

From *Crias da Casa* to *Filhos de Criação*
Raising Illegitimate Children in the “Big House”
in Post-Abolition Brazil

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Historians often scour the judicial archives in search of micro-historical evidence of everyday life and the dynamics of individual relationships, attuned to the possibility that such evidence might challenge normative narratives constructed by previous generations of social scientists. I expected, for example, that a close reading of lawsuits regarding paternity in Brazil would challenge the paradigmatic “traditional Brazilian family” famously constructed by Gilberto Freyre in his 1933 account of hierarchically structured relationships contained within colonial plantation households.¹ According to Freyre, Brazil’s national character had been forged through myriad intimate relationships among members of the “Big House,” where the master’s family resided with various retainers and enslaved domestic servants, and the slave quarters, home to the families of field laborers. In Freyre’s account, sexual relationships between Portuguese-descended male patriarchs and Indigenous or African-descended women they held as slaves, together with bonds between white children and their black nannies, or black children and their white mistresses or masters, played crucial roles in the nation’s biological and cultural formation. These relationships, Freyre argued, not only produced a variegated population that occupied various rungs of the social ladder but also symbolized the sensual intimacy and affection that underlay the merger of Portuguese,

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¹ G. Freyre, *The Masters*.

African, and Amerindian cultures, moderating the hostility generated by the violence of colonization and slavery.

Already in the 1930s, intellectuals such as historian Sérgio Buarque de Holanda soundly rejected Freyre’s nostalgic vision of Brazil’s slaveholding households, though without discarding his depiction of the hierarchical kin and patronage-based social organization and cultural values these households nurtured.² For Holanda, the “patriarchalism” of colonial society had left a cultural legacy of authoritarianism and patronage that stymied the nation’s attempts to modernize and democratize. In the 1950s, sociologist and literary critic Antônio Candido celebrated the demise of the patriarchal family over the preceding 150 years – an uneven process that he attributed to urbanization – while emphasizing core elements of the Freyrean model and insisting that this type of family was the sole source of sexual organization and social identity in colonial Brazil. This patriarchal colonial family, Candido explained, had incorporated all but the “nameless mass of the socially degraded” who “reproduced themselves haphazardly and lived without regular norms of conduct.”³

Since the early 1980s, Freyre’s conclusions regarding racial harmony and national character have been thoroughly discredited by overwhelming scholarly evidence of systematic racism and violence in both Brazil’s past and its present. Social historians have also rejected his (and Candido’s) monolithic view of colonial society, revealing instead an enormous variety of family and household arrangements throughout Brazil’s nearly four centuries of slavery, as well as social networks and norms that tempered patriarchal prerogatives.⁴ While rejecting Freyre’s romanticism and exaggeration, historians have also refined some of his insight into cultural features and racial and gender dynamics of plantation households. Specifically, they have described the ways violence, patriarchy, and paternalism worked together to structure social and sexual reproduction, producing variegated hierarchies of domination.⁵

² S. Buarque de Holanda, *Raízes*. ³ A. Candido, “The Brazilian Family,” p. 304.

⁴ See M. Corrêa’s influential essay “Repensando a família.” Elizabeth Anne Kuznesof reviews debates among historians about the weight of patriarchal values throughout colonial society in E. Kuznesof, “Sexuality, Gender.” For an updated discussion of research on family and gender under slavery, focusing on the nineteenth century, see S. Caulfield and C. Schettini, “Gender and Sexuality.” For discussion of similar themes in English-language historiography, see E. Kuznesof, “The House.”

⁵ The seminal work is S. Lara, *Campos da violência*. For a review of scholarly assessments of Freyre, see A. Castro, “Gilberto Freyre e Casa-Grande & Senzala: historiografia & recepção,” May 16, 2012, <https://alexcastro.com.br/gilberto-freyre/>, accessed December 13, 2017.

Early-twentieth-century lawsuits by nonmarital children demanding legal recognition of paternity offer a unique ground-level perspective on the legacy of family structures that were shaped by slavery. This type of litigation was prohibited in 1847, then reintroduced by the 1916 civil code. Over the decade that followed, paternity investigations, generally as part of child support or inheritance disputes, became one of the most common types of legally contested civil cases. Most were filed by children, or their mothers or legal guardians in the case of minors, whose alleged fathers occupied a similar or slightly higher social position than their own. In a handful of cases, however, nonmarital children described their upbringing in rural households that bore resemblance to the “traditional” extended family model described by Freyre, in which their alleged fathers sat at the top, and their mothers the bottom, of a multitiered hierarchy. The children themselves held an ill-defined position somewhere in the middle. They usually claimed that their father had at least tacitly acknowledged paternity. They were incorporated into his family not as recognized kin, however, but as *filhos de criação* (literally, “sons/daughters by upbringing”).

This chapter recounts the experiences of two such *filhos de criação*, each born to enslaved mothers and raised in the households of white men who were allegedly their fathers at the end of the nineteenth century. Decades later, each of these illegitimate sons sued for the right to paternal recognition and inheritance. A host of individual circumstances and decisions explain the divergent paths that led one of them to impoverishment, alcoholism, and an early death, while the other enjoyed considerable social standing and economic success. Despite their contrasting fates, however, the two illegitimate sons’ life histories and experiences in court show striking similarities. Each boy was raised by his alleged father’s sister; both women were described as deeply religious and charitable. As their respective aunts’ *filhos de criação*, both boys were treated “like family,” while an unspoken promise of eventual recognition as family seemed to dangle elusively before them. When they grew up, the two plaintiffs were burdened by expectations of gratitude and fraught family relationships that reveal the fragility, and suggest the emotional cost, of their relatively privileged position within their households and communities.

