony on behalf of the Portuguese government displayed heterogeneous qualities, with some officials being more deeply concerned than others to regulate its law as well as address any abuses. Moreover, as Curto's insightful comment reminds us, "In the dirty business of slaving, Africans were far from constituting a single and homogeneous entity, whether as victims or victimizers."¹⁴⁸ Then of course there were the settlers themselves, a huge melting pot of outcasts with varied levels of loyalty to the Portuguese government, many of whom were keen to benefit from the insidious trade in bodies. What does come across from the Angolan material, however, is a clear antipathy towards the notion of enslavement for debt, and in particular to the issue of communal liability. Indeed it was this aspect of African enslavement practice that appears to have done most to offend Portuguese metropolitan sensibilities, driving forward the notion of African law as "barbaric". Observers were unable to comprehend how individuals could allow others, especially children, to suffer enslavement for their debts. Such notions of illegitimate title, which become more insistent in the later eighteenth century, were likely to have been compounded by changing attitudes to slavery that were visible in the laws and literature of Portuguese society. Moreover, anti-slavery sentiment had begun to spread across the Atlantic world.

The antipathy towards enslavement for debt evident in the Angolan documentation was not purely a function of Portuguese mentalities, since Cavazzi himself was Italian. Comments from travellers in other parts of West Africa revealed similar levels of disbelief, but little could be done – in the absence of colonisation - to stem the practice. Even in Angola, where Portuguese law had some level of traction, differential customary approaches to debt recovery made the prohibition of debt slavery virtually impossible. Such findings support a view of the wider relevance of differential and contested approaches to executing liability for debt on the body to the history of slavery.

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¹ The primary research for this article was undertaken in Lisbon in 2008 and the author wishes to express her thanks to the Nuffield Foundation for funding it. The advice of the anonymous referees was a great help in improving the article, and the author is also deeply indebted to the work of the historians cited here for access through publication to the rich Angolan records that are used to support and extend her argument. Any errors in interpretation remain her own.

² "Those experimenting with the humanity of our laws will not have to find any other shelter." Manoel de Almeida e Vasconcelos, Governor of Angola (1790-97), Arquivo Histórico Ultramarino [AHU] Angola cód 1633, November 21 1791: fol. 28 - 29v.

³ Benton, "World-Systems Perspective," 261-95; idem, "Legal Regime," 55, 41, 47-8.

⁴ Spicksley, "Pawns on the Gold Coast," 172-5.

⁵ Thornton, *Africa*, 74-86, 97. Benton addressed this in "Legal Regime," 39-40.

⁶ Thornton, *Africa*, 86, fn 58.

⁷ "A customary law may be defined as a normative order observed by a population, having been formed by regular social behaviour and the development of an accompanying sense of obligation." Woodman, "Survey of Customary Laws," 10.

⁸ Saunders, *Social History*, 35.

