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Dignité/Dignidade: Organizing against Threats to Dignity in Societies after Slavery

Rebecca J. Scott¹

ONE OF THE MOST striking modern historical occurrences of the term ‘dignity’ in a legal text appears in the preamble to the 1848 decree abolishing slavery in the French empire:

Considérant que l’esclavage est un attentat contre la dignité humaine; qu’en détruisant le libre arbitre de l’homme, il supprime le principe naturel du droit et du devoir; qu’il est une violation flagrante du dogme républicain: Liberté, Égalité, Fraternité ...

Considering that slavery is an assault upon human dignity; that in destroying man’s free will, it destroys the natural source of law and duty; that it is a flagrant violation of the republican creed: Liberty, Equality, Fraternity ...²

Written into a key text, the term ‘dignity’ became increasingly available for borrowing and invocation in subsequent struggles. Like other normative terms of the kind that philosophers characterize as ‘thick’, however, the concept ‘dignity’ necessarily carries descriptive as well as evaluative content. That is to say, its use does not only mark something as positive, it also implies ways in which the action or comportment is thought to be good.³ The nature

¹ I thank Elizabeth Anderson, Pedro Cantisano, Mark Elliott, Malick Ghachem, Ângela Maria de Castro Gómez, Keila Grinberg, Jean M. Hébrard, Don Herzog, Thomas Holt, Silvia Lara, Beatriz Mamigonian, Christopher McCrudden, Mariana Dias Paes, Cristiano Paixão, Marieke Polffiet, Peter Railton, João José Reis, and Patrícia Sampaio for suggestions and discussion. In Brazil, I owe a particular debt to Luís Camargo, Attorney General of the Ministério Público do Trabalho (MPT), for having invited me to participate in a panel at the November 2012 gathering of MPT attorneys working on issues of contemporary slavery, and to Jonas Moreno and Cristiano Paixão for arranging that visit. The meeting also included anthropologist Ricardo Rezende Figueira and several *auditores fiscais* from the Ministério do Trabalho e Emprego, who were equally generous with their ideas.

² For the full French-language text of the decree of 27 April 1848, see <http://www.assemblee-nationale.fr/histoire/esclavage/decret1848.asp>. All English translations are mine.

³ On ‘thick’ normative terms see Bernard Williams, who summarizes the idea in this way: ‘The way these notions are applied is determined by what the world is like (for instance, by how someone has behaved), and yet, at the same time, their application usually involves a certain valuation of the situation’.

of that descriptive content in social practice, in turn, emerges as we examine vernacular as well as elite understandings of the term in particular historical circumstances.⁴

This chapter is not an attempt to join the fractious debate over philosophical first principles or juridical first usages of the term 'dignity'. Instead, it explores the tight connection between the institution of slavery and the giving of specific meanings to the concept of dignity, in particular times and particular places. To explore the dynamics of the intertwined process of creating and drawing upon meaning for the terms 'dignity' and 'slavery', I examine two historical movements that emerged after formal abolition.

As slavery became widely recognized as emblematic of a fundamental violation of human dignity, practices associated with slavery could themselves be seen to carry a potential threat to dignity, even without any further ownership of property in persons. The late nineteenth-century popular campaign against legally mandated racial segregation, particularly as it unfolded in the state of Louisiana, drew upon a language of dignity, sometimes echoing the uses in earlier French radical thought of the term *dignité*. Louisiana's white supremacists had often portrayed segregation regulations and statutes as aimed merely at maintaining familiar customs, public comfort, and public order. Those who opposed the statutes nonetheless saw an intentional dignitary offence, precisely because of the ways in which legally mandated segregation reproduced forms of humiliation practised against free persons of colour under slavery. The meaning—and the marking—involved in the practice of forced separation could, in their view, best be understood with reference to the slaveholding past, as constituting a project of white supremacy for the post-emancipation future.⁵

One hundred years later, in Brazil, the link between dignity and slavery has re-emerged in jurisprudence and in a social movement. Forms of highly constrained and degrading labour, stimulated in part by westward expansion and in part by new forms of export agriculture and the deregulation of private enterprise, are now increasingly referred to as constituting *trabalho escravo*, slave labour. To characterize contemporary labour practices as 'slavery' has involved severing the term 'slavery' from legally authorized ownership. It

Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA, Harvard University Press, 1985), 128–30.

⁴ Christopher McCrudden has pointed out that the specific meanings imputed to the term human rights are necessarily local, even if the larger concept often implies universality. Christopher McCrudden, discussion, Conference on Law and Human Rights in Global History, University of Michigan, April 2012. The same could be said of the concept of dignity.

⁵ For a subtle essay on the process of 'marking', see Thomas C. Holt, 'Marking, race-making, and the writing of history', *American Historical Review* 100 (February 1995), 1–20.

has also required moving beyond the question of consent, since debt rather than mere force often serves as a key mechanism of control. Those charged with investigating and penalizing such labour practices increasingly invoke (among other things) the guarantee of dignity written into the 1988 Brazilian constitution. The link to historical experiences of nineteenth-century slavery thus passes through the concept of human dignity, closing the obvious gap in time and space that separates the chattel slavery that was abolished in 1888 from the rural labour processes that have come to be identified as contemporary slavery.