FILHOS DE CRIAÇÃO “IN THE TIME OF SLAVERY”

The ubiquity among all social classes of the practice of child circulation – a term that encompasses the variety of ways children are incorporated temporarily or permanently in households not belonging to their biological

parents – has been widely documented throughout Brazil’s history.⁶ In Candido’s traditional family model, “the rearing of children of other parents” was commonplace, “a kind of exchange that indicates the broad structure of kinship and perhaps functioned to reinforce it.”⁷ In the eighteenth and nineteenth centuries, enslavers frequently used the term *crias da casa* or, more frequently, “my *crias*” to refer to enslaved children raised within their homes. Several historians have demonstrated that both female and male enslavers of diverse ethnic and class status commonly expressed special affection toward one or more of their enslaved *crias*. Close relationships between masters and *crias*, including bonds of codependency, were not uncommon, particularly when the social distance between master and enslaved was not great. For example, in her research on wills left by African-born freedwomen whose property included people held as slaves, Sheila Faria finds a common pattern in which, upon their death, these women freed most or all of the enslaved and, in a maternal gesture, selected at least one of the *crias*, almost always female, as a favored heir who would carry on the enslaver’s legacy. Testators often freed *crias* while leaving the children’s mothers enslaved. The well-documented expectation on the part of enslavers that formerly enslaved workers would remain tied to them for life through a debt of gratitude – an expectation that continued to nurture patron–client relationships well after the abolition of slavery in 1888 – was especially pronounced when the formerly enslaved had been *crias da casa*.⁸

Filhos de criação were usually distinguished from the children of the enslaved. They might be biological kin or other children who shared a similar social status with the household heads, or they might be lower-status dependents or servants. Their relationships to their adoptive parents were rarely legalized. In fact, formal adoption was so uncommon that the author of Brazil’s first compendium of family law, published in 1869, remarked that it was pointless to even comment on it; it had “fallen completely out of practice here, as has occurred in all of Europe.”⁹ This was not entirely accurate, as historian Alessandra Moreno has demonstrated by

⁶ A. Candido, “The Brazilian Family,” p. 301; R. Cardoso, “Creating Kinship”; C. Fonseca, *Caminhos da adoção* and “Patterns of Shared Parenthood”; A. Moreno, *Vivendo em lares*. Child circulation is also a ubiquitous practice throughout Latin America. J. Leinaweaver, “Introduction”; N. Milanich, “Latin American Childhoods.”

⁷ A. Candido, “The Brazilian Family,” p. 301.

⁸ S. Faria, “Damas mercadoras” and “Sinhás pretas”; S. Graham, “Being Yoruba.” Regarding masters’ expectation of gratitude, see M. Abreu, “Slave Mothers”; S. Chalhoub, *A força*.

⁹ L. Pereira, *Direitos*, p. 172. Pereira reiterated observations made by several jurists since the seventeenth century. See A. Moreno, *Vivendo em lares*.

uncovering a handful of Portuguese and Brazilian adoption records from the late eighteenth and early nineteenth centuries. The records reveal a complex bureaucratic procedure that included approval by the Supreme Tribunal in Lisbon and written consent of all of the adoptive parent's legal heirs, since adoption could qualify a child for hereditary succession. It was certainly pursued by very few. Instead, adults who cared for *filhos de criação* generally created informal relationships that combined widely varying portions of labor exploitation, education, and loving protection.¹⁰

As demonstrated in Chapters 4 and 6 in this volume, by Mariana Muaze and Maria Helena Machado respectively, enslaved or free women commonly served as “mothers by upbringing” (*mães de criação*) to the household's children, including both the white offspring of the household head and various others. In the post-abolition period, nostalgic representations of the enslaved wet nurse (*ama de leite*), nanny, “black mother,” and “black old lady” (*mãe preta*, *preta velha*) transformed these figures into romanticized icons of the traditional slaveholding family.¹¹ Many free poor women also nursed and cared for the children of others, often with the explicit or tacit expectation of compensation, either in cash or through the children's labor once they were old enough to work.

As slavery went into decline in the late nineteenth century, and after it was abolished in 1888, legal guardianship contracts were increasingly pursued by men as a way to acquire child laborers.¹² Guardianship contracts had long been drawn up for children who had been abandoned to the care of religious institutions. These children were frequently placed with families who agreed to provide for their education from age seven and to deposit a monthly stipend in a trust account once they reached the age of twelve, in exchange for their labor. These provisions mirrored laws requiring biological parents to provide for their children (whether legitimate or illegitimate), with mothers specifically charged with early childhood care and fathers responsible for the child's “education” after the age of seven. In either situation, “education” meant socialization, schooling, or professional training appropriate to the child's station.¹³

¹⁰ A. Moreno, *Vivendo em lares*; L. Lewin, *Surprise Heirs I*.

¹¹ Such representations are featured prominently and colorfully in G. Freyre, *The Masters*. In addition to Chapters 4 and 6 in this volume by Muaze and Machado, see P. Alberto, “Of Sentiment”; M. H. Machado, “Entre dois Beneditos.”

¹² J. Meznar, “Orphans”; G. Azevedo, “A tutela”; M. Ariza, “Bad Mothers.” Henrique Espada Lima points out that employers also incorporated elements of paternalism and tutelage in labor contracts for adults in the post-abolition period. H. Lima, “Sob o domínio.”

¹³ A. Moreno, *Vivendo em lares*; L. Lewin, *Surprise Heirs II*.