- ⁹ Pascoal José de Melo Freire, *Instituições de Direito Civil Portugues* [15th-18th centuries] Livro II, “Do Direito Das Pessoas, Titulo I Dos Livros E Escravos,” at http://iuslusitaniae.fcsb.unl.pt/verlivro.php?id_parte=120&id_obra=76&pagina=6 [accessed 20 Mch 2014]. A further revision appeared in 1603; Schwartz, *Sovereignty*, 45-50.
- ¹⁰ Schwartz, *Sovereignty*, xv, 72-3.
- ¹¹ Almodovar and Cardoso, *Portuguese Economic Thought*, 74.
- ¹² Van Caenegem, *Historical Introduction*, 45-6.
- ¹³ Watson, ed., *Digest 1.5.5*. [Marcian, *Institutes*, book 1].
- ¹⁴ See Richardson and Spicksley (forthcoming), “Debt, the Inheritance Principle and Slavery.”
- ¹⁵ Thomas Aquinas, *Summa Theologiae*, Second Part of the Second Part, Q. 40; Russell-Wood, “Iberian Expansion,” 23-4.
- ¹⁶ Russell-Wood, “Iberian Expansion.”
- ¹⁷ See Bartholomé Las Casas, *Sobre la materia de los Indios que se han hencho esclavos* (1552), and Fernão de Oliveira, *Arte da Guerra no Mar* (1555). See also Saunders, *Social History*, 42-44; Orique, “Comparison of the Voices,” 104-117; and Las Casas’ anti-slavery tract in Sullivan, *Indian Freedom*, 255-77.
- ¹⁸ Russell-Wood, “Iberian Expansion,” 33.
- ¹⁹ Phillips, Jr., *Slavery From Roman Times*, 181-2; Boxer, *Race Relations*, 101-2; idem, *Portuguese Seaborne Empire*, 88; Sullivan, *Indian Freedom*, 159.
- ²⁰ The most significant debate was played out in 1567 in Brazil in the works of Quirício Caxa and Manuel da Nóbrega; Eisenberg, “Cultural Encounters,” 379-84. See also Brett, “Human Freedom and Jesuit Moral Theology,” 9-26. For a discussion of self-sale as a punishment in the Justinian codes see Spicksley, “Decline of Slavery for Debt,” 481-2.
- ²¹ Eisenberg, “Cultural Encounters,” 395.
- ²² *Ibid.*, 382-3.
- ²³ *Ibid.*, 389-90.
- ²⁴ Cited in *ibid.*, 378; de Mello, “Angola no Fim do Seculo XVIII,” 278.
- ²⁵ In some places, this was occasioned by debt. See Lane, “Venetian Merchant Galleys,” 198 and Pike, *Penal Servitude*, 4. For the galley system in Portugal see Coates, *Convicts and Orphans*, 43-9.
- ²⁶ Weil, *Navy of Venice*, 64-5; Pike, *Penal Servitude*, 6-11.
- ²⁷ See for example AHU Angola cx 25, doc. 70, February 20 1731; AHU Angola cx 21, doc 75, June 13 1722; AHU Angola cx 38, doc 14, April 7 1753; Sebestyén, Vansina and Leitão, “Angola’s Eastern Hinterland,” 308, 325; Duffy, *Portuguese Africa*, 140. See also Newitt, ed., *Portuguese in West Africa*, 23-4.
- ²⁸ Patterson, *Slavery and Social Death*, 124-6; Bales, *Disposable People*.
- ²⁹ For a detailed discussion of the decline see Spicksley, “Decline of Slavery,” in Cavaciocchi, ed., *Schiavitù e servaggio*. Debt bondage, with the risk of permanent enslavement, remained possible for non-Christians and recent converts in the Crown of Aragon in the high medieval period, and in late medieval Valencia. See Phillips, Jr., *Slavery in Medieval and Early Modern Iberia*, 29.
- ³⁰ Islamic societies proscribed enslavement for debt amongst co-religionists; Schneider, “Freedom and Slavery,” 354.
- ³¹ Biehler, *Procedures*, 9; Howard, *State of the Prisons*, 150.
- ³² There appears to have been no penal slavery for other offences; Russell-Wood, *Fidalgos*, 241, 246-7; idem, “Iberian Expansion,” 41. See also Livro 4. Tit. 5 of the Ordinações Manuelinas, in operation in Brazil during the entire period of Portuguese colonial occupation: “That no-one distraint his debtor, nor take and possess his goods, without legal authority.” <http://www1.ci.uc.pt/ihti/proj/manuelinas/14p17.htm> [accessed 8 January 2015].
- ³³ For West Africa see Atkins, *Voyage to Guinea*, 53; Law, “Legal and Illegal Enslavement,” 519; Winsnes, ed., *Reliable Account*, 165; Ojo, “‘Èmú’ (Àmúyá),” 31-58. For West Central Africa see AHU Angola, cx 74, doc 49, 1789; Vansina, “Ambaca Society,” 18, fn 71. For a contemporary Portuguese definition of *penhorár*, from which ‘panyar’ was derived, see Bluteau’s dictionary *Vocabulario* (1720), 393-4. Available online at <http://catalog.hathitrust.org/Record/009300528> [accessed 13 May 2015].
- ³⁴ Cugoano, *Thoughts and Sentiments*, 35-6. For indentured servitude see Galenson, “Market Evaluation,”; Grubb, “Auction of Redemptioner Servants,”; Wareing, “Migration to London,”; Beckles, “A ‘Riotous and Unruly Lot’,”; Klepp and Smith, eds, *The Infortunate*.
- ³⁵ Elias, *Nature of African Customary Law*, 87-95.
- ³⁶ Powis Smith, *Origin and History*, 66-7; Verlinden, “Markets and Fairs,” 135; Greif, “History Lessons,” Kuo, “Preserving Public Peace,” 186-90; Miller, *Way of Death*, 50-1.
- ³⁷ Newitt, ed., *Portuguese in West Africa*, Introduction; Bethencourt, “Political Configurations,” 236-244.
- ³⁸ Benton, *Law*, 44-9.
- ³⁹ Disney, *History*, 238-9.
- ⁴⁰ Benton, *Law*, 46.

