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ANTI-VAGRANCY, PUNISHMENT AND LABOR RELATIONS IN THE CONTEXT OF THE ABOLITION OF SLAVERY IN BRAZIL AND THE PORTUGUESE EMPIRE (1870–1910)

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Abstract

Focusing on the Brazilian and Portuguese Empire contexts, between 1870 and 1910, this text aims to investigate how the slavery abolition process affected the different historical definitions of what constituted vagrancy and how those definitions related to categories such as class, race and gender; and the way punishments for vagrancy changed over time and how those changes were linked to the transformations associated to the new workers' labor and production relations. This article first explores the effect that the abolition discussions had on the definitions of vagrancy, and what the previous definitions had been. It goes on to show how, in the post abolition period, the concept of vagrancy was expanded to criminalize workers' practices and behaviors. An important innovation and contribution of this article is that it is the first comparative and connected analysis of the transformations in labor relations in the abolition context in those spaces with the persecution of vagrancy as its central focus.

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I. Introduction

In Brazil the first Abolition Law, the Free Womb Law (Lei do Ventre Livre), was approved on September 28, 1871, and its main point was to free the sons and daughters of women slaves who were born after the date of its enactment. However, it stipulated that those children would remain in the power and under the authority of their mother's master until they were eight years old. After that period the master would either receive an indemnity or "use the services of the minor until he or she had completed 21 years of age" (Lei de 28 de setembro de 1871[1]). The same law determined that slaves liberated under its aegis would remain "during five years under government surveillance" and would be "obliged to contract their services on pain of being forced, if they live in vagrancy, to work in public establishments".[2] The forced labor would cease, however, if they presented proof of being hired.

Persecution of vagrancy already existed in Brazil at the time the 1871 law was approved, and the aim of this text is to investigate and analyze how the slavery abolition process affected the different historical definitions of what constituted vagrancy and how those definitions related to categories such as class, race and gender; and the way punishments for vagrancy changed in the course of time and how those changes were linked to transformations related to the new workers' labor and production relations. The text also analyzes the extent to which the Brazilian process was not limited to national frontiers but had possible connections and points of comparison with that of the Portuguese Empire.

The time frame for the analysis of the abolition process (1870 to 1910) was established to encompass the decades immediately following the Free Womb Law, as this was a period of intense debates of laws centered on labor issues. In Brazil, in addition to the abovementioned legal instrument of 1871, a law enacted in 1879 established regulations for new forms of labor hire contracts. Another law enacted in 1885, the Sexagenarian Law (*Lei dos Sexagenários*), proposed that slaves over sixty years of age should be freed. The actual abolition of all slavery came in 1888, and the Penal Law of the Republican regime expanded the outreach of the anti-vagrancy policies in 1890.

In the Portuguese Empire, although some measures associated to the end of slavery were earlier, the decade of the 1870s was extremely important. A decree issued in 1858 determined that abolition should occur twenty years from then and another decree in 1869 established that slaves would pass from the condition of freedmen to that of freemen. However, at the end of that same year a regulation was enacted specifically governing the question of labor hire contracts. That document was largely replicated in the new regulations established in 1878 and then, in 1899, the Indigenous Labor Regulations (*Regulamento do Trabalho Indígena*) were enacted in addition to other more specific regulations created for each colony. The year 1910 was chosen to limit the timeframe because it was the year the Portuguese monarchy fell, and that eventually altered all labor relations in the Portuguese dominions.

The research decision to rethink the relations between Brazil and the Portuguese Empire was not made merely because the former was part of the latter up until its independence in 1822.

[1] http://www.planalto.gov.br/ccivil_03/leis/lim/lim2040.htm

[2] The text of Henrique Espada Lima (2005) is an important exception in its approach to that aspect.

Even after becoming independent, Brazil continued to maintain relations with the African part of the Portuguese Empire, insofar as, up until 1850, Brazil was the main destination for slaves from the African continent (Klein 1987). Furthermore, Brazil's commercial and cultural bonds with its former colonizer persisted for a long time.