Parents and guardians alike generally expected children under their tutelage to earn their keep and contribute to the household economy. Some, however, contributed more than others. In many cases, informal adoption or formal guardianship bore some similarity to enslavement, as is illustrated by competition for guardianship contracts in the late nineteenth and early twentieth centuries.¹⁴ The continuity between enslavement and tutelage of free children is seen most clearly in the 1871 Free Womb Law, which freed all children born to enslaved mothers from the date of its enactment. As compensation for the expenses of these children’s upbringing until they were eight years old, the law gave their mothers’ enslavers the right to either profit from the children’s labor until they were twenty-one or turn them over to the state in exchange for cash.¹⁵

In Gilberto Freyre’s portrait of the Brazilian “Big House,” children born to enslaved mothers and fathered by a member of the slaveowning family invariably counted among the *crias* and *filhos de criação*. Indeed, in Freyre’s depiction, polygamy was a central feature of the traditional Brazilian family, a more-or-less open secret. Within their fathers’ households, non-marital children might be singled out for special favor or even treated as a member of the master’s family, even if their fathers did not offer legal recognition as true kin or the patrimonial rights that came with this recognition. This was the situation described by Gustavo Nunes Cabral when he filed suit to demand paternal recognition in Rio de Janeiro, in 1917, and by José Assis Bueno, when he did the same in Jaú, São Paulo, in 1929.¹⁶

FILHO NATURAL OR FILHO DE CRIAÇÃO? EDUCATION, STATUS, AND AFFECTION AS PROOF OF PATERNITY

Gustavo Nunes Cabral

Gustavo Nunes Cabral was born an *ingênuo* (the term used for children born to enslaved mothers after the 1871 Free Womb Law) in 1886, in the

¹⁴ J. Mezner, “Orphans”; G. Azevedo, “A tutela” and “De Sebastianas”; C. Fonseca, *Caminhos da adoção*, chapter 2.

¹⁵ Brasil, Lei 2.040 de 28 de setembro de 1871, *Presidência da República, Casa Civil*, www.planalto.gov.br/ccivil_03/leis/lim/LIM2040.htm, accessed December 13, 2017.

¹⁶ Arquivo Nacional, Rio de Janeiro, Corte de Apelação – 20, Apelação civil, Investigação de Paternidade, 1917–1923, apelante, Gustavo Nunes Cabral, apelado, Henrique Gonçalves, n. 3663, maço 413, gal. C (hereafter cited as AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral); Museu de Jaú, Juízo de Direito da Comarca do Jaú, 2º cartório, Investigação de Paternidade, autor, José de Assis Bueno, réu, Francisco de Assis Bueno, réu, 1929–1931 (hereafter cited as MJ, Investigação de Paternidade, José de Assis Bueno).

rural town of São João do Macaé in the state of Rio de Janeiro. His enslaved mother, Umbelina, was “a young girl of about sixteen and very pretty,” according to witnesses. The law prohibited the separation of enslaved parents and their children under twelve years old, but, according to the lawyer who represented Gustavo thirty-one years later, Umbelina rescinded her rights to her baby at the baptismal font. The lawyer called witnesses who testified that Umbelina’s surrender of Gustavo was arranged by Dona Teresa Nunes Cabral, a neighboring widow, “because she was certain that her son, Sabino, was Gustavo’s father.” This certainty also explained why Dona Teresa’s daughter, Regina, stood as Gustavo’s godmother.¹⁷

The opposing party in Gustavo’s suit claimed that it was not Umbelina but rather her enslaver who had rescinded her rights as per the Free Womb Law. Indeed, grammatical ambiguity in the relevant line on Gustavo’s birth certificate permits either reading: “[Gustavo is] the natural son of Umbelina, the slave of Dona Lauriana Rosa da Conceição, who declares that she gives up her rights that the Law confers to her over said *ingênuo*.”¹⁸ Both parties agreed that, after Gustavo was given up, Dona Teresa took the baby to her plantation and raised him in the Big House, where her son Sabino also resided. For Gustavo’s lawyer, Umbelina consented because she understood that Gustavo would be raised as a *filho família* in his wealthy father’s household. The opposing party insisted that Dona Lauriana consented in “an act of generosity,” permitting the boy’s upbringing by his charitable and childless godmother as a *filho de criação*.¹⁹

Sabino passed away when Gustavo was five years old. If Sabino had legally recognized Gustavo as his natural son, which the law permitted as long as a child was not incestuous, adulterous, or sacrilegious,²⁰ Gustavo would have inherited a sizable portion of the family’s fortune.²¹ Since

¹⁷ AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral, 24, 314–318v.

¹⁸ AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral, 24.

¹⁹ AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral, 247–275, quotation on 267v.

²⁰ Portuguese ordinances, in place in Brazil until 1916, divided illegitimate birth into two categories: “natural,” when there would have been no legal impediments to their parents’ marriage; and “spurious,” when the parents’ union was adulterous, incestuous, or sacrilegious (as when a priest or nun broke their vow of chastity). Although the sacrilegious category was eliminated when marriage was secularized in 1890, the 1916 Civil Code otherwise retained the distinction between natural and “spurious” children, prohibiting parental recognition of the latter.

²¹ Sabino had already inherited his portion of his father’s estate. If Gustavo had been recognized as his son, he would have inherited Sabino’s entire estate as well as half of Sabino’s mother’s estate (Regina would have inherited the other half).

Gustavo had not been legally recognized, however, the entire estate passed to Sabino’s nearest living heir, his mother. When she died six years later, her estate passed to her only surviving child, Sabino’s sister and Gustavo’s godmother, Regina.

Dona Regina, who was married but childless, took eleven-year-old Gustavo along with the family estate when her mother died. She raised him alongside four other *filhos de criação*, an arrangement that was so commonplace that the question of why the children were not cared for by their own mothers did not arise in the documents. Commonly, *filhos de criação* retain a filial relationship to their biological mothers, most typically poor working women who place their children in the care of another woman whom they believe could better care for them. Anthropologist Claudia Fonseca describes such arrangements in a poor community in the south of Brazil in the 1980s, where many people speak of having two or even more mothers.²² Likewise, it is clear in Gustavo’s case that his *mãe de criação* did not supplant but rather supplemented his mother’s care.