Although both the nineteenth-century Louisiana experience and the contemporary Brazilian process highlight the relationship between the concept of 'dignity' and that of 'slavery', the lines of interpretation and reinterpretation go in opposite direction in the two cases. In post-1862 Louisiana, an awareness of the slave past made salient the affront to dignity contained in what might otherwise seem to be mere customary modes of allocating seats on trains and in theatres. In contemporary Brazil, specific working conditions have come to be seen as in themselves an assault on human dignity—often because they include actions that assimilate human beings to animals, or prevent workers from leaving the property of the employer. For prosecutors, in turn, these practices become indicia of the presence of legally prohibited *trabalho escravo* (slave labour) or *trabalho em condições análogas às de escravo* (labour in conditions analogous to those of slavery). The ancient term 'slavery' has thus been brought back into wide usage through its link to the more recent term 'dignity', making it possible to give a specific name to a perceived harm.

Louisiana, 1862–96

Although by the mid-nineteenth century chattel slavery had been abolished in many jurisdictions in the Americas (including Haiti, most of the new Latin American republics, the French Caribbean colonies, the British Caribbean, and many northern states of the USA), it nonetheless remained central to the economies of Cuba, Brazil, and the southern states of the USA. The sharp conflict between the perceived security needs of the slaveholding states and a growing abolitionism stimulated rigorous restrictions on the public discussion of race and slavery, and led to a multiplication of laws stigmatizing and constraining not only slaves but also free persons of colour. Claims by free persons of colour to individual dignity and voice would run directly against

long-standing prohibitions on the fomenting of discontent that might imperil slavery itself.⁶

The texts of France's 1848 Revolution, including the decrees of abolition, nonetheless found an audience deep in the Gulf South. A substantial population of men and women in the city of New Orleans spoke French and English, a legacy both of the city's French colonial background and of the arrival of thousands of immigrants from France and from the Francophone Caribbean during the first half of the nineteenth century. The 1848 French texts offered a powerful invocation of abolition, human dignity, broad citizenship for freed people, and an open embrace of what the French government itself designated as 'social equality'.⁷ Living in a slaveholding metropolis, free persons of colour in New Orleans were obliged to show great discretion as they developed their own political thought, but these ingredients were now within reach for those who chose to adopt or adapt them.⁸

Once Union forces occupied the city of New Orleans in April 1862, the questions of abolition, equal rights, and an expanded suffrage became subject to wide debate. Although the federal government had uttered no definitive judgement on the future of the institution of slavery, with the issuance of the preliminary and then the definitive Emancipation Proclamation, the direction of change was clear. Each further advance by Union forces would now bring formal freedom to those who had been held as slaves in Confederate territory.

Into the newly opened space of public discussion that had emerged under Union occupation came a group of activist men of colour who founded a French-language newspaper which they titled *L'Union*, aiming at a readership among the Afro-Creole men and women of colour who formed the backbone of the city's artisanal classes, particularly in the building trades and cigar-making.⁹ The editors quickly began enunciating a strong defence of equal rights, drawing freely on the figures and language of the French 1848ers.

⁶ On struggles in the US Congress over the public expression of abolitionism, and over the right of free persons of colour to petition the Congress, see William Lee Miller, *Arguing About Slavery: John Quincy Adams and the Great Battle in the United States Congress* (New York, Random House, 1995). Statutes in Louisiana criminalized any action or speech tending to encourage discontent among free persons of colour. See the discussion in Rebecca J. Scott and Jean M. Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA, Harvard University Press, 2012), 76.

⁷ On reactions in New Orleans to the events of 1848 in France, see Caryn Cossé Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718–1868* (Baton Rouge, Louisiana State University Press, 1997), 160–86.

⁸ There was, of course, no necessary relationship between one's colour category and one's politics, and some free persons of colour were deeply involved with slavery itself. It was nonetheless from the community of free persons of colour that much of the political thought of Louisiana's Reconstruction era emerged. See Scott and Hébrard, *Freedom Papers*, chapters 6 and 7.

⁹ On the long-standing traditions of Afro-Creole activism, see Bell, *Revolution*.

Their first evocation of the concept of dignity appeared within a matter of weeks. In a stirring essay titled 'La Liberté', an author who signed his name F. B***** quoted the poet Alphonse de Lamartine on liberty, and applied the message specifically to the question of the hour: the abolition of slavery and the equality of men. To deny liberty, the author insisted, was to deny all grandeur and dignity to man. His essay echoed the 1848ers' linking of slavery to the loss of free will, and of abolition to human dignity.¹⁰

The Afro-Creole activists of New Orleans exhorted the nation to go much further than the president's Proclamation, and to abolish slavery entirely. The distinction between emancipation as an act of military necessity (as Lincoln had necessarily framed it) and freedom as a fundamental right (as the editors of *L'Union* would see it) was crucial for tens of thousands of residents of the state of Louisiana. Under the terms of the Proclamation, slavery would be abolished in territory deemed to be in rebellion, but could continue to exist in areas already under Union control. New Orleans and the sugar parishes of the state's bayou country were indeed under Union control in January 1863, hence exempt from the formal effects of the Proclamation.