Although there have been various incursions in this direction, the important innovation and contribution of this article is that it is the first comparative and connected analysis of the transformations in labor relations in the abolition context in those spaces with the persecution of vagrancy as its central focus. From a Global History of Labor perspective, it dialogues with Marcel van der Linden's proposal in which he questions the extant methodological nationalism, and focuses on the transnational and transcontinental connections, which means "situating all historical processes in a broader context, not minding how geographically small those processes may be" (van der Linden 2008).

This article begins by exploring the effect that the abolition discussions had on the definitions of vagrancy and what the previous definitions had been. It goes on to show how, in the post abolition period, the concept of vagrancy was expanded to criminalize workers' practices and behaviors that were deemed morally unacceptable.

II. Vagrancy, Idleness and the Abolition Process

One of the main issues permeating this text is the perception of the impact that the abolition process had on the definition of vagrancy, not only in Brazil but also in the Portuguese Empire. In both spaces, there were laws in force prior to it that criminalized vagrancy and that makes it of fundamental importance to verify the meanings attributed to the term.

Brazil was part of the Portuguese Empire up until 1822, when it became independent. At that time, and even after the separation, the penal legislation in force on both sides of the Atlantic was the Philippines Ordinances (*Ordenações Filipinas*). That Portuguese legislation dated back to 1603 and its fifth and last book is dedicated to penal law stipulating crimes and their respective punishments. The text of Title 68 declared that:

> We hereby order that any man who does not live with a master or a boss, who has no trade nor any occupation in which to work or gain a living nor is conducting some business of his own or of another, after twenty days from the day her arrives in any city, village or place and not finding within the said twenty days, a boss or a master with whom he lives or an occupation in which he works and gains a living or if he takes up one and afterwards leaves it, shall be imprisoned and publicly flogged (*Ordenações Filipinas*, Livro V[3]).

That definition of vagrancy seems first to concern itself with whether the person lives with a boss or a master and if not whether he has a trade or an occupation or some other activity. In Portuguese society under the Ancient Regime the social classification of individuals was determined by characteristics such as character, condition and state. Thus, manual labor stained the person with the "mechanical defect or the stain of vileness which restricts their

[3] http://www1.ci.uc.pt/ihti/proj/filipinas/l5p1216.htm

access to the ennobling and political functions" (Silva 2017, 22). The only destiny poor men and women could expect in the Portuguese Empire was honorable, honest work. According to Fabiano da Silva, even the Portuguese laws in more modern times designed to combat vagrants and idlers, such as the *Ordenações Filipinas* which have a strong moral connotation "did not fail to urge the subjects of the monarchy to follow the path of labor" (Silva 2017, 21). The author indicated how in that moralizing regulatory context, work "was legitimized more as a relation of personal dependency or subjection to another than as an economic function of the market" (Silva 2017, 87).

The punishment the law stipulated, presumably for slaves, was imprisonment and flogging although it was not restricted to flogging for them alone and exile for others. Punishment by exile was a vital measure for populating the colonies of the Portuguese Empire. Paul Ocobock stated that the destiny of vagrants was determined by the labor shortages in the colonies. Exiles were not only sent to Africa but also to Brazil and other parts of the Empire (Ocobock 2008, 12). Judith Spicksley comments that from the end of the seventeenth century onwards, judges in Brazil were encouraged to exile their vagabonds and criminals to Angola (Spicksley 2015, 257).

That was therefore the vagrancy legislation still in force in Brazil and the Portuguese Empire at the beginning of the nineteenth century. In the case of Brazil, after its independence, the first set of Criminal Laws was approved in 1830. Given the criticisms that existed of the *Ordenações Filipinas*, which at that time were considered to be "bloody and barbaric", the new Criminal Law aligned itself with the liberal legal movement "of the West, in course at the turn of the eighteenth to the nineteenth century" (Costa 2013).