Beyond sending Gustavo to school, Dona Regina seemed to play a specific role in his “education,” one that his mother could not have fulfilled. As was expected of elite women, Dona Regina nurtured the family’s social network.²³ She used her connections to secure a job for Gustavo in the city when he was sixteen, then she instructed him how to behave in order to get ahead. The many letters she wrote to him during the first six years after he left home (1902–1907), which Gustavo saved for over a decade and were included as supporting documents in his lawsuit, reveal her continuing efforts to “educate” him, placing him in a good working-class job while teaching him proper manners and how to succeed in a society based on patronage. Her first letter, brimming with joy at the news that Gustavo had begun work (apparently as a pharmacy assistant), instructed him to send her warm embrace to her friend, who had secured the position for him, and asked whether Gustavo had already thanked him. “If not,” she instructed, “do so right away. You should always show gratitude to Senhor D., as he went to a lot of trouble and sacrifice to place you.”²⁴

At first glance, this seems to be an entirely routine command by an elder to a teenaged boy, the kind of “education” expected of any parent or guardian in most times and places. In the historical context that shaped

²² C. Fonseca, *Caminhos da adoção*. ²³ R. Graham, *Patronage and Politics*.

²⁴ AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral, 68–86, 88, quotation on 72 (insert).

Regina and Gustavo's relationship, however, everyday "education" in manners potentially carried added weight. In taking Gustavo from his enslaved mother, Regina's mother had also freed Gustavo of his obligations as an *ingênuo*, which would have included providing labor until he reached the age of twenty-one to the woman who held his mother as a slave. Still, his status was akin to that of a freedperson – that is, not unambiguously free. Ordering a freed child to be grateful harkens to the law that permitted former masters to re-enslave freedpersons who failed to display gratitude.²⁵ As Marcus Carvalho shows in Chapter 2 of this volume, former masters made use of the law to defend their continued right to demand deference, loyalty, and labor of those they had formerly enslaved. Indeed, opponents of the Free Womb Law had argued that it would eliminate freedpeople's gratitude to former masters, thus removing their incentive to work and to respect authority.²⁶ Regina's letter displays these concerns, exhorting Gustavo to "be very obedient to your boss [*patrão*] and other superiors," while instructing him to remind his boss of his connection to her: "Until I have the pleasure to meet Senhor Moura, and his Excellent wife," she wrote, "be sure to send them my regards." The following year, she praised Gustavo for repaying money he owed to someone, reminding him that "the man who lies and has no credit is worth nothing in society."²⁷

These and other letters revealed that Regina believed Gustavo was insufficiently grateful, obedient, and credit-worthy. The letters constantly urged him to "be thrifty" and to nurture his personal relationships, reminding him of her own affection and generosity while relaying news of neighbors and relatives who "always remember you and send remembrances." She frequently scolded Gustavo for not writing back quickly enough, failing to inquire about her health after an illness, or neglecting to send condolences to friends or relatives who had undergone hardship. One letter thanked him for placing flowers on the grave of her "saintly mother" while noting with irritation that he kept ignoring her suggestions. Reiterating this theme in her next letter, she wrote: "If you valued me, you'd follow my advice."²⁸ Constantly imploring him to "use good judgment," Regina's letters implied that he did not always do so and that her willingness to use her influence in his favor therefore had limits. After an apparent altercation, for example, she wrote that, while she understood

²⁵ Almeida, *Código Filipino*, book 4, title 63, 863. ²⁶ M. Abreu, "Slave Mothers."

²⁷ AN, RJ, *Investigação de Paternidade*, Gustavo Nunes Cabral, 73, 69.

²⁸ AN, RJ, *Investigação de Paternidade*, Gustavo Nunes Cabral, 86, 79.

his desire to get a better job and earn more money, “this requires patience and persistence” and that she would not do the favor he asked “for reasons I told you personally.” In her angriest letters, she chided Gustavo for having overstepped boundaries during visits home: on one occasion, when Gustavo was eighteen years old, he slaughtered a pig without first consulting her; another time, when he was twenty, he took some shotguns after she had told him not to.²⁹

In 1917, about a decade after her final letter to Gustavo, Dona Regina passed away, intestate. Her closest legitimate relative, a cousin, prepared to inherit her estate. Postmortem inventory proceedings were halted, however, by Gustavo’s claim that, as her nephew, he was at the front of the line of succession and therefore had the right to inherit the entire estate. The documents do not indicate whether Gustavo had ever previously protested the family’s failure to recognize him as an heir, but Regina’s death came at the moment when the nation’s first civil code made it possible, for the first time since the mid-nineteenth century, for a nonmarital child to demand such recognition in court.

In allowing children such as Gustavo to file paternity suits, the Civil Code of 1916 restored a long-standing legal practice that the Brazilian Parliament had banned in 1847. Medieval Portuguese ordinances had forbidden children of “damnable and punishable unions” (adultery, incest, or sacrilege) to inherit from their parents or be recognized as family members. But Portuguese law granted other children born outside of marriage, known as “natural,” the same filial rights as legitimate children. Following Roman law traditions, recognition of maternity was generally presumed, as was the husband’s paternity of his wife’s children, which could be disputed under very limited circumstances. Paternal recognition of natural children, however, required proof. Judicial investigation of paternity, at the request of natural children, was therefore a commonplace procedure during settlement of a deceased father’s estate up until 1847. In lieu of written documentation, authorities accepted a range of evidence, including witness testimony confirming that the alleged father had behaved publicly as such, particularly by giving the child his surname and affection and providing for the child’s care and education. These procedures were consistent with the Ordinances’ recognition of families formed through consensual unions (often referred to as “marriage as per the Ordinances”), in contradiction to Catholic Tridentine doctrine.³⁰

²⁹ AN, RJ, *Investigação de Paternidade*, Gustavo Nunes Cabral, 71, 80, 86.