The logic that lay behind the limits on the Proclamation was complex, and included Lincoln's concerns about the boundaries of executive power and the nature of his authority as a wartime commander-in-chief. Permanently destroying 'property'—for it seemed that such was the effect of declaring slaves to be henceforward and forever free—raised serious questions under the laws of war as previously understood, laws that seemed only to permit confiscation for the duration of the hostilities.¹¹ For the Afro-Creole radicals who took the text of 1848 as their model, by contrast, the claim was simple: slavery was by its nature a direct affront to human dignity, and could not be allowed to continue in a self-respecting republic.¹²

One thinker whose writings appealed strongly to the editors of *L'Union* was Eugène Pelletan, a charismatic French journalist and 1848er who had directly addressed the question of slavery. In early April 1863, *L'Union* printed multiple excerpts from Pelletan's pamphlet *Adresse au roi Coton* ('Address to King Cotton'). The text provided Francophone readers with a brief history that contrasted the continuance of slavery in the United States

¹⁰ See 'La Liberté', signed F. B*****, *L'Union* (New Orleans), 18 October 1862, 1. It seems likely that the author was the eloquent activist François Boisdoré.

¹¹ On the connection of the Proclamation to the Laws of War, see the analysis in chapter 7 of John Witt, *Lincoln's Code: The Laws of War in American History* (New York, Free Press, 2012).

¹² On the politics of the newspaper, see the account by a Belgian 1848er who had collaborated on it: Jean-Charles Houzeau, 'Le journal noir, aux Etats-Unis, de 1863 à 1870 (1)', *Revue de Belgique* 11 (1872), 5–28.

with a stirring account of the abolition of slavery by the French republicans in 1848. In that summary, Pelletan emphasized the Republic's 'tendresse pour la dignité humaine'—its careful concern for human dignity—in order to explain the context of abolition.¹³

In the months after the federal Emancipation Proclamation of 1863, the practical effects of Union occupation continued to undermine the social relations of slavery in Louisiana, and the activists put increasing pressure on the Union high command to cease recognizing any property rights in persons.¹⁴ The rapid breakdown of slavery in turn nourished a growing activism. In July 1863, *L'Union* collaborated with the recruitment of a regiment of men of colour, whose service was needed to defend the city against a possible Confederate attack. Questions of honour, dignity, equal rights, and patriotism were fused as the various leaders of the activist community assembled in Economy Hall and called their brothers to arms.¹⁵

A regiment was quickly assembled, drawing both on free men of colour and on men whose status as slave or free was by this point indeterminate. For the leaders who proposed to assume officer status in the regiment, recruitment provided an occasion on which to fuse the bedrock claim to dignity and universal human rights—'les droits qui appartiennent à tous les hommes' ('the rights which belong to all men')—with an expansive claim to honour and respect as soldiers. Even for mere privates, it offered the possibility of fighting directly against the Confederacy, and of making it clear that they were willing to perform the duties of a citizenship that they believed was already theirs by right.¹⁶

¹³ On Pelletan, see chapter 4 of Sudhir Hazareesingh, *Intellectual Founders of the Republic: Five Studies in Nineteenth-Century French Republican Political Thought* (Oxford, Oxford University Press, 2001). The 'Adresse au Roi Coton', including the quoted phrase, appears in *L'Union* (New Orleans) on 11 April 1863.

¹⁴ On slavery in Louisiana in these months see Rebecca J. Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery* (Cambridge, MA, Harvard University Press, 2005), chapter 2.

¹⁵ The account of the meeting at Economy Hall appears in 'Assemblée à la Salle d'Economie', *L'Union*, 30 June 1863. Paul Trévigne referred specifically to the *dignité* of those there assembled.

¹⁶ The phrase is from the speech by Anthony Fernandez reported in 'Assemblée', cited above. This essay is not the place to try to disentangle claims to dignity from claims to honor and respect. (On this question see Jeremy Waldron, *Dignity, Rank, and Rights*, ed. Meir Dan-Cohen (Oxford, Oxford University Press, 2012), including the response by Don Herzog.) It may be enough for our purposes to notice that earlier in the war, some men of colour in New Orleans had thought that their honour actually required volunteering for Confederate service, lest they be thought cowardly and unpatriotic. Needless to say, such service (generally brief and unarmed) did not earn from the Confederates recognition of the dignity of persons of colour more generally. Many of these soldiers subsequently joined Union units. See Justin Nystrom, *New Orleans after the Civil War: Race, Politics, and a New Birth of Freedom* (Baltimore, MD, Johns Hopkins University Press, 2010), chapter 1.