Chapter Four of the Criminal Law in question, entitled "Vagrants and Beggars" stipulated that:

> Art. 295. Any person not taking an honest and useful occupation from which to make a living, after being warned by the Justice of the Peace, not having a sufficient income.
>
> Penalty – imprisonment with labor for from eight to twenty-four days.
>
> Art. 296. Begging:
>
> 1º In places where there are public establishments for beggars or there is a person willing to support them.
>
> 2º When those begging are in condition to work, even in those places where there are no such establishments.
>
> 3º When pretending to have sores or other infirmities.
>
> 4º When even if they are invalids, they beg in groups of four or more, not counting fathers and sons and not including in the four the women who accompany their husbands or the boys who guide the blind.

> Penalty– imprisonment with or without forced labor according to the physical state of the beggar, for from eight days to one month (*Código Criminal*, 1830[4]).

The Brazilian Criminal Law of 1830 no longer stipulated the obligation to live with a boss or a master. Thus, there was an observable change in regard to the former definition whereby the work was more strongly legitimized as a relation of dependency on another rather than an economic function of the market. Vagrancy came to be linked to a person who had no honest, useful occupation or had an insufficient income. Thus, another important distinction from the previous legislation stands out, namely, the need to distinguish the idleness of one who has an income from that of the one who does not. Not having work was considered to be vagrancy only for those who did not have sufficient income for them not to need to have an occupation.

The sentence was no longer imprisonment with flogging or deportation and became instead incarceration with forced labor for from eight to twenty-four days.[5] That sentence of incarceration without flogging, according to Gláucia Pessoa, represented "a rupture with the torture-laden punishments of Portuguese Law (quartering, amputation, flogging etc.)" (Pessoa 2016). Those differences from the punishments of the Ancient Regime, which were inflicted on the body of the condemned individual to serve as an example, were inspired by the ideas of the Enlightenment movement. Fernando Salla states that incarceration came to the fore from the beginning of the nineteenth century on because "it constituted a sentence that confiscated liberty, an asset to which all individuals elevated to the condition of citizens had the right" (Salla 2006, 46).

Insofar as it specifically proposed associating imprisonment and labor, the Brazilian Law was in alignment with other countries which at the turn of the eighteenth to the nineteenth century had been influenced by the punitive theories of Cesare Beccaria, Karl Roeder and Jeremy Bentham and their "ideals of penal utility and rehabilitation of criminals through work" (Costa 2013, 277).

However, even though the country was adapting itself to the new punitive practices, it still maintained the old social structure, including slavery. Luiz Felipe de Alencastro explained that what took place was a "modernization of slavery to adapt it to Positive Law and the new West rules that regulated private property and public liberties". Thus, according to that author, the question was "how could a delinquent slave be punished without incarcerating him and without depriving his master of the benefits of the captive's labors while he was serving a prison sentence?" (Alencastro 2010, 7). The answer to that was in Article 60 of the Criminal Law which stated that if the accused were a slave and the sentence was not capital punishment or the galleys he could be condemned to floggings "and after having suffered them, be delivered back to his master who would be obliged to keep him in irons in the manner, and for the length of time specified by the judge" (*Código Criminal*, 1830[6]). Alencastro explained that with the "floggings and the torture, one could punish without incarcerating: the dilemma was solved" (Alencastro 2010, 8). It can be seen that in regard to the punishment

[4] http://www.planalto.gov.br/ccivil_03/leis/lim/lim-16-12-1830.htm

[5] In 1831, the sentence was increased to from one to six months of reclusion with forced labor and double that for a recurrent offense.

[6] http://www.planalto.gov.br/ccivil_03/leis/lim/lim-16-12-1830.htm

of slaves there were certain continuities of the former practices. The new Criminal Law demonstrated the coexistence of a new legal culture with traditions inherited from colonial times (Pinto, 2010).

In the Criminal Law of 1830, together with the definition of vagrancy there is a definition of begging, and it is interesting to note that it is far more detailed. Begging seems to be considered a crime when the person could work but insists on begging instead. The punishment was a little different from the punishment for vagrancy because it could be simple imprisonment or forced labor, depending on the state and the forces of the beggar, for eight consecutive days.