³⁰ L. Lewin, *Surprise Heirs I*; S. Caulfield, “From Liberalism.”

Much more troubling were natural children who demanded recognition from men who did not publicly acknowledge paternity. The widespread practice whereby men from well-to-do families, and generally recognized as white, engaged in sexual relationships and even established households with enslaved or free women of acknowledged African descent produced legions of potential “surprise heirs.” Children born to enslaved or poor women seldom had the means to file suit, and it was generally a much better bet for them to accept a tacit or explicit agreement to remain silent in exchange for whatever paternal support the father, or his family, offered voluntarily. Gustavo’s upbringing followed a long-standing pattern in which elite fathers, or their families, provided for and “educated” their illegitimate children, sometimes bringing them into their households, without elevating them to the status of family member. Examples abound of fathers whose support permitted their illegitimate children to rise above their mothers’ social station. Although many such fathers, as nineteenth-century French traveler Auguste Saint-Hilaire observed, “were cruel enough to leave their own children in slavery,” others were inspired by affection, conscience, or the fear of God to free such children at the baptismal font or through their last will and testament, sometimes acknowledging their paternity.³¹

Beginning in the late eighteenth century, various reformers sought to lift the myriad penalties imposed on illegitimate children, arguing that they represented unjust punishment of innocents and promoted the concentration of wealth and power by patriarchs of sprawling clans. After Brazil became an independent empire in 1822, these arguments were revived as part of broader liberal reforms. By the 1830s, however, calls to expand the rights of illegitimate children were increasingly drowned out by cries for the protection of legitimate families from disreputable “surprise heirs,” as conservatives warned that a decline of moral authority and expansion of popular access to local courts had produced public scandal in place of justice.³² Similar debates had raged in revolutionary France and around the Americas, usually resulting in harsher restrictions on illegitimate children.³³ Brazil contributed to the trend in 1847, when Parliament rescinded natural children’s right to demand paternal recognition in court. As Linda Lewin explains, the 1847 law reflected the

³¹ A. Saint-Hilaire, *Segunda viagem*, cited in M. Iansen, “Os senhores”; L. Lewin, *Surprise Heirs II*; C. Lima da Silva, “Senhores e pais.”

³² L. Lewin, *Surprise Heirs II*.

³³ N. Milanich, “To Make,” p. 767; R. Fuchs, *Contested Paternity*.

increasing insecurity of white elite families as importation of enslaved laborers continued to rise, revolts multiplied, and, most importantly, the likelihood of abolition in the not-distant future meant that the already large urban free population of color would soon comprise a sizable majority. Although the enslaved could not file paternity suits, freedpersons could. Moreover, in a political and economic climate in which older mechanisms for maintaining social hierarchy came under increasing attack and young men began to experience more autonomy from extended family, the possibility that a husband might acknowledge having fathered children with enslaved or other lower-status women was perceived as a growing threat. The 1847 law protected legitimate families from being forced to accommodate such children, not only by stripping natural children of the right to sue for paternal recognition but also by prohibiting married men from voluntarily recognizing them. Single men could still acknowledge paternity of natural children, but only in writing through a formal legal document.³⁴

Arguments over the rights of illegitimate children continued to simmer in late-nineteenth-century legal doctrine and jurisprudence, and disputes over paternal inheritance frequently spilled onto the press. The debate flared up again at the start of the First Republic (1890–1930), reaching its height during the lengthy legislative review that preceded the approval of Brazil’s first civil code in 1916. The outcome was a compromise: the code restored natural children’s right to sue for paternal recognition if, during the time of conception, the father had had sexual relations, abducted, or “lived in concubinage” with the mother. Liberal jurists lobbied to include a Roman law concept, “possession of status of filiation,” as an alternative condition. Citing the Roman legal criteria for determining possession of status (*nomen*, *tractatus*, and *fama* – the child has been given the father’s name, is treated as the father’s son/daughter, and is reputed to be the son/daughter), these jurists argued that such social indications of paternity were consistent with both Brazilian traditions and “modern” law, having been incorporated into the civil codes of Portugal and other “civilized” nations. Although conservative legislators struck this provision from the final draft of the code, Brazil’s most prominent jurists nonetheless boasted that the code’s provisions regarding illegitimate children were among the world’s most liberal.³⁵

³⁴ L. Lewin, *Surprise Heirs II*, pp. 286–304.

³⁵ Conservatives also inserted discrimination against adulterous and incestuous children into the code’s final draft. S. Caulfield and A. Stern, “Shadows of Doubt,” 3.

Filed just a month after the new civil code went into effect, Gustavo's lawsuit provided a testing ground for defining the conditions on which children could now sue. Each party included lengthy discussions of what legislators had meant by "living in concubinage" and the nature of sexual relations between "pretty Black girls" and wealthy white men under the shameful institution of slavery. Yet Gustavo's lawyer rested his arguments primarily on Gustavo's "possession of status." The lawyer emphasized that Sabino and his family had always treated Gustavo as Sabino's son and that this relationship was public knowledge, even though the family did not formally recognize it. As proof, the lawyer brought in five witnesses who had formerly been enslaved by Sabino's family, as well as a woman who had been raised alongside Gustavo as Regina's *filha de criação*. The witnesses corroborated the claim that "everyone on the plantation always knew" that Sabino was his father, that Sabino "never hid this fact," and that Gustavo was raised within the plantation's Big House, where he was differentiated from other *filhos de criação* by the "special affection" of his aunt, his "education" (including enrollment in a private school and the instruction and discipline his aunt imparted at home), and his family name.