- ⁴¹ See the excerpt from the letters of Padre Garcia Simões, ‘*Informação Acerca dos Escravos de Angola (1582-1583)*’, in Brásio, ed., *Monumenta Missionaria* 3, 227-9.
- ⁴² “Proposta a Sua Magestade sobre a escravaria das terras da Conquista de Portugal”, cited in Conrad, *Children of God’s Fire*, 11-12.
- ⁴³ Phillips, Jr. *Slavery in Medieval and Early Modern Iberia*, 156-60.
- ⁴⁴ See Boxer, *Race Relations*, 100 and fn 14.
- ⁴⁵ Blackburn, *Overthrow*, 62. Russell-Wood too argued that the Enlightenment had a “pronounced” effect on Portuguese society, especially in Brazil. See Russell-Wood, *Portuguese Empire*, 207; idem, “Iberian Expansion,” 38, 40-41. It was not until 1886, however, that slaves in Brazil were finally given freedom. Phillips, Jr., *Slavery in Medieval and Early Modern Iberia*, 160.
- ⁴⁶ Blackburn, *Overthrow*, 62.
- ⁴⁷ “Carta para Ioaquim Iozé Roiz, 12 November 1771,” *Arquivos de Angola*, 3, 28, (November 1937), 297-8.
- ⁴⁸ Proyard, *Histoire de Loango*, 2.
- ⁴⁹ Cavazzi de Montecúcolo, *Descrição Histórica*, 157.
- ⁵⁰ Vansina, “Ambaca Society,” 11. For the broader communal involvement in debt in East Africa in the later nineteenth century see Dale, “Account of the Principal Customs,” 226-7.
- ⁵¹ Cavazzi de Montecúcolo, *Descrição Histórica*, 157.
- ⁵² Thornton, *Africa*, 99; Curto, “Experiences of Enslavement,” 389-91; Walvin, *Black Ivory*, 26; Lovejoy, *Transformations in Slavery*, 3.
- ⁵³ Rodney, *History*, 108-9. 218.
- ⁵⁴ Miller, *Way of Death*, 265, 268.
- ⁵⁵ Candido, *African Slaving Port*, 195-7.
- ⁵⁶ Ferreira, “Slaving and Resistance to Slaving,” 111-123 (citation on 111). See the case of José Rodrigues Alentejo and Tomás Bezerra, charged with the capture of free persons with intent to turn them into slaves or obtain a ransom for them from their kin: AHU Angola, cx 97, doc 45, December 20, 1800.
- ⁵⁷ AHU Angola, cx 61, doc 55, October 1777; de Mello, “Angola no Fim do Século XVIII,” 278.
- ⁵⁸ Simões, “Informação,” 227-9.
- ⁵⁹ Thornton, *Africa*, 99; “Carta patente do perdão de tributos aos reis, senhores e sobas dos reinos de Angola,” XVI January 16 1650, in *Arquivos de Angola*, 181-3.
- ⁶⁰ Curto, “Experiences of Enslavement,” 401-9 (citation on 387).
- ⁶¹ Ferreira, *Cross-Cultural*, 71-7. Ideas in West Central Africa about the finite nature of wealth and its relationship with health, wealth and social harmony have a long history. See Schuler, “Enslavement,” 186; Austen, “Moral Economy,” ; Vansina, “Ambaca Society,” 12.