That parallelism of vagrancy and begging does not seem to have been restricted to the Brazilian Criminal Law alone. Analyzing the Police of Rio de Janeiro in the nineteenth century, Thomas Holloway found that the police targeted both begging and vagrancy and the two were treated similarly in various aspects The former was seen as a problem due to the tenuous line that separated begging for alms and accepting alms when offered, which was associated to an act of charity, or taking without asking which was stealing and therefore a practice the police had to suppress. There was another problem associated to distinguishing between 'true' beggars and 'false' ones. The former were marked by their degraded condition and extreme poverty; they were incapable of being employed which made them deserving of charity whereas the false beggars, in the opinion of the elite of the times, begged fraudulently and from laziness (Holloway 2008, 164).

The relation between begging and vagrancy in that context is evident, for example, in a complaint in 1845 that some people had been wrongly arrested in the city for the crime of vagrancy when in fact they were 'true' beggars that is, they were in no physical condition to work. That was the case with João Benguela over forty years old who had one arm partially amputated and the other completely cut off or, again, with Maria Luisa de Nazarete who had a serious case of dysentery (Holloway 2008, 169).

In Brazil, other measures emerged, related to the idea of forcing subaltern classes to work, contemporaries of the Criminal Code. In 1830 a legal instrument was approved that regulated the service provision contracts. It created mechanisms that made it difficult for a worker to abandon his work and enabled the judges to force "the service provider to do his duty, punishing him with correctional imprisonment or after three ineffectual correctives, condemning him to work in prison until he had indemnified the other party" (*Lei de 13 de setembro de* 1830[7]).

Another service hire law was approved in 1837, this time specifically directed at immigrants and making the lives of workers who wished to abandon their contract even more difficult. In that case, if they did not pay to do so, they would immediately be arrested and condemned to "labor in public works for whatever time was necessary for them to settle, with the gross product of their labors, the amount owed to the hirer" (*Lei de 11 de outubro de* 1837[8]). What

[7] https://www2.camara.leg.br/legin/fed/lei_sn/1824-1899/lei-37984-13-setembro-1830-565648-publicacaooriginal-89398-pl.html
[8] http://legis.senado.leg.br/norma/541072/publicacao/15632760

those legislative devices go to show, according to Télio Cravo et al., is the construction of a framework that "restricted mobility and defined the coercive mechanisms" governing free workers in Brazil. Those laws sought to "canonize the relations of worker dependency: making it impossible for him to be absent from or evade his work and, if necessary, condemn him to imprisonment" (Cravo, Rodrigues, and Godoy, 2020).

While in Brazil the first change regarding the definition of vagrancy as expressed in the *Ordenações Filipinas* came with the Criminal Law of 1830, in Portugal, that only took place in 1852 with the introduction of the Penal Law which, in Article 256, stipulated that a vagrant was one who had no "fixed address where he lived, or the means of subsistence, or who did not habitually practice a profession or occupation or other means of gaining a living". The punishment was correctional imprisonment for six months and the culprit would be "placed at the government's disposal to work for whatever time seems convenient" (*Código Penal aprovado por Decreto de 10 de dezembro de 1852*[9]). The same law also foresaw that if after being judged, the vagrant presented a guarantor, the sentence would be extinguished. If however, the vagrant got away from the residence of the guarantor he would be liable to serve all the original sentence. Furthermore, the vagrant who "entered a habitation" or who was found disguised in any way or was founds in possession of objects worth more than ten thousand *reis* without justifying his possession would be sentenced to one to three years imprisonment. Lastly, if the vagrant were a foreigner, he would be handed over to the government which would cause him to leave Portuguese territory if he should refuse to do "the work that he was ordered to perform" (*Código Penal aprovado por Decreto de 10 de dezembro de 1852*[10]).

Portugal's new set of laws had references very similar to the Brazilian ones and in fact they were shared internationally in the ambit of the liberal Law Codification Movement at the end of the eighteenth and beginning of the nineteenth century. Cesare Beccaria and Jeremy Bentham were the inspiration for associating imprisonment with correctional labor (Nobre 2020). In Lisbon, forced labor as punishment for vagrancy had been established by an official order issued in 1755 which condemned both vagrants and beggars to labor in the city's public works (Esteves 2013, 117).