Soon the risks of retaliation against claims of this kind became quite clear. The very sight of men of colour in uniform provoked conflicts on public transportation, as both pro-Confederate townspeople and unsympathetic white Union soldiers acted to expel the offending passengers. Most of the members of the Union high command, moreover, were not ready to see men of colour as commissioned officers. General Nathaniel Banks moved to force the original captains from their posts.¹⁷

The results were complex. For some individual men of colour, the affronts to personal honour and dignity imposed by the Union high command and by many in the white population of the city were simply intolerable. Lieutenant Joseph Tinchant, who had helped to recruit a company of the 6th Louisiana Volunteers, was by 1864 ready to take his distance from the struggle. He gathered his family, and began to plan to join two of his brothers in Mexico, where he could try his hand at trade in a country that enforced no colour bar.¹⁸

For Joseph Tinchant's younger brother Édouard, by contrast, the affronts were a stimulus to further action. Édouard, who had served as a private in that same regiment, penned a vigorous call to his fellow 'sons of Africa' to support the struggle to end slavery once and for all, and to resist all such affronts on public transportation. In the course of these battles over access to public space, the concept of equal rights expanded beyond civil and political rights to encompass what would soon come to be called 'public rights', including the right to respectful and equal treatment in all places of public resort, without discrimination or separation on the grounds of colour.¹⁹

This right to such equal treatment was a radical demand, and one that its enemies portrayed as an unacceptable pursuit of 'social equality'—a polemical term freighted with associations of sexuality and promiscuous association. Édouard Tinchant, however, combined ideals of personal honour as a veteran with claims to formal respect for all. Despite the disrespect shown by Union general Nathaniel Banks to officers of colour, Private Édouard Tinchant, who had himself been shoved off a streetcar, could use the military structure for his own purposes, appealing successfully to his commanding officer to insist that a man in the Union uniform, whether he was white or black, should not

¹⁷ See the discussion of Banks's policy in James G. Hollandsworth, Jr, *The Louisiana Native Guards: The Black Military Experience during the Civil War* (Baton Rouge, Louisiana State University Press, 1995), 43–4.

¹⁸ See Scott and Hébrard, *Freedom Papers*, chapters 6–8.

¹⁹ See Édouard Tinchant, 'Communiqué', *La Tribune de la Nouvelle-Orléans*, 21 July 1864. On the construct of 'public rights' see Rebecca J. Scott, 'Public rights, social equality, and the conceptual roots of the Plessy challenge', *Michigan Law Review* 106 (March 2008), 777–804.

be subjected to the disrespect shown by the white sergeant who had delivered the shove.²⁰

By the autumn of 1864, the newspaper *L'Union* had been reconfigured into a larger-circulation bilingual daily paper, the New Orleans *Tribune*. Edited by the local activist Paul Trévigne, in collaboration with a Belgian émigré, Jean-Charles Houzeau, the *Tribune* spoke to a wide audience, conveying the concerns of both the long-free and the newly freed in Louisiana, and from there all the way to Washington. With the end of the war, and the extension of the vote to men of colour in Louisiana by congressional action, the activist community could go further still. Under the broad suffrage conferred by the federal Reconstruction Acts, elections took place in 1867 to elect delegates to a Constitutional Convention that would produce a document under which Louisiana could rejoin the Union.

Reflecting both the newly cross-racial electorate, and the careful electoral strategy of the activists themselves, the resulting body of delegates was composed in nearly equal numbers of men described as white and men described as black or coloured. They drafted a radical constitution, one whose Bill of Rights guaranteed the same 'civil, political and public rights' to all citizens, and whose Article 13 asserted equal rights to access to public transportation and all businesses offering service to the public under state or municipal licence.²¹

For a decade, law in the state was formally governed by this Constitution and subsequent enabling legislation. The link between public rights and dignity became explicit during the debate on the provisions of the enforcement statutes. The editors of the *Tribune* insisted that punitive as well as actual damages should be imposed on those who practised forced segregation, noting that 'the real injury lies in the *indignity* done to the passenger'.²² A significant number of lawsuits were indeed brought and won under Article Thirteen and the subsequent enabling statutes that had established a specific cause of action in cases of refusal of service on the basis of colour.²³

Louisiana's experiment in challenging these indignities met with opposition both in the US Supreme Court and in the local Democratic Party. By

²⁰ Édouard Tinchant, 'Communiqué'.

²¹ The debates are conveyed, in part, in *Official Journal of the Proceedings of the Convention for Framing a Constitution for the State of Louisiana* (New Orleans, LA, J. B. Roudanez, 1867–8). Further information appears in *La Tribune* during the weeks that the convention was in session.

²² Emphasis in the original. 'The bill to enforce Article Thirteen', *The New Orleans Tribune* (12 February 1869), 1.

²³ For cases adjudicated in the courts of first instance, see most recently Beth Kressel, 'Creating "what might have been a fuss": the many faces of equal public rights in reconstruction-era Louisiana', in *Louisiana History*, forthcoming.

1879, the ascent of white-supremacist forces in the state had reversed many of the gains of the 1860s and early 1870s, and the *Tribune* had closed its doors. The activists of the *Tribune* nonetheless remained an inspiration to the next generation, and their principled claims of equal rights in the name of liberty and dignity constituted a bedrock on which subsequent campaigns would be built.²⁴

White supremacists (and they openly identified themselves as such) had their own memories of the period of Reconstruction, which they saw as having violated their inherent right to rule over the state's residents of African descent. Once the threat of federal reintervention had passed, Louisiana's Democratic Party moved to enact explicit segregationist statutes. In 1891, they achieved passage of a state law requiring the provision of 'equal but separate' accommodations on trains, and the mandatory sending of each passenger to the car in which he or she 'belonged' on the basis of race and colour.²⁵