The defendant's lawyer countered that Gustavo's mother could not have lived in concubinage with Sabino because the latter resided in the city at the time of Gustavo's birth. Like Gustavo's lawyer, however, the defense attorney focused primarily on disproving Gustavo's alleged "possession of status." Gustavo had never been recognized as a relative by the family, according to witnesses for the defense, but took the family name "just as many former slaves did, out of gratitude." Dona Regina served as Gustavo's godmother and *mãe de criação* out of deep piety and charity, the same motivation that explained why other poor children had been raised "within the family" (*dentro da família*). The undeniable affection she displayed toward Gustavo was explained by her childlessness and generosity of spirit. According to the defense, Gustavo's lack of gratitude and excessive drinking had so disappointed Dona Regina that she had put him out of the house, and she took this disappointment with her to the grave.³⁶

According to Gustavo's death certificate,³⁷ he did drink too much: the document indicated that he died of alcohol-induced pancreatitis in 1920,

³⁶ AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral, 38, 68, 271–273.

³⁷ AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral, 364. This document records Gustavo's color as "white." It is the only indication of Gustavo's color in the case file.

shortly after his lawyer filed a final appeal of the lower court decision. The lower court had decided against Gustavo on technical grounds: when his alleged father died, in 1891, the law did not permit paternity suits; too much time had passed since then; and the estate had passed through too many hands. The appeals court confirmed the sentence, declining to resolve not only whether Sabino was Gustavo’s father but also several legal issues brought up by both sides. What was meant by “concubinage,” and what form did it customarily take under slavery? Could “possession of status” prove filiation? Were witness testimony and “public knowledge” sufficient to establish possession of status? What kind of treatment or evidence of status distinguished a *filho natural* (natural child) from a *filho de criação*?³⁸

José Assis Bueno

Such questions also arose in the paternity suit brought by José Assis Bueno, in 1929. José was born in 1876 in Jaú, a rural municipality in the state of São Paulo. His mother, Dina, was held as a slave by Dona Teresa Assis Bueno, heiress to the coffee fortune of one of the region’s wealthiest families. His father, according to the lawsuit, was Dona Teresa’s brother, Francisco. In the act of his baptism, Dona Teresa waived her right to José’s labor under the Free Womb Law, giving him the birth status of “freed” rather than “ingênuo.” Dona Teresa later took charge of the boy’s upbringing in the Big House of her plantation, where the alleged father, Francisco, also lived. Dina remained enslaved until slavery was finally abolished, in 1888, selling milk and produce in town while residing in the plantation’s slave quarters with her husband, Jonas, with whom she had six additional children.

Dina’s marriage to Jonas took place eight days before José’s birth, making his civil status, and thus his right to file a paternity suit, much more complex than Gustavo’s. According to José, it was a forced marriage, arranged by his father’s family to protect their honor and patrimony. To reinforce the legal fiction of Jonas’ paternity, one of Francisco’s brothers, acting as José’s godfather, registered the baby as the “legitimate son of Jonas and his wife Dina.”³⁹

Fifty years after these events, Dona Teresa passed away, at age seventy-eight. She left a will that named as her heirs “the seven children of Dina,

³⁸ AN, RJ, Investigação de Paternidade, Gustavo Nunes Cabral, 288–297, 390–391.

³⁹ MJ, Investigação de Paternidade, José de Assis Bueno, vol. 1, quotation on folio 7.

[who is] married to Jonas,” including José, while granting the elderly Dina and Jonas usufruct of the shack and farm where they were living at the time. Teresa included special provisions to protect Dina and Jonas’ five female children, who were to receive the most stable assets – rental properties in town, rather than farmland – and repeatedly specified that their spouses were not permitted control over any part of their inheritance. One of Teresa’s sisters and an assortment of nieces and nephews contested the will, but the executor, another nephew, saw to it that Teresa’s wishes were respected. When the estate was settled in 1927, Dina’s six adult children (one child, the only other boy besides José, had died) each received properties valued at 250,000 mil reis, a considerable fortune.⁴⁰

In leaving her estate (aside from small bequests to a local chapel and a close female friend) to the children of the woman she had held captive, Teresa’s will was certainly unusual, though not unprecedented. Historians have uncovered examples of eighteenth- and nineteenth-century enslavers who left all their property to their *crias*, or children born to enslaved women and raised in their households, although such cases usually involved smallholders, not members of wealthy white families such as Teresa.⁴¹

The inheritance arrangement in some cases could be characterized as negotiations in which an elderly testator (Teresa was seventy-five when she wrote the will) exchanged a promise of inheritance for continued service and care through death and beyond, as many testators required heirs to attend to their funerals and postmortem care of their souls.⁴² Teresa seem to have followed this pattern of codependency with Dina and her daughters. While the postmortem inventory proceedings were held up by Teresa’s relatives, Dina’s daughters requested a temporary monthly stipend from the estate, stating that they “had always lived in the company of Dona Teresa, who raised them, educated them, and gave them everything they needed, and they now had no means of subsistence.”⁴³ If this was true, we might assume that the daughters, all then in their thirties and

⁴⁰ Museu de Jaú, Juízo de Direito da Comarca do Jaú, Cartório 1º, Inventário, Teresa de Assis Bueno, 1926, maço 48-A registro 1.7.2.904, folio 5.

⁴¹ R. Slenes, “Brazil.”

⁴² J. Reis, *Death Is a Festival*; S. Faria, “Sinhás pretas”; S. Graham, “Being Yoruba” and *Caetana Says No*, pt. 2. For discussion of a similar situation of codependency in a matriarchal household in Buenos Aires, see P. Alberto, “*Liberta* by Trade.”

⁴³ Museu de Jaú, Juízo de Direito da Comarca do Jaú, Cartório 1º, Inventário, Teresa de Assis Bueno, 1926, maço 48-A, registro 1.7.2.904, folio 109.

forties, and three of whom had married (two were widowed), had continued living and working on Teresa’s estate. Teresa probably provided subsistence in lieu of wages, as the women are not listed among the salaried employees in the inventory (all of the employees listed were *colonos*, or recent European immigrant settlers who had supplemented the former enslaved labor force by the turn of the century).