The text of the Portuguese Penal Law defines vagrancy in a manner similar to that of the Brazilian Criminal Law but with some differences such as the need to have a fixed address, in the Portuguese law. The punishment is also different because it specifies prison for six months and handing the individual over to the government to work for whatever time was considered convenient. It should be remembered, however, that a Brazilian Law of 1831 increased the punishment to six months confinement with labor and double that in case of a repetition of the offence. Another difference, as we have seen, was the punishment if the vagrant were a foreigner. In the Portuguese case João Fatela observed that keeping the vagrant in custody for as long as the government deemed convenient showed just how dangerous the status of vagrant progressively came to be (Fatela 1989, 6).

[9] https://www.fd.unl.pt/Anexos/Investigacao/1829.pdf
[10] https://www.fd.unl.pt/Anexos/Investigacao/1829.pdf

In Portugal, just as in Brazil, there was similarity insofar as both vagrancy and begging were criminalized. Article 260 of the Penal Code provided that any individual capable of earning a living by working, who decides to beg regularly will be deemed and punished as a vagrant. Article 261 stipulated imprisonment for the beggar who simulated infirmities in an ostensive manner, made threats or insults or begged in the company of another "except in the case of husband and wife, or a father and mother and their pre-pubescent children, the blind and crippled who cannot move around without help, each one with their respective guide" (*Código Penal aprovado por Decreto de 10 de dezembro de 1852*[11]), points very close to those of the Brazilian Criminal Law.

Alexandra Esteves has pointed out that the 'true' and 'false' distinction of beggars involved the verification of the existence of conditioning factors that made it impossible for the individual to work, such as physical or mental limitations or old age. Those considered capable of "guaranteeing their subsistence without having to beg should be compelled to work and consequently led away from idleness and vice". This procedure would be in "consonance with the recommendations of the bourgeoisie of the 1800s founded on the valorization of labor, order and merit" (Esteves 2013, 118–119).

Once the distinction had been verified the 'true' beggars would be eligible for charity while the 'false' ones would be reprimanded whether by "punishment and subjection to legal process or by being incorporated to the military corps". In 1839 Portugal published two edicts declaring that those considered to be vagrants could "opt to enter military service provided they were sufficiently physically robust and passed a rigorous selection process that sought to impede the propagation of bad habits and immoral vices" (Esteves 2013, 116).

In the course of the first half of the nineteenth century, in Brazil and in the Portuguese Empire, the legal definitions of vagrancy underwent transformations. While formerly they were permeated by the idea of labor as a relation of dependency on another person they came to be, instead, the valorization of work as such, including its regenerating and moralizing character. Furthermore, there was a crucial confluence of begging and vagrancy, and it was found necessary, in those two geographic spaces, to identify which beggars were 'false' and which were 'true' and the false ones were attributed the same vices as vagrants. Thus, the criminalization of poverty defined who could carry on begging given their incapacity for work and who should be obliged to work.

The 1870s decade represents a moment of inflection in the contexts being addressed here insofar as the aspect of race was added to that of class in the classification of vagrancy in the terms of the law. In the abolition context in Brazil and the Portuguese Empire, legal devices were introduced specifically directed at the black population.

As mentioned earlier, in 1871, Brazil approved its first abolitionist law which gave freedom, albeit conditionally, to the children of slaves born from then on. It was also determined that slaves "that belonged to the nation", "slaves donated for the use of the Court", "slaves of unclaimed legacies" and "slaves abandoned by their masters" should be freed. Even though

[11] https://www.fd.unl.pt/Anexos/Investigacao/1829.pdf

the crime of vagrancy was already typified in the Criminal Code of 1830 which was still in force at the time, a term was included in the new legislation that obliged the newly freed slaves to remain under government inspection for five years and to "hire their services on pain of being forced, if they lived in vagrancy, to work in public establishments" (*Lei de 28 de setembro de* 1871[12]).