A few Afro-Creole veterans of the Reconstruction-era struggles promptly joined forces with a larger group of younger activists to form the Citizens' Committee for the Repeal of the Separate Car Act. Their goal was to challenge the constitutionality of the new law. The strategy that the committee chose was to combine mass meetings and popular mobilization with the development of legal test cases, one by Daniel Desdunes to test the law with reference to interstate travel, and another by Homer Plessy to test the law with reference to intrastate travel.²⁶

The story of the committee's legal challenges is well known, having reached the US Supreme Court as the case of *Plessy v. Ferguson*. The committee's claims to equal access to public transportation were once again portrayed by their opponents as efforts to use the power of the state to gain an unearned 'social equality', even though as a matter of fact the committee was now seeking to fend off, rather than call for, state action. In response, the committee insisted that dignified treatment in the public sphere was a matter of equal citizenship, not social presumption.²⁷

The lead attorney for Homer Plessy, Albion W. Tourgée, penned one after another eloquent defence of equality in the face of what he described as the 'spirit of caste'. Tourgée counterposed forced segregation with 'that divine

²⁴ The US Supreme Court ruled Louisiana's anti-discrimination statute unconstitutional insofar as it interfered with the commerce clause of the US Constitution, to which the court on this occasion gave a surprisingly broad reading. See *Hall v. DeCuir* 95 U.S. 485 (1877).

²⁵ On the circumstances of the passage of the law, see Keith Weldon Medley, *We as Freemen: Plessy v. Ferguson* (Gretna, LA, Pelican Publishing, 2003).

²⁶ For discussions of the process by which the case of *Plessy v. Ferguson* emerged, see Medley, *We as Freemen*.

²⁷ The nature of the committee and of its arguments is discussed in Scott, 'Public rights'.

equality which prescribe[s] one rule of Christian conduct for all'. Implicitly invoking dignity by speaking of its opposite, humiliation, Tourgée defined the core evil of slavery as 'the degradation of manhood and the legalized defilement of womanhood'.²⁸

Tourgée emphasized the link between the campaign for equal treatment and the refusal of distinctions established under slavery, referring to the Separate Car Act's 'two grand divisions of humanity'—'white' and 'coloured'—as 'a new ethnology by prejudice based on the lessons of slavery'.²⁹ Alongside the formal reasoning laid out by the attorneys and organizers in the case, there was also a bedrock of local, vernacular understandings of dignity on which that reasoning rested. It is not easy to capture the thoughts of Alice Hampton, a schoolteacher in the Donaldsonville Academy who raised money to support the legal challenge, or of Pierre Carmouche, a blacksmith from Ascension Parish who contributed on behalf of a local True Friends Association. But it is clear that support for the legal challenge to dignitary offences went well beyond the urban activists who had organized the committee.³⁰ Sometimes we can even catch a glimpse of the concepts with which persons of very modest means analysed their own predicaments. One routine legal document provides a hint of the wider adherence to the construct of dignity. Louis Martinet, a key figure in the committee, earned his living as a public notary, operating in daily dialogue with those among his neighbours who sought his services to give legal form to their transactions. The documents that he drafted for those neighbours have been preserved in his ledgers, reflecting some of the ways in which women and men from the artisan and working-class households of New Orleans sought to fend off the humiliations of a society in which the theory and practice of white supremacy had rapidly gained ascendance.³¹

On 3 April 1890, a small group of women came to Martinet to draft and record the founding document for a mutual aid association that they wished to constitute. They proposed to join together to provide mutual aid in sickness,

²⁸ These phrases come from the pamphlet *The Violation of a Constitutional Right*, published by Authority of the Citizens' Committee (New Orleans, LA, The Crusader Print, 1893), 20, 22. The richness of Tourgée's thought has been revealed by the recent work of Mark Elliott, including *Color-Blind Justice: Albion Tourgée and the Quest for Racial Equality from the Civil War to Plessy v Ferguson* (New York, Oxford University Press, 2006).

²⁹ The quotation is from Tourgée's oral argument, reprinted in Mark Elliott and John David Smith, *Undaunted Radical: The Selected Writings and Speeches of Albion W. Tourgée* (Baton Rouge, Louisiana State University Press, 2010), 329.

³⁰ For Alice Hampton, see 'Young lady's noble work for the stocking', from the *Crusader* (c. 12–20 July 1895), clipping in *Crusader Clippings File*, Special Collections, Library of Xavier University of New Orleans. On Carmouche, see Scott, *Degrees of Freedom*, 90–1.

³¹ These papers are held in the New Orleans Notarial Archives Research Center (NONARC).

and assistance with the costs of a proper burial in case of death. They called the society *Dignité*, expressing their sense of the multiple risks to their own dignity in a society only a few decades removed from slavery. Indeed, each act of the society was to be marked with the word '*Dignité*', from a stamp that they pledged to have made for that purpose.³²

In these uses of the term 'dignity', and the associated efforts to fend off humiliation, we can see something of the conceptual universe of men and women who had emerged from a condition of vulnerability, some of them as slaves, others as free persons of colour with sharply limited civil rights. Both the formal status and the practical conditions of slaves and of *gens de couleur libres* had often been defined by humiliations large and small. Part of the meaning of freedom, then, was the replacement of these humiliations with a claim to dignity, in the sense of treatment in the public sphere as bearers of rights and persons worthy of respect.