Teresa’s apparent intimacy and reliance on her female dependents, including Dina, who was her own age and had apparently been born on her family’s plantation, in addition to her concern to protect Dina’s girls from their spouses and her own decision not to marry, may have been influenced by her experience growing up in a patriarchal household with four highly aggressive and unstable brothers. This, at least, was how her family was described in a medical history by physicians who examined her brother Francisco at his wife’s request in 1928, declaring him mentally incompetent.⁴⁴

José filed his paternity suit a few weeks after Francisco’s wife was granted control of her husband’s affairs. He claimed that Francisco had recently promised to formally acknowledge paternity, prompting Francisco’s wife’s rush to have him declared incompetent and her “hasty and recklessly disposal of Francisco’s property” with the intent to “cheat [José] of his rights as Francisco’s natural son and sole heir.”⁴⁵

José’s lawyer opened the suit with an emphasis on Francisco’s subjection of Dina to “concubinage,” describing the relationship as typical of the abuse suffered by enslaved women. Yet the lawyer was unable to enlist witnesses who had direct knowledge of the relationship. José wanted to call his mother and her husband Jonas to testify. The law prohibited testimony by immediate family members, but the lawyer was able to subpoena Jonas, arguing that he was not a blood relation. Jonas, however, repeatedly failed to appear on designated court dates. José’s key witness, according to the lawyer, would have been Dina’s “adoptive mother,” whom he described as a “near-centenarian ex-slave [who] raised the unfortunate captive, Dina, and knows everything about the sinful

⁴⁴ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 30–42. The report indicates that Teresa’s parents had twelve children, but it discusses only eight. Considering the aggressive and impulsive nature of Teresa’s brothers (two had died in armed disputes, and one hung himself) and the mental illness of one of her two sisters (the same sister who, together with the children of the three deceased brothers, tried to obstruct Dina’s children’s inheritance), the physicians concluded that the whole family suffered from congenital syphilis.

⁴⁵ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 3–4.

cohabitation of the defendant and her adoptive daughter.” He desisted from calling this witness, however, because she had been “coached and bribed by the defendant’s ambitious relatives” and then “hidden by her whites” (*ocultada por seus brancos*).⁴⁶

Unable to establish concubinage, José’s lawyer focused on his client’s “possession of status of filiation.” The plaintiff’s eight witnesses – all men who had been intimate with the Assis Bueno family for many decades, including a few of the family’s former laborers, an Italian mule driver, neighboring planters, and childhood friends of both Francisco and José – presented a consistent story. One of the witnesses, who had been enslaved “for many, many years” on the Assis Bueno plantation, went so far as to say that Francisco himself told him he was José’s father.⁴⁷ He and all the other witnesses confirmed that “everyone in the Assis Bueno and Almeida Prado⁴⁸ families,” “everyone on the *fazenda*, including slaves and *colonos*,” and “everyone on the farm and in town” held José to be Francisco’s son.⁴⁹ Even the defense witnesses agreed that this was “what everyone said,” although one of them specified that “he never heard anyone of social distinction say this, although it is correct that this circulates among lowly people.”⁵⁰ Witnesses for both parties also agreed that José had been raised by his aunt Teresa in the Big House, or, as the formerly enslaved witness explained, “in the house of his whites, not in the slave quarters,” where Dina and Jonas lived. According to the same witness, Francisco “did not allow José to keep company with the slaves.”⁵¹

By all accounts, Francisco instead prepared José for the work of “his whites.” After his own father’s death, Francisco administered the family properties, and he remained in the Big House through José’s childhood, along with his wife and his sister Teresa (and in earlier years, his mother and other siblings). Growing up, José was often seen working alongside Francisco when he wasn’t at school. He drove oxcarts or supervised the formerly enslaved workers and Italian *colonos* who replaced them. When

⁴⁶ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 2, 328–329.

⁴⁷ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 98v.

⁴⁸ Francisco’s mother, as well as his wife (who was also his cousin), along with several other relatives, belonged to the wealthy Almeida Prado clan. The Assis Bueno and the Almeida Prados had made their respective fortunes on the coffee frontier, establishing plantations in Jaú in the 1840s, and then consolidated their economic power through various marriages. See Luiz de Assis Bueno, *O Comércio*, Jahu, August 15, 1953.

⁴⁹ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 96–104; vol. 2, 144–173; vol. 2, 262–263.

⁵⁰ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 79v.

⁵¹ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 98v.–99.

José was a young man, Francisco set him up with a business in town. Then, in his early forties (eleven years prior to his lawsuit), José took over the administration of Francisco’s property.⁵² At that time, he apparently already administered Teresa’s estate. His power of attorney, included in the case file, gave him complete autonomy over Francisco’s affairs, empowering him to deposit and withdraw funds from his bank accounts, collect rents and evict tenants, enter or revoke contracts (including *colono* labor contracts), oversee coffee production and sales, and conduct other business dealings. He was apparently a skilled businessman and had acquired a few properties of his own. As one witness commented, he was already a rich man even before receiving his initial inheritance from Teresa.⁵³