It can be seen that work appears to be just as compulsory in the Free Womb Law as it was in the Criminal Law of 1830. However, in the Free Womb Law which made previsions specifically regarding recently freed slaves, the forms of control were even stricter and it was not sufficient for such workers to show that they had an occupation, they had to prove they were employed by someone. That emphasis was to ensure that freed slaves would be under submission to a boss.

There is an observable construction, in that period, of the figure of the freed slave as a potential vagrant, including on the part of the commission responsible for elaborating the Law of Free Birth. It considered that the immediate abolition of slavery would be a calamity for the security of the state "for private individuals and for the slaves". The justification for that assertion was, on the one hand, that it would mean launching into liberty masses of people who were "incapable of exercising the serious functions of the citizen". The prematurely freed slave "lacking coercion or incentive, becomes a vagabond" (*Anais da Câmara dos Deputados*, Seção de 30 de junho de 1871[13]).

The idea that idleness was inherent to the black to justify a gradual rather than immediate emancipation also circulated in the newspapers of the capital, Rio de Janeiro. In its issue of July 2, 1871, the *Jornal do Commercio,* in a weekly section dedicated to criticizing the draft of the Free Birth Bill declared that the forecast of the number of freed individuals there would be in 20 years time limited the possibilities of raising them "educating them, policing them and making them work". The vast contingent the writer imagined would lead to the "large-scale development of idleness, vagrancy and criminality" (*Jornal do Commercio*, 02.07.1871: 5).

The same Commission identified inspiration for a gradual transition in the experiences of England, Denmark and Portugal (*Anais da Câmara dos Deputados*, Seção de 30 de junho de 1871). As mentioned above, the Portuguese Empire also backed the idea of a gradual process for ending slavery which began with the decree of 1858 determining that abolition was to take place in the colonies in twenty years time.

It was just as usual, in Portugal, to associate the blacks with idleness as it was in Brazil. The ideas of that association were propagated, for example, in broadsheets and pamphlets published in the 1870s. In 1875, Alberto da Fonseca Abreu e Costa, a landowner in Angola warned of the need for curbing the freed slaves:

> as a means of transition, which it was indispensable to accept, because the indigenous colonial peoples, due to their rustic state, are not sufficiently prepared for the good use

[12] http://www.planalto.gov.br/ccivil_03/leis/lim/lim2040.htm
[13] https://bd.camara.leg.br/bd/handle/bdcamara/28839

> of total freedom; because even today, they are not [prepared] for the transition to the status of freed person without there being regulations for repressing vagrancy, or obligatory wage-earning labor contracts, in view of their natural indolence and rejection of working willingly (Costa 1875, 13).

The author identified some foreign inspirations for a gradual transition for ending slavery such as Puerto Rico and Cuba. In regard to Brazil "sister nation in language and customs", he stated that the country had recently abolished "slavery, establishing a twenty-year period of transition to the state of liberty from slavery", a reference to the Free Womb Law (Costa 1875, 14).

There were those, however, who contested that image of the blacks as necessarily repudiating work, albeit they were fewer in number. That was the case of Sá da Bandeira, an important Portuguese abolitionist who, in a leaflet in 1873, stated that blacks would only refuse to work, not because of any natural indolence but for not receiving their wages, or when the same were insufficient or when they were being maltreated. He warned that care should be taken when using the word vagrant in the colonies; it was important to remember that in general it was the black women who performed the agricultural work and other tasks (Bandeira 1873).

Sá da Bandeira formulated various Portuguese abolition laws one of which was approved in 1875. It proposed that in the following year workers in the colonies would pass from being freed slaves to being freemen, but they would be under government guardianship and obliged to hire out their services for two years, that is until 1878, preferably to their former masters (*Lei de 29 de abril de* 1875[14]). The guardianship of the State, according to technical opinion of the commission that examined the said law was to protect those emerging from captivity from "renouncing the benefits of freedom even before acquiring its habits" (*Câmara dos Pares do Reino*, Seção de 31 de março de 1874[15]). According to that vision, it was up to the State to civilize the blacks through compulsory labor and in that way protect them from the snares of sudden freedom.