- ⁶² Candido, *African Slaving Port*, 201-2. See also the case of the trader Simao Acahoje and the dispute over debt that led eventually to invasion: Vansina, “Ambaca Society,” 14-16.
- ⁶³ Proyard, *Histoire de Loango*, 136-7.
- ⁶⁴ In Indo-European languages the roots of the word “debt” are the same as those for “guilt” or “sin”. Cited in Graeber, *Debt*, 59. In Nigeria debt cases – defined as *injô* – covered “a wider range of phenomena and social relations” than the English word “debt” would suggest; Bohannan, *Justice*, 102.
- ⁶⁵ Koyana, “Traditional Courts,” 239; Bohannan, *Justice*, 116-20.
- ⁶⁶ Vansina, “Ambaca Society,” 10-12; Linda M. Heywood, “Slavery” 14-16; MacGaffey, “Kongo Slavery Remembered,” 62-4.
- ⁶⁷ Simões, “Informação,” 227-9; de Almeida, *Portugal e a Escravatura*, 38; AHU Angola, cx 4, doc 23, Carta do rei do Dongo D. Garcia, March 20 1643; Cadornega, *História Geral*, 3, 269; Curto, “Experiences,” 407; Boxer, *Portuguese Society*, 125-7.
- ⁶⁸ Cadornega, *História Geral*, 3, 269; Vansina, “Ambaca Society,” 10-12 (citation on 12), and see 11, fn 39.
- ⁶⁹ AHU Angola, cx 44, doc 22, 24 February 1765, Cópia do capítulo 10º do Regimento dos capitães mores.
- ⁷⁰ de Mello, “Angola no Fim do Século XVIII,” 278. See also Ferreira, *Cross-Cultural*, 70.
- ⁷¹ Duarte, “Districto do Duque de Braganca,” 124-5.
- ⁷² Ferreira, *Cross-Cultural*, 87.
- ⁷³ Slave traders operated under several names. See Ferreira, *Cross-Cultural*, 58-61, 190; Boxer, *Portuguese Society*, 132; Candido, “Merchants,” 2-3.
- ⁷⁴ Newitt, ed., *Portuguese*, 19; Hallett, “European Approach,” 192; Boxer, *Portuguese Society*, 133.
- ⁷⁵ Bender, *Angola*, 60-2; Miller, *Way of Death*, 250, 261; Russell-Wood, *Portuguese Empire*, 106-7. The most common crime appears to have been theft, and vagrancy was also a frequent cause; Boxer, *Portuguese Society*, Appendix, Document 26, 197-209. For exile from Brazil see Coates, *Convicts and Orphans*, 82.
- ⁷⁶ Bender, *Angola*, 61; Coates, *Convicts and Orphans*, 41.
- ⁷⁷ Ferreira, *Cross-Cultural*, 190; idem, “Transforming Atlantic Slaving,” 149-52.
- ⁷⁸ Russell-Wood, *Portuguese Empire*, 107; Candido, *African Slaving Port*, 205.
- ⁷⁹ Russell-Wood, *Portuguese Empire*, 106-7.