We might observe that in this context the term 'dignity' was used to reject practices whose logic emerged directly from that of a slaveholding society, encompassing both the exclusion of men and women of colour from public life, and the exclusion of such men and women from various forms of public transportation and lodging. Not confined to the sphere of politics, the word '*dignité*' as used by the women who ventured to Notary Martinet's office also reflected the hope that through mutual aid one might escape some of the humiliations of poverty, particularly at the moment of death.

Written into the 1868 state constitution (and expunged in its 1879 successor), the entitlement to 'public rights' had rested on the idea of an equal claim to dignity in the public sphere, picking out certain actions and designating them as impermissible. 'Public rights' thus provided an alternative to the familiar triad of civil, political, and *social* rights, a framing that had tended to weaken the force of dignitary claims by associating them with the sphere of social rights or, more ominously, with 'social equality', the label given to assertions portrayed as unworthy of any legal recognition. Through conjoined efforts in formal politics and in informal mutual association in post-slavery Louisiana, 'dignity' had taken its place in public debate as a term carrying descriptive weight and meaning, capable of linking features of lived experience with a definite, diagnostic, normative concept.

³² 'Chartre '*La Dignité*' Société D'Assistance Mutuelle', 3 October 1890, Act no. 6, vol. 1, 1890, Notarial Acts of Louis Martinet, NONARC.

Brazil, 1970–2012

In the last decades, there has emerged a new variation on the association of the term ‘dignity’ with a repudiation of the powers once exercised over those held as slaves. Brazil was, famously, the last country in the Americas to abolish chattel slavery, finally terminating the ownership of property in men and women in 1888. One hundred years later, upon the emergence of democracy following an extended period of dictatorship, Brazil’s Constituent Assembly in 1987–8 drafted a constitution in which commitment to ‘the dignity of the human person’ figures as the third fundamental principle of the state, coming after sovereignty and citizenship.³³

If we were to attempt a strict constitutional history, we would likely find that the invocation of ‘dignity’ in the Brazilian text owes more to the German *Grundgesetz* of 1949 than to a memory of slavery.³⁴ By offering up this powerful normative term alongside a list of workers’ rights and landowners’ obligations, however, the Constitution opened a door to a new way of framing the debate over conditions of labour. This re-framing of the critique of working conditions, moreover, pre-dated the drafting of the Constitution, though it accelerated after its adoption.

In 1940, the government of President Getúlio Vargas had written into the penal code an explicit reference to slavery, albeit modified by the phrase ‘analogous to’, presumably borrowed from the language of the League of Nations and the International Labour Organization. Article 149 of the 1940 Penal Code read: ‘To reduce someone to a condition analogous to that of a slave. Penalty: Imprisonment for from two to eight years.’ The new post-1988 Constitutional regime, then, could already count on a long-standing statutory basis for the prosecution of labour practices ‘analogous to’ slavery. As the incidence of sharply degrading labour conditions become more widely recognized in the 1990s and early 2000s, Article 149 of the Penal Code was modified to provide a clarification of the phrase ‘labour analogous to that of a slave’: ‘either to submit someone to forced labour or to *jornadas exaustivas* [debilitating work days], or to subject a person to degrading working conditions, or to restrict by whatever means a person’s mobility on ground of debt contracted with the employer or employer’s representative’.³⁵

³³ For the full text of the Constitution, with indication of subsequent amendments, see the official site of the Brazilian state: http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm.

³⁴ I am indebted to Cristiano Paixão of the Faculty of Law of the University of Brasilia for this suggestion. Personal communication, 21 May 2012.

³⁵ I am drawing here on the careful discussion of the process of ‘resignification’ of the term *trabalho escravo* offered by Ângela de Castro Gómez in ‘Trabalho análogo a de escravo: construindo um prob-

Already in the 1970s, during the dictatorship, social justice missions of the Catholic Church had taken a leading role in the investigation of farms and other isolated locales in which employers were suspected of subjecting workers to conditions constituting or analogous to slavery.³⁶ After the end of the dictatorship, successive Brazilian governments—including those of Itamar Franco, Fernando Henrique Cardoso, Luis Inácio Lula da Silva, and Dilma Rousseff—in turn supported efforts to enforce the federal regulations through the imposition of penalties on offending employers.

In the mid-1990s, the campaign against contemporary slavery took on greater formality with the formation of what were called Mobile Inspection Groups, organized under the auspices of the Ministry of Labour and Employment in collaboration with the Public Ministry of Labour. When they receive credible information suggesting the possibility of conditions of *trabalho escravo* (slave labour), inspectors from the Ministry of Labour and Employment and attorneys from the Public Ministry of Labour are deployed to reach the site before evidence can be suppressed.³⁷ Given the physical risks to these teams, they are now generally accompanied by members of the Federal Police. The ‘mobile groups’ are authorized to take immediate legal action leading to the liberation of workers held in conditions ‘analogous to slavery’, and the attorneys can bring charges against the offending employers before the labour courts.³⁸

The government has also compiled and made public a *lista suja* (dirty list), naming enterprises that have been found to be employing *trabalho escravo*. The list provides a daunting inventory of cane growers, charcoal manufacturers, cattle raisers, and others. The *lista suja* itself, by associating specific companies and their owners with the word ‘slavery’, also operates as a market-based deterrent, enabling non-governmental organizations to call on other enterprises to refuse to do business with the offending companies.³⁹

The workers liberated each year by the mobile groups number in the thousands. Those engaged in the campaign against *trabalho escravo* freely use the

lema’, *História Oral* 11 (January–December 2008), 11–41.

