



Review of *Liberalismo Jurídico: uma discussão sobre Direito e escravidão no Brasil oitocentista*
(Legal Liberalism: A Discussion of Law and Slavery in Nineteenth-Century Brazil).
Thaís Duarte. 1st ed. Mackenzie University Press, 2025

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Thaís Duarte Zappellini's *Liberalismo Jurídico: uma discussão sobre Direito e escravidão do Brasil oitocentista* (Legal Liberalism: A Discussion of Law and Slavery in Nineteenth-Century Brazil) (2025) is based on the author's doctoral dissertation, defended in the Stricto Sensu Graduate Program in Political and Economic Law at Mackenzie Presbyterian University, Brazil. The dissertation received the institution's Best Dissertation Award in 2022 for its contributions to social, political, economic, and legal discussions on slavery in Brazil and Brazilian constitutional theory.

Zappellini has served as an associate researcher at the University of Illinois Urbana-Champaign (UIUC) since 2023, where she continues to expand upon the arguments presented in the book. Her work examines the consolidation of a pact against enslaved people, a system organized and rationalized by groups in positions of power in nineteenth-century Brazil.

Brazil's independence in 1822 preserved the country's slave mode of production. At the time of its separation from Portugal, discussions regarding abolition or the establishment of alternative forms of wealth production had little political relevance. However, the

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Brazilian experience demonstrates compatibility between liberalism and slavery. European liberal ideas were adapted locally while assuming specific social and political forms.

Legal Liberalism makes a significant contribution to scholarly debates on this topic. The book would be particularly useful in courses on Political Science, Constitutional Theory, and Brazilian Political Economy, since it examines the legal structures that shaped nineteenth-century Brazil and highlights the continuing legacy of these historical dynamics.

Brazil imported more enslaved people through the transatlantic slave trade than any other country and maintained slavery for nearly four centuries, becoming the last nation in the Americas to abolish the institution.³ Zappellini demonstrates how constitutional history—beginning with the Imperial Constitution of 1824—legitimized the legal status of enslaved people and framed slavery as necessary for national development. The book also illustrates how Brazilian liberalism encompassed both slaveholders and abolitionists⁴ until the early Republic, incorporating white superiority as the logical basis for the Brazilian civilizing pact.

The book is organized into an introduction, five chapters, final considerations, and references. Its theoretical and analytical framework draws on seminal works such as Roberto Schwarz's essay *Misplaced Ideas*, Alfredo Bosi's *Dialética da colonização* (Dialectics of Colonization, studies by Emília Viotti da Costa and Florestan Fernandes, and the article *O pacto de todos contra os escravos no Brasil Imperial* (The Pact of All Against the Slaves in Imperial Brazil) by Julio César Vellozo and Silvio Almeida (2019).

Zappellini states that “the book addresses liberalism in Brazil and how its relationship with slavery was treated by Brazilian law” (Zappellini 2025, 15). She emphasizes that post-1822 Brazil maintained slavery as a cornerstone of the national legal-economic order rather than pursuing abolition. As a result, “Brazilian law emerged from exclusionary foundations and through the mobilization of broad sectors of society against enslaved people, including Brazilian freed people” (Zappellini 2025, 16). Accordingly, the author argues that “the relationship between liberalism and slavery, when viewed from a legal perspective, is central to Brazilian liberalism” (Zappellini 2025, 21).

In the first chapter, “Ideas and Places: Revisiting the Debate of Schwarz and His Contemporaries (*Sobre ideias e lugares: revisitando o debate de Schwarz e seus contemporâneos*)” (Zappellini 2025, 23-72), Zappellini argues that debates about Brazil's independence were shaped by the relationship between law and liberalism. Different political groups shaped competing visions of Brazil according to their specific interests. Zappellini also contends that freedom was associated with individuals recognized as holders of rights, that is, individuals capable of owning property.

³ “Slavery was the cornerstone of the economy, political parties, and aristocratic society. Over the course of nearly three centuries, Brazil imported more enslaved Africans than any other country: 5,848,265 individuals, around 500,000 of whom arrived during the Second Reign” (Alonso 2015, 28).

⁴ Abolitionists were individuals involved politically and socially efforts to end slavery. It is important to note that some abolitionists showed little or no moral concern for Africans and did not consider them members of the post-abolition social order. Others, however, believed that enslaved Africans should be incorporated into a class-based society. This distinction highlights how racial dynamics were reshaped in Brazilian society after the abolition of slavery.

Vellozo and Almeida (2019, 2149) argue that “the consolidation of freedom for a former slave lay in his adherence to slavery as a system, in his transformation into a property owner.” Drawing on Florestan Fernandes, Zappellini (2025, 40) notes that liberalism facilitated Brazil’s political independence while simultaneously reinforcing its economic dependence on Great Britain.