- ⁸⁰ Coates, *Convicts and Orphans*, 28; Boxer, *Portuguese Society*, Appendix 26, “Typical Deportees from Brazil and Portugal to Angola, 1714-48”, 200.
- ⁸¹ Davidson, *Eye of the Storm*, 100; Russell-Wood, *Portuguese Empire*, 107.
- ⁸² Cited in Bender, *Angola*, 62, 59. See also Duffy, *Portuguese Africa*, 71-2.
- ⁸³ Bender, *Angola*, 61.
- ⁸⁴ AHU Angola cx 10, doc 95, March 27 1673 (my italics).
- ⁸⁵ Tavares and Santos eds., *Africa Monumenta*, 428-9; Ferreira, *Cross-Cultural*, 98-100.
- ⁸⁶ Cited in Ferreira, *Cross-Cultural*, 69.
- ⁸⁷ Vansina, “Ambaca Society,” 2.
- ⁸⁸ Candido, ‘Enslaving Frontiers’, 95; Miller, *Way of Death*, 254.
- ⁸⁹ In Ambaca, *capitães mores*, who were often locally born and half Ambundu, were related by marriage to local chiefs and other important people in the area; Vansina, “Ambaca Society,” 8, 10.
- ⁹⁰ Cited in Ferreira, *Cross-Cultural*, 103-4.
- ⁹¹ AHU Angola cx 14, doc 80, February 4 1692. See also Vansina, “Ambaca Society,” 11.
- ⁹² AHU Angola cód 545, January 31 1715: fol. 180v; March 4 1719, fols 207v-208. See also AHU Angola cx 10, doc 46, August 31 1671, for claims of unjust enslavement.
- ⁹³ Benton, *Law*, 49; Boxer, *Portuguese Seaborne Empire*, 144. See also Schwartz, *Sovereignty*, 3-21.
- ⁹⁴ AHU Angola cx 44, doc 22, February 24 1765.
- ⁹⁵ AHU Angola cód 545, March 15 1698: fols 111v-112v.
- ⁹⁶ AHU Angola, cx 20, doc 53, November 20 1716; AHU Angola cód 545, 31 January 1715: fol. 180v.
- ⁹⁷ AHU Angola cx 30, doc 75, February 12 1738.
- ⁹⁸ AHU Angola, cx 44, doc 22, February 24 1765.
- ⁹⁹ Ferreira, *Cross-Cultural*, 101.
- ¹⁰⁰ See Candido, *African Slaving Port*, 50-57; Curto, “Story of Nbena,” 51.
- ¹⁰¹ Such aid is unlikely to have been provided consistently however. Ferreira, *Cross-Cultural*, 101, 111; Candido, *African Slaving Port*, 214-5.
- ¹⁰² AHU Angola cx 14, doc 80, February 4 1692.
- ¹⁰³ It was also possible for those who were enslaved to gain their freedom, although freed slaves may not often have enjoyed comfortable lives, and many remained on the margins of early modern Iberian and colonial society. See Phillips, Jr., *Slavery in Medieval and Early Modern Iberia*, 122-45; Dantas, *Black Townsmen*, 97-125; Hanson, *Economy and Society in Baroque Portugal*, 65; Sweet, *Domingos Álvares*, 91; Ferreira, *Cross-Cultural*, 132; Curto, “‘As if from a Free Womb’”; Ribeiro da Silva, *Dutch and Portuguese in Western Africa*, 150.
- ¹⁰⁴ AHU Angola cx 14, doc 80, February 4 1692. See also Cadornega, *História Geral* 2, 61.
- ¹⁰⁵ AHU Angola cx 14, doc 80, February 4 1692. In 1784, however, Governor Jose de Almeida e Vasconcelos claimed that nothing aside from a “short record of the decision” was written down. Cited in Ferreira, *Cross-Cultural*, 104.
- ¹⁰⁶ Ferreira, *Cross-Cultural*, 118.
- ¹⁰⁷ The meaning of “pardo” according to Bluteau’s *Vocabulario* is “a colour between white and black.” For a definition of “Homen pardo” Bluteau recommended the reader see “Mulato”, 265. Available online at <http://catalog.hathitrust.org/Record/009300528> [accessed 13 May 2015].
- ¹⁰⁸ AHU Angola cx 77, doc 85, 1792.
- ¹⁰⁹ Curto, “Struggling.”
- ¹¹⁰ Miller, *Way of Death*, 249.
- ¹¹¹ Curto, ‘Struggling’, 104.
- ¹¹² Ferreira, *Cross-Cultural*, 118-9.
- ¹¹³ See AHU Angola cód 1633, 1791-97, Manoel de Almeida Vasconcellos, November 21 1791: fols 28-29 v; AHU Angola cód 1633, 1791-97, José de Seabra da Silva, January 25 1792: fols 49av-50a; Ferreira, *Cross-Cultural*, 66.
- ¹¹⁴ Cited in Ferreira, “Slaving and Resistance to Slavery,” 123.
- ¹¹⁵ See Lovejoy and Falola, eds, *Pawnship*.
- ¹¹⁶ Lovejoy and Richardson, “Business of Slaving”; Lovejoy and Richardson, “‘This Horrid Hole’”; Harms, *River of Wealth*, 102; Dale, “Account of the Principal Customs,” 226-7; Alpers, “Debt, Pawnship and Slavery.”
- ¹¹⁷ Spicksley, “Pawns on the Gold Coast.”
- ¹¹⁸ Vansina, “Ambaca Society,” 6; Curto, “Struggling,” 104; Miller, *Way of Death*, 95, 179-80; Miller, “Imbangala Lineage Slavery,” 222-225; MacGaffey, *Kongo Political Culture*, 110, 121, 155; MacGaffey, “Kongo Slavery Remembered,” 63; Hilton, “Family and Kinship,” 191.
- ¹¹⁹ Cited in Tomlinson, “Comparative Historical Perspectives,” 26, fn. 71.
- ¹²⁰ Harms, *River of Wealth*, 81; Spicksley, “Pawns on the Gold Coast,” 157; Ravenstein, ed., *Strange Adventures*, 23. For medieval distraint law see, ‘Lei sobre execução dos bens do vencido em caso de não