Witnesses for both parties also offered consistent descriptions of physical features of the various Assis Buenos. Responding to prompts from José’s lawyer, they agreed that whereas José was “a light-skinned mulatto, with somatic features characteristic of the white race,” including “straight hair, a fine nose, and blue eyes,” Dina, Jonas, and Dina’s other children were “very dark negros, with kinky hair, that is, [they were] completely black.” Witnesses also generally agreed with the lawyer that “two very dark negros cannot produce a light-skinned mulatto child.”⁵⁴ A great deal of the litigation centered on José’s lawyer’s demand for a “comparative physical examination” of José and Francisco, but the defense lawyer successfully obstructed his efforts, first by refusing access to Francisco, then by arguing that the poor state of the science on paternity determination rendered such examinations worthless, and finally (according to José’s lawyer) pressuring or bribing the local physicians who had agreed to perform the exam, using photographs of Francisco, to desist, “in order to hide the shame of Francisco’s people, rich people.”⁵⁵ The lawyer finally obtained two medical reports from Brazil’s foremost expert on forensic paternity determination, Dr. Flamínio Fávero, of the University of São Paulo. Although Fávero did confirm that race science indicated that “in short time, the black race will completely disappear from Brazil,” as two black parents could not produce a mulatto child, he declined to compare José to Francisco or shed any further light on the case.⁵⁶

José’s racial classification, professional skills, and economic success set him apart from Dina’s five daughters, who had remained entirely

⁵² MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 2, 436.

⁵³ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 79.

⁵⁴ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 1, 86, 144, 169.

⁵⁵ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 2, 262.

⁵⁶ MJ, *Investigação de Paternidade*, José de Assis Bueno, vol. 2, 297–301, 345–351.

dependent on Teresa well into adulthood. It is not clear whether they, too, grew up in the big house. No witnesses say so, and their statement that they had “always lived in the company of Dona Teresa” is ambiguous. Their gender might explain the differences between their and José’s “education” and subsequent social position, though José’s claim that he was differentiated because he was Francisco’s son seems entirely credible.⁵⁷ Perhaps because of these differences, José’s relationship to his half-sisters was conflictual. A year before he filed his paternity suit, his sisters sued him over payment of a small debt (5,000 mil reis).⁵⁸

Notwithstanding overwhelming evidence that José was widely reputed to be Francisco’s, not Jonas’, son, the judge who decided the case ruled against José on the grounds of “insufficient evidence of possession of status.” Although the judge accepted José’s comprehensive power of attorney as credible evidence of Francisco’s paternity, he discounted most of the other evidence as hearsay. While acknowledging that José had been “treated as a son” by Teresa, the judge insisted that “this has no [evidentiary] value whatsoever” but simply followed “the tradition of the old Brazilian family to hold its good house slaves in high esteem. The black mammy [*preta velha*], the wet nurse, the so-called black mother [*mãe preta*], who so amusingly mangled Perrault’s marvelous stories, appear in poets’ lore and justify a monument.”⁵⁹ In a split decision, in 1933, the state court of appeals confirmed the sentence, condemning José to pay the considerable court costs accrued over the nearly five years of litigation.⁶⁰

CONCLUSION

The paternity investigations opened by Gustavo Nunes and José Assis Bueno offer rare insight into the internal dynamics of a particular extended

⁵⁷ The documents do not offer information about Dina’s other son, who died prior to these proceedings.

⁵⁸ I have not yet located the lawsuit, but it is mentioned in a lawsuit by the lawyer who represented José in the case and complained that José failed to pay him. MJ, Juízo de Direito da Comarca do Jaú, 2º Cartório, Ação de Cobrança, autor, Fausto Guryer Azevedo, réu, José de Assis Bueno, 1928.

⁵⁹ MJ, Investigação de Paternidade, José de Assis Bueno, vol. 2, 476–484, 483. The judge might have been referring to the movement underway during these years to create a monument to the *mãe preta*, or black wet nurse. See P. Alberto, “Of Sentiment, Science and Myth.”

⁶⁰ “Investigação de Paternidade,” Acórdão, n. 19.420, *Revista dos Tribunais*, vol. 92 (November 1934): 446–450. This publication includes the brief verdict and the dissenting opinion by one of the three appeals judges.

family structure that emerged from plantation slavery, in which lower-status *filhos de criação* were raised to occupy a variety of differentiated social positions within hierarchical extended families. The practice of raising less-privileged *filhos de criação* in the household as family members, but unequal ones, remained a strong social norm, not only for the first generation to emerge from slavery but also for their children and grandchildren through the end of the twentieth century. These children seldom moved into the class status of the legitimate families that headed their households but instead often maintained lifelong, unequal relationships that combined different measures of love, affection, dependence, servitude, and resentment. Among these *filhos de criação*, the unacknowledged “natural children” of elite family members often occupied an elevated position. Yet the cases of Gustavo Nunes and José Assis Bueno suggest that if they tried to translate their elevated position into a legal claim to family rights such as inheritance, they might encounter a thicket of obstacles.

In the case of Gustavo Nunes, Dona Regina’s letters reveal the ways these adults “educated” children in manners, including showing gratitude and deference appropriate to their station and crucial for survival. Dona Regina’s limitations on the patronage and social connections she was willing to mobilize for Gustavo when he didn’t behave according to her wishes, and her decision not to transfer to him a share of the family patrimony upon her death, much less during her life, also illustrate the ways *filhos de criação* were commonly differentiated from *filhos de família*, or legally recognized children, even when they were blood kin. José Assis Bueno’s *mãe de criação*, Dona Teresa, followed another well-established, if less common, pattern, in which her *filhas de criação* and their formerly enslaved mother remained by her side, grateful and dependent, most likely working in her household and caring for her until her death, when they finally received a financial reward for their loyalty. The “education” provided to José by his father – again following long-standing patterns that had been solidified by colonial law – together with José’s gender and lighter color, placed him in a much higher position, that of trusted administrator with authority over the enslaved and, later, immigrant workforce. This placement (*colocação*), together with José’s apparent talent for business, permitted him to achieve considerable economic success but not equal membership in his father’s legitimate family. Yet although the courts did not grant either Gustavo or José filial rights, each of the lengthy proceedings (and the split appeals decision in José’s case) revealed continuing uncertainty over how to define and enforce paternal responsibility and family membership in the aftermath of slavery.