Chapter two, “The Emergence of an Exclusionary Legal Order: Frustrated Heroism and the Consolidation of the Pact Against Enslaved People” (*Nasce um Direito excludente: Heroísmo frustrado e a consolidação do pacto contra as pessoas escravizadas*) (Zappellini 2025, 74-146), contends that liberalism was adopted as a synonym for constitutionalism. In this process, liberalism and law became intertwined in the formation of the Brazilian state, reinforcing the authority of the Emperor.

According to Zappellini, the absence of references to enslaved people in legal texts reveals a deliberate effort to preserve the slave system. José de Alencar, invited to write a work characterizing the Brazilian nation, defended the continuation of slavery. He maintained that Greek civilization had flourished because slavery ultimately exhausted itself within that society and asserted that slavery formed the foundation of the Brazilian Empire. In his view, immediate abolition would lead to civil war,⁵ since slaveholders would resist the loss of their property.⁶

The composition of the Constituent Assembly of 1824 reflected this perspective: “the slaveholding discourse would, in any case, be reproduced and slavery would continue to be consciously and strategically understood by dominant groups as essential to the country’s subsistence” (Zappellini 2025, 91). Enslaved people were legally treated as property and classified as foreigners, thereby excluding them from the group defined by the Constitution as members of the society and of the Empire of Brazil (chapter 1, title 2, article 5) (Brazil, 1823, vol. 5: 10 apud Zappellini 2025, 105). The Constitutional Charter remained in force from March 25, 1824, to November 15, 1889, making it the longest-lasting constitution in Brazilian history.⁷

⁵ José de Alencar argued that slaveholders had the right to react—even violently—if their property (enslaved people) were seized from them.

⁶ *Cartas a favor da escravidão* (Letters in Defense of Slavery) is a collection of seven political texts written in the epistolary genre. José de Alencar published them in France between 1867 and 1868 under the title *Ao imperador: novas cartas políticas de Erasmo* (To the Emperor: New Political Letters of Erasmo, 1867-1868), in opposition to Dom Pedro II and to proposed legislation aimed at abolishing slavery. In one of these letters, Alencar wrote, “I am a monarchist, sir, just as I am a Christian, with fervor and enthusiasm, from the depths of my soul” (Alencar 2008, 52). In his second letter to the emperor, he argued that “whenever it has been necessary to repair a rupture in social relations among peoples, slavery has reappeared in order to fulfill its eminently social mission” (Alencar 2008, 66). Alencar’s view of slavery’s economic importance is clear in the following passage: “Without African slavery and the slave trade that sustained it, America would still today be a vast desert. The greatest revolution in the world since the Flood would have been nothing more than a geographical discovery without immediate importance. The two great powers of the New World—the United States and Brazil—would certainly not exist. The brilliant American civilization, successor to the old European civilization, would still be unborn” (Alencar 2008, 69).

⁷ “From Independence until the abdication of Dom Pedro I in 1831, the period of constitutional organization was marked by intense conflict among three prominent factions: the radical liberals; the so-called authoritarians, defenders of absolute monarchy; and the conciliators, who sought a framework for establishing a constitutional monarchy” (Paim 1998, 50 apud Zappellini 2025, 153). In this sense, “liberalism was in fact seen as a set of sacred and emancipatory ideas that had guided ‘cultured’ and ‘civilized’ nations toward the realm of freedom, where the chosen—property-owning legal subjects—had their place” (Zappellini 2025, 153).

Civil law norms structured the economic and legal order of the slave regime on exclusionary foundations. Likewise, the Land Law of 1850, the Commercial Code of 1850, and the Penal Code of 1830 safeguarded the interests of slaveholding elites and helped sustain slavery, while the emerging society legitimized this system. As Zappellini observes, “the exclusion of ‘subaltern’ groups was institutionalized through law, while rights were recognized through the same legal framework, albeit slowly and in a carefully controlled manner” (Zappellini 2025, 144).⁸ Clóvis Moura characterizes the first phase of Brazilian slavery (lasting until 1850) as one in which “colonial authorities and the slaveholding class used every form of brutality, enforcing despotic laws against enslaved people” (Moura 1988, 5-10).⁹ This was followed by what Moura terms late slavery, when enslaved people began to be viewed from a liberal perspective.