pagamento de dívida', in Gomes da Silva, ed., *Livro das Leis e Posturas* [1249-1393], 215, at <http://www.iuslusitaniae.fcsh.unl.pt/consulta.php> [accessed May 21 2015]

¹²¹ In Ambaca, "A free person pawned in return for a loan to another matrilineage remained free, although the labor of such pawns (*ngunji*) and perhaps the children born to a female pawn belonged to the matrilineage of their owners." Vansina, "Ambaca Society," 6.

¹²² Vansina, "Ambaca Society," 12.

¹²³ Heywood, *Contested Power*, 110.

¹²⁴ Pawns could choose permanent enslavement as a way to evade sale away from a village; see MacGaffey, *Kongo Political Culture*, 110. Pawnship agreements did not usually have fixed deadlines; Ojo, "Child Slaves," 422; Lovejoy and Falola, eds, *Pawnship*, 3-4.

¹²⁵ See for example "Carta de Baltasar Rebelo de Aragão (1618)," in Brásio, ed., *Monumenta Missionaria* 6, 340; Cavazzi de Montecúcolo, *Descrição Histórica*, 161; Hilton, "Family and Kinship," 191.

¹²⁶ "Carta patente do perdão de tributos aos reis, senhores e sobas dos reinos de Angola," XVI January 16 1650, *Arquivos de Angola*, 1 and 2, 181-3.

¹²⁷ AHU Angola cx 3(2), doc 61, January 27 1639.

¹²⁸ Birmingham, *Portugal and Africa*, 86.

¹²⁹ AHU Angola cx 52, doc 29, August 26 1768.

¹³⁰ AHU Angola cx 55, doc 1, January 2, 1771 (my italics).

¹³¹ AHU Angola cx 55, doc 1, January 2, 1771.

¹³² "Carta para Ioaquim Iozé Roiz, 12 November 1771," *Arquivos de Angola*, 3, 297-8.

¹³³ AHU Angola cx 61, doc 55, October 1777.

¹³⁴ Ferreira, *Cross-Cultural*, 83.

¹³⁵ AHU Angola cód 1633, November 21 1791, Manoel de Almeida Vasconcellos: fols 28-29v.

¹³⁶ Cited in Ferreira, *Cross-Cultural*, 81.

¹³⁷ AHU Angola cód 1628, 1791-92, May 28 1792, Para o Tenente Regente de Ambaca Pedro Beltrão: fol. 208.

¹³⁸ Curto, "Struggling," 106. See also Ferreira, *Cross-Cultural*, 118; Candido, *African Slaving Port*, 218.

¹³⁹ AHU Angola cód 1633, 1791-97, Offícios para José de Seabra da Silva, January 25 1792: fols 49av-50a.

¹⁴⁰ AHU Angola cód 1633, November 21 1791 Manoel de Almeida Vasconcellos: fols 28-29v.

¹⁴¹ An estimated 5, 694, 574 slaves left the area of West Central Africa and St. Helena during the period 1501-1866; *Transatlantic Slave Trade Database* <http://www.slavevoyages.org/tast/assessment/estimates.faces> [accessed 22 April 2014].

¹⁴² Duffy, *Portuguese Africa*, 49.

¹⁴³ Boxer, *Portuguese Society*, 120.

¹⁴⁴ Newitt, ed., *Portuguese*, 21.

¹⁴⁵ See for example AHU Angola cx 20, doc 75, March 27 1718; AHU Angola cx 24, doc 82, May 16 1729.

¹⁴⁶ Birmingham, *Portugal and Africa*, 88; Nunn and Wantchekon, "Slave Trade."

¹⁴⁷ A quantitative analysis of the relative importance of debt as a mechanism of enslavement nevertheless remains problematic.

¹⁴⁸ Curto, "Struggling," 115.