Again, according to the commission, vagrancy was "the first and most pernicious vice to prevent" in the said transition period (*Câmara dos Dignos Pares do Reino*, Seção 31 de março de 1874[16]). Article 27 of the said law stated that an individual that the law had made free and was under public guardianship would be judged as such following the conditions of Article 256 of the Portuguese Penal Code. If the punishment provided for in this code was up to six months of correctional imprisonment, the law of 1875 fixed an even stricter penalty for the Africans insofar as those deemed to be vagrants would be "subject to forced labor for two years in State establishments specially created for the purpose or in the forts and public works of the province and receive the wage determined by the respective governor". It also foresaw the possibility of those convicted hiring out "their services, at any time, to private individuals in which case the public obligation would be extinguished" (*Regulamento para execução da lei*

[14] https://www.fd.unl.pt/Anexos/Investigacao/1425.pdf
[15] https://debates.parlamento.pt/catalogo/mc/cp2
[16] https://debates.parlamento.pt/catalogo/mc/cp2

de 29 de abril de 1875[17]). Another aspect classified as vagrancy by the same regulation was 'disturbance' or attempted disturbance in the employer's establishment or the enticement of employees to abandon the establishment.

In that very year of 1875, regulations were implemented that specified, in greater detail, the terms of service contracts.[18] They established a ceiling of nine and half hours work per day with Sundays off and the provision of a bed raised up from the floor on the part of the employer. The minimum wage and the 'minimum rations' were to be determined by the specific regulations of each province. Furthermore, absence from work for a period of fifteen consecutive days "without a justification would be considered vagrancy and as such subject to the penalties" established in the regulations themselves (*Regulamento para execução da lei de 29 de abril de* 1875[19]).

In the case of Brazil, the harshest repression of vagrancy came with the law enacted on September 28, 1885, known as the Sexagenarian Law (*Lei dos Sexagenários*). One of its main points was the liberation of slaves over sixty but on the condition that they worked an additional three years for their former masters to compensate them for their manumission. The law also foresaw that slaves whose manumission was financed by the Emancipation Fund would be obliged to remain in the municipality where they had been emancipated for five years. Those who left their domiciles would be considered vagabonds and arrested by the police to be employed in "public works or agricultural settlements". In addition, any freed slave found without an occupation would be "obliged to employ himself or hire out his services within a time that the Police determined". If the freed slave had not complied with that determination when the period ended, he would be brought before the Judge of Orphans "who would force him to enter on a service hire contract on pain of 15 days imprisonment with labor and to be sent to an agricultural settlement if he should repeat the same offence (*Lei de 28 de setembro de* 1885[20]). Thus, the punishment for vagrancy became even more complex and specified than in the 1871 Law and it was designed to immobilize the freed slave in the municipality where he had always worked and keep him within the jurisdiction of his former master; also, there was a specified prison term for those found without an occupation.

It can be seen that even though there were already laws governing vagrancy in the Portuguese Empire and in Brazil, the context of the emancipation of slaves brought with it transformations. In that regard, in those spaces, in connection with the international context, images circulated of a 'natural tendency' to idleness on the part of blacks and those images were used to justify making the transition to liberty gradual rather than immediate and repressing vagrancy, specifically for that part of the population. Thus, the persecution of vagrancy in the abolition period appeared as a powerful weapon to oblige black men and

[17] https://www2.ifch.unicamp.br/cecult/lex/web/uploads/da927b9b0aa93e489c21965e78286b6f922c070d.pdf
[18] A more in-depth analysis of the said regulation can be found in Mayza Espíndola Souza (2017).
[19] https://www2.ifch.unicamp.br/cecult/lex/web/uploads/da927b9b0aa93e489c21965e78286b6f922c070d.pdf
[20] http://www.planalto.gov.br/ccivil_03/leis/lim/LIM3270.htm

women to continue working, and preferentially for their former masters. The idea was to repress any large-scale alterations in society and to guarantee worker supply by compulsion.