The third chapter, “Silencing Liberalism: Maintenance and Reform of the Legal Order” (*Liberalismo do silenciamento: Manutenção e reforma da ordem jurídica*), argues that although liberal ideas were not adopted in their strictly classical form, they were nonetheless compatible with liberal ideology and incorporated its inherent contradictions—including its relationship with slavery” (Zappellini 2025, 144). Political and economic elites adapted to the presence of the Moderating Power, which structured Brazil’s political order. Zappellini emphasizes that “the state will always be a conservative force, acting to preserve the basic social forms of capitalism, with legality constituting one of the most specific manifestations of capitalist society” (Zappellini 2025, 158).

The book examines the Land Law of 1850, which established criteria for land demarcation and stipulated that public lands could be acquired only through purchase. As Zappellini explains, “the law created a legal basis allowing large landowners to appeal to the government and the courts in order to expand their properties, while smallholders lacking economic and social resources ultimately lost their land” (2025, 168).

The Land Law of 1850 helps explain Brazilian liberalism in a country that remained predominantly agrarian, unlike European societies. The transition to wage labor was facilitated by several factors, including the expansion of urban life and population growth, access to new technologies, and the gradual shift toward industrialization (Zappellini 2025, 174).

In the fourth chapter, “Paths Toward Late-Imperial Liberalism: The Reform Era and the Legal Problem of Slavery” (*Caminhos para o liberalismo do fim do império: Era da reforma e o problema jurídico da escravidão*), Zappellini argues that the Land Law of 1850 paved the way for a conservative political agenda. Major changes occurred during the 1870s, notably with the Law of the Free Womb (1871), strongly opposed by José de Alencar. At

⁸ Civil law treated enslaved people as property, whereas criminal law contained “a number of indications suggesting that the enslaved person was recognized as a person rather than a thing and was, to some extent, treated as a legal person, even if only in order to punish them” (Zappellini 2025, 211).

⁹ “These measures ranged from royal decrees ordering that enslaved people be branded with red-hot irons to legislation authorizing the death penalty, whipping, and the summary execution of rebellious enslaved people ‘without any possibility of appeal.’ At this stage there was no attempt at mediation, and the repressive nature of the legislation was unmistakable. Moreover, these legal and police measures were enforced through an apparatus of brutal yet legally sanctioned repression. Enslaved people’s freedom of movement was almost completely restricted. Stocks, pillories, iron collars, whips, iron masks, chains, shackles, neck rings, and other devices formed a system of torture and humiliation through which the law was enforced as a mechanism of social control” (Moura 1988).

the same time, imperial sovereignty faced increasing pressure from growing demands to suppress illegal slavery, including efforts to combat the internal slave trade.

Drawing on the work of Emília Viotti da Costa, Zappellini (2025, 198) explains that the Law of the Free Womb (1871) initiated a gradual emancipation process by freeing the children born to enslaved women while ensuring that slavery itself would end only gradually. In part, this measure aimed to reassure slaveholders concerned about the loss of their property and their economic interests.

Zappellini (2025, 212) further contends that the Second Reign consolidated Brazil's legal and political order in what she terms estate-based liberalism. In this system, "large landowners who owned enslaved people were full citizens, while small landowners, public officials, merchants, other educated professionals, and poor free men occupied progressively subordinate positions" (Alonso 2002, 59 apud Zappellini 2025, 213).

As Zappellini observes, "liberalism developed in such a way that freedom and authority were not antagonistic concepts but rather functioned as a legal mechanism of the elites" (2025, 213). In chapter five, "An Interpretive Proposal on Legal Liberalism in Brazil" (*Uma proposta interpretativa sobre o liberalismo jurídico no Brasil*), the author revisits her central thesis, arguing that the legal rationality of the Imperial Constitution of 1824 and the close relationship between law and slavery produced a legal order grounded in exclusionary principles, in which authoritarianism remained a persistent feature of political practice (Zappellini 2025, 227).

Liberalism promises individual guarantees through a conceptual separation of state and society. This logic is reflected in the theoretical concepts of the state of nature and civil society, where the contracting individual plays a central role. Within this liberal framework, freedom lies in the ability to enter into contracts with other free individuals. It is expressed not through participation in government but through market exchange among individuals endowed with will and capable of self-determination. The state therefore plays a central role in enforcing contracts and intervenes in civil society to fulfill this function (Zappellini 2025, 232).

The book also highlights the intimate ties between civil law and slavery in Brazil, noting that some intellectuals viewed abolition as necessary for national development.¹⁰ Nevertheless, the slave regime endured until 1888, sustained by powerful political and economic interests and a broad social pact.

The transition from the slave mode of production to capitalism produced new exclusionary mechanisms that kept formerly enslaved populations socially marginalized. As Zappellini observes, the Republican period saw the development of scientific theories centered on racial superiority, entrenching structural racism. Although the Republic formally recognized all individuals—including formerly enslaved people—as rights holders, racial and

¹⁰ "For slavery to endure for so long, it was essential that the liberal framework itself repeatedly reinforced and legitimized the idea that enslaved people were enemies of the nation, foreigners with no place in Brazil, and that their only possible fate was total exclusion" (Zappellini 2025, 264).

class hierarchies persisted, reinforced by the continued concentration of large landed estates.