³⁶ A detailed anthropological study of the phenomenon of contemporary debt labour, carried out by a scholar with a background of years of activism in this domain, is Ricardo Rezende Figueira, *Pisando Fora da Própria Sombra: A Escravidão por Dívida no Brasil Contemporâneo* (Rio de Janeiro, Civilização Brasileira, 2004).

³⁷ For a review of policies and procedures, see the *Manual de combate ao trabalho em condições análogas às de escravo* (Brasília, Ministério do Trabalho e Emprego, 2012).

³⁸ Updated information on the campaign is available from the website of the Ministério Público do Trabalho (www.mpt.gov.br/) and from the site <http://trabalhoescravo.org.br>.

³⁹ The non-governmental organization Repórter Brasil provides a searchable inventory of enterprises on the list: <http://www.reporterbrasil.com.br/listasuja/resultado.php>.

term dignity, and invoke workers' rights to the dignity of being issued official identification papers and of having labour contracts properly formalized. Indeed, the acts of liberation are often accompanied by the conferral on the spot of a *carteira*, the government-issued booklet in which are recorded terms of employment and identifying information.⁴⁰

The meaning of 'dignity' in this context seems to be double. First, it captures a dimension of human dignity that has been familiar for centuries, one that invokes a key moral line between human beings and animals.⁴¹ Certain conditions of work are seen as 'humiliating and degrading' precisely because they blur the line between humans and animals, subjecting men, women, and children to conditions that are essentially those of farm animals—obliging them to sleep on dirt floors, or directly in the field under plastic, and providing only untreated river water to drink. (This connection between the phrase 'humiliating and degrading' and the concept of human dignity is one that is also found elsewhere, notably in the 1949 Geneva Convention on prisoners of war, which prohibits 'outrages upon personal dignity, in particular humiliating and degrading treatment'.)⁴²

Second, the phrase *trabalho escravo* anchors this dimension of human dignity in a metaphor that has a powerful historical resonance in the country that was the last in the nineteenth-century Americas to abolish slavery, and whose population is now categorized as majority black and brown. The first line of the preface to the classic 1883 abolitionist text by Joaquim Nabuco, *O Abolicionismo*, reads: 'In our country there already exists, fortunately,

⁴⁰ One prosecutor managed recently to obtain a court settlement obliging an offending company to pay for the cost of running in the local newspaper large announcements that emphasize each worker's right to dignity, and to have a *carteira* with his or her terms of labour properly recorded. (From interviews by the author at the meetings of the MPT attorneys in Brasília, November 2012.)

⁴¹ Formal jurisprudence on slavery in Brazil, drawing on Roman law, used the term *dignidade humana* in addressing the question of the rights over children born to an enslaved woman whose usufruct had been conferred on someone other than the owner. The great jurist Perdigão Malheiro held that such children were not in fact 'fruits' of their mother, to be reaped by the holder of the usufruct, but should instead remain property of the owner. The reason to refuse ownership of the children to the usufructuary was, in his view, that conferring it would be a violation of human dignity, for it would treat the mother as if she were a mare or other animal. This policy and this reasoning, however, conferred no rights on either the mother or the child; it simply allocated ownership rights as between contending third parties. See Agostinho Marques Perdigão Malheiro, *A Escravidão no Brasil: Ensaio Histórico-Jurídico-Social*, part 1, section 70 (Rio de Janeiro, Typographia Nacional, 1866), 86–7. I thank Mariana Dias Paes, a master's student in law at the University of São Paulo, for having spotted this reference.

⁴² Detailed information on specific cases can be found on the websites <http://trabalhoescravo.org.br/> and <http://www.reporterbrasil.org.br/>. These phrases in the Geneva Convention are analysed, for a somewhat different purpose, in Michael Rosen, *Dignity: Its History and Meaning* (Cambridge, MA, Harvard University Press, 2012), 59.

a certain national consciousness—still in formation, to be sure—which is introducing into our legislation the element of human dignity, and for which slavery, although inherited from the past, is a true mark of Cain that Brazil carries on its forehead.⁴³ Those subjected to humiliating and degrading labour practices in the twenty-first century are not defined by colour, but the unacceptability of their exploitation may be particularly vivid to those for whom the social memory of historical slavery is strongest.⁴⁴

The connection between *trabalho escravo* and affronts to human dignity has been rendered particularly vivid in a prizewinning study by Ricardo Rezende Figueira, who served as a Catholic priest for a decade in the rural state of Pará before initiating his doctoral work in anthropology and sociology. His massively documented study, *Pisando Fora da Propria Sombra* (*Stepping outside One's Own Shadow*), is built on interviews with workers, labour recruiters, family members left behind, and the employers themselves. Resolutely unromantic, and at the same time deeply principled, Figueira carefully analyses the ways in which individuals experience the labour conditions associated with debt servitude. He draws particular attention to the moral pressure that is imposed upon indebted workers to force them to submit to degrading conditions, moral pressure that is in turn often backed up by direct threats of violence.⁴⁵

Figueira provides a detailed description of the lack of sanitary facilities, the constant debilitating labour, the risk and reality of injury or death, and the moments of specific humiliation, including the refusal of medical care, the blocking of all exits from the place of labour, and, in one particularly vivid episode, an employer's refusal to allow a dying worker to return to his family. Like the women in New Orleans in 1890 who joined together to assure that they would have the resources for a proper funeral, the workers on this farm perceived the refusal of decent consideration to a dying person as a violation of fundamental human dignity. They may previously have believed themselves to be morally bound by the debts that the system was designed to perpetuate, and by their promise to earn something before returning to their families. But the indignity imposed upon their fellow worker triggered protest

⁴³ Joaquim Nabuco de Araújo, *O Abolicionismo* (1883; reprint São Paulo, Publifolha, 2000). I thank Keila Grinberg for having called this quotation to my attention. The actual dynamics of abolition were in operation well before Nabuco's book appeared, and involved many actors beside himself, as several authors (including Grinberg) have argued. See, most recently, Elciene Azevedo, *O Direito dos Escravos: Lutas Jurídicas e Abolicionismo na Província de São Paulo* (Campinas, São Paulo, Editora da Unicamp, 2010).

⁴⁴ This connection seemed clear in the debates on the floor of the Chamber of Deputies on 22 May 2012, broadcast on the television channel Câmara.

⁴⁵ Figueira, *Pisando Fora*.

against the underlying dehumanization inherent in the larger labour practices in which they had become entangled.⁴⁶

The link between dignity as a moral precept and dignity as a value underlying the protection the state owes to those under its jurisdiction emerges quite clearly in the context of current debates and prosecutions in Brazil. The work of members of the Catholic Church, and of the teams from the two labour ministries, brings in an alternative source of authority that can challenge local landowners and the local authorities with whom landowners are often in close collaboration. The 'mobile teams' of inspectors and attorneys have in the process built on their experience in the field in order to transform the phrase 'degrading and humiliating labour' from an apparently unspecified normative statement into a legally recognizable category of behaviour that the state should act to halt.⁴⁷

The issue of *trabalho escravo* surged into public view in Brazil in May 2012, when a long-standing proposal for an amendment to the federal constitution came up for a vote in the Chamber of Deputies. The proposed constitutional amendment (referred to as PEC 438/2001) would impose a penalty of expropriation of property on employers convicted of using *trabalho escravo*. Advocates of the amendment mobilized broad support, but faced delaying tactics from what was referred to as the *bancada ruralista*, a group of deputies representing landowners' interests who opposed the amendment in the name of the absolute right of property. These deputies argued that the terms of the proposed amendment were impermissibly vague, and they evoked the risk of a rogue prosecutor who would seize land on false pretences.⁴⁸

In the course of the nationally televised debates, the word 'dignity' resonated again and again in the speeches of supporters of the amendment. In the final vote in the Chamber, on 22 May, opponents initially held out by staying off the floor to block the achievement of a quorum. At the last minute, the necessary votes were obtained to pass the amendment, but only through a promise from the government that a serious discussion yielding a proposal for 'infra-constitutional' legislation would be forthcoming to clarify the language of the amendment itself. The matter then went to the Brazilian Senate.⁴⁹

⁴⁶ Figueira, *Pisando Fora*, 356.

⁴⁷ Ângela de Castro Gómez, in 'Trabalho análogo', emphasizes the role of these practical efforts in helping to refine the definition of *trabalho escravo*.

⁴⁸ For the official record of the long legislative history of the amendment, see <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=36162>.

⁴⁹ The transcript of the debates can be consulted at camara.gov.br, in the Diário of the Câmara for 23 May 2012, beginning on 18181.

In an insightful recent essay on the history of the concept of *trabalho escravo* in Brazil, the historian Ângela de Castro Gómez has traced in detail the way in which the term 'slave labour' has come to be 're-signified', to use her phrase. The new usage, she suggests, is metaphorical, but metaphorical in the strongest sense, giving meaning to one thing by drawing attention to the way in which it is like something quite different. The worker subjected to *trabalho escravo*, Gómez concludes, is referred to as a slave precisely in order to say that he or she is *not* a slave, for slavery cannot by law exist in Brazil. The practice of *trabalho escravo*, and its inherent affront to human dignity, is thus named in order to assist in its extinction. The Afro-Creole activists of nineteenth-century Louisiana, who a century earlier had combined their equal rights litigation with a commitment to the dignity of labour, would have understood.⁵⁰

In these two periods—across two continents and two centuries—the term 'dignity' became a key link between specific experiences of exploitation or humiliation, and a normative diagnosis that evoked the previous institution of chattel slavery. Far from being a term confined to abstract political philosophy, it thus became a vital part of how people saw the harms and hopes of their own lives.

⁵⁰ On the overlap between the supporters of the Plessy challenge and the organizers of the Knights of Labor in Louisiana, see Scott, *Degrees of Freedom*, 78, 90, 91.