In her final considerations, Zappellini contends that Brazilian liberalism reflects a historical reality shaped by slavery, colonization, and structural racism. Law provided the framework that rationalized and legitimized these social structures, producing what the author describes as legal liberalism in Imperial Brazil.

This argument also exposes a key gap in Brazilian legal education. Textbooks on Constitutional Theory and General Theory of the Constitution rarely explore the relationship between the Imperial Constitution of 1824 and slavery in depth, generally limiting their discussion to brief references to abolition or to the contradiction of a law that failed to recognize foreigners and enslaved people as citizens. André Ramos Tavares, in his *Curso de Direito Constitucional*, observes:

Although item XIII of article 179 of the Imperial Charter states that ‘the law shall be equal for all, whether it protects or punishes, and shall reward each person in proportion to their merit,’ slavery persisted until May 13, 1888, when Law No. 3,353 was enacted. This demonstrates not merely the Constitution’s flexibility but its lack of efficacy. Although the constitutional text initially failed to transform social reality, change eventually occurred through ordinary legislation without amending the document itself (Tavares 2025).

Similarly, Flávio Martins argues that the Constitution of 1824 was liberal in character, yet limited in reach

A strongly liberal constitution, it established an extensive catalogue of individual rights and guarantees—referred to as ‘civil and political rights’ (first-generation rights)—particularly in article 179. Nevertheless, in the early phase of modern constitutionalism, constitutions lacked the transformative normative force they hold today. The Constitution of Dom Pedro illustrates this point: although it guaranteed freedom of movement (article 179, caput and item VI), it did not abolish slavery (Martins 2025).

In *Escravidão colonial* (Colonial Slavery), Jacob Gorender argues that “without external pressure from the British government, the African slave trade—illegal under Brazilian law—would likely have continued for a long time, with the collaboration of the state apparatus and all sectors of the free population.” Enslaved Africans played a fundamental role in Brazil’s formation¹¹ (Gorender 2016, 357). Despite a legal order reinforcing civil society’s pact against enslaved people, resistance arose from the oppressed—later termed subaltern groups. Abolitionists were crucial, but enslaved people’s own organization and resistance were equally important.¹² Angela Alonso (2015, 352) describes abolitionism as a social

¹¹ “The Constitution of 1824, Penal Code of 1830, Code of Criminal Procedure of 1832, and a series of regulatory laws enacted in the early years of independent Brazil granted free people individual rights and even democratic freedoms unusual for the period. The hypothesis advanced here is that these rights and guarantees embodied a pact among free people and property owners against enslaved people” (Vellozo and Almeida 2019, p. 2150).

¹² Clóvis Moura argues that rebellions within slave quarters played a decisive role in the success of abolition. While abolitionists must certainly be recognized for their contributions, it is also essential to acknowledge the impact of enslaved people themselves.

movement: “an extra-parliamentary form of political action adopted by groups excluded from institutional politics.” She highlights public demonstrations, symbolic acts, and more than 2,200 confrontations aimed at ending slavery.

Sustained over two decades, with coordinated associations and nationwide events that mobilized large numbers of supporters in major cities and spread throughout the interior, abolitionism became Brazil’s first major social movement (Alonso 2015, 352).¹³

Clóvis Moura (1988) contends that after 1850 enslaved people increasingly came to be viewed through a liberal lens, as “humanitarian sentiments gained ground, particularly among bohemian and radical liberal circles and groups aligned with a more radical liberalism.” However, fears about the consequences of emancipating enslaved people—and of Brazil becoming another “Haiti”—persisted among slaveholders, sparking repression of the abolitionist movement.

Legal Liberalism offers constitutional scholars an alternative framework for understanding the legal order of Imperial Brazil, while demonstrating how slavery, colonization, and the use of law as a central instrument shaped Brazil’s national formation. The book also provides important insights into Brazilian society, both historically and in the present. The complexity that persists today is deeply rooted in the long history and institutional legacy of slavery in Brazil, where structural racism continues to sustain a social order that subordinates part of the population on the basis of race and class.

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¹³ The activities of abolitionists ranged from lobbying Congress and organizing public demonstrations to parliamentary initiatives and assisting the escape of enslaved people. Prominent abolitionists included André Rebouças, Luiz Gama, José do Patrocínio, Joaquim Nabuco, and Antônio Bento (Alonso 2015, p. 354).

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