III. Vagrants and Vagabonds in the Post-Abolition Period

In the Portuguese Empire, 1878 was the year supposed to mark the end of the period of transition to liberty. In that year the Portuguese government issued a new regulation governing labor contracts, largely re-editing the former text.[21] The document justified itself by stating that "the state of the indigenes does not yet qualify them to promote, by their own efforts, the maintenance of their rights as free citizens and for that reason special protection of the authorities is essential for them" (*Regulamento para os contratos de serviçais e colonos nas províncias da África portuguesa*, 1878[22]). Thus, the same legal provisions concerning vagrancy persisted for the Africans.

While the use of the term 'indigenes' to refer to the African blacks literally meant those born in the country, in that context, according to Isabel Castro Henriques, the term acquired "a pejorative functionality that disqualifies and serves to designate one who for that reason is condemned to forced labor" (Henriques 2004, 294). The same author states that such a construction was achieved through the re-elaboration of the representation of the Africans with the aim of making "evident the congenital nature of [their] savagery". According to her, "the very savagery of the image serves to justify the imposition of a highly ferocious labor discipline" (Henriques 2004, 287–288).

In Brazil a few days prior to the signing and enactment of the Abolition Bill in 1888, Princess Isabel gave a speech which addressed the need to extinguish servitude but at the same time stressed the importance of improving "our laws for repressing idleness" (*Anais do Senado*, Seção de 3 de maio de 1888[23]). In harmony with the Princess's remarks, in that same year, Minister of Justice Ferreira Vianna proposed a project specifically addressing vagrancy. It foresaw the creation of "establishments dedicated to the correction" of those accused of vagrancy and the punishment was to be increased to be a minimum of three months to a maximum of one year. Furthermore, it included, in the articles of the 1830 Criminal Code that dealt with vagrancy (Art. 295) and begging (Art. 296), the offenses of "habitual drunkenness", "abandonment of employment or occupation" and "rejection of honest work that is offered or which the person is bound by contract to perform" (*Anais da Câmara dos Deputados*, Seção de 10 de julho de 1888[24]). The parliament, however, never voted on the project.

The real transformation in the definition of vagrancy in the post-abolition period in Brazil only came after the fall of the monarchy and the installation of the Republic in 1889 and, more effectively, with the enactment of the Penal Code in 1890. The first change in relation to the Criminal Law of 1830 was that the crime of vagrancy was no longer considered together with

[21] Esmeralda Simões Martinez (2008) addresses the question of the 1878 regulation in greater detail.
[22] https://www.fd.unl.pt/Anexos/Investigacao/1426.pdf
[23] https://www.senado.leg.br/publicacoes/anais/asp/ip_anaisimperio.asp
[24] https://bd.camara.leg.br/bd/handle/bdcamara/28839

begging but instead with the Afro-Brazilian martial art capoeira. In addition to the lack of an occupation that provided a means of living that previously defined vagrancy, it was also defined by not having a "fixed domicile and living in it" or "gaining a living by means of an illegal occupation or one that is manifestly offensive to morals and good customs" (*Código Penal de* 1890[25]). Thus, there was an insertion of the need to have a residence in a similar way to the Portuguese Penal Code of 1852 already commented on, but with the additional feature of a moral judgement of the type of work. The punishment went from being "imprisonment for eight to twenty days with labor" in the 1830 law to "prison for fifteen to thirty days". Thus, the obligation to work was removed but in the case of recurrence of the offense the offender would be "confined for one to three years in penal colonies founded on maritime islands or on the frontiers of national territory" (*Código Penal de* 1890[26]).

Other elements that were introduced bore similarities with the Portuguese Law and included the possibility of presenting a guarantor which would suspend the conviction and the deportation order if the convicted individual was a foreigner. The punishment for capoeira in its association with vagrancy was far more severe and foresaw "prison for two to six months" (*Código Penal de* 1890[27]). In the case of a recurrence, then the same punishment would apply to capoeira as that foreseen for the recurrence of vagrancy.

In the 1890 law beggars were associated with drunkards. In regard to begging, in addition to the definitions set out in the 1830 laws, there was the criminalization of a person's giving permission "for a person under 14 years old subject to his power or entrusted to his guardianship and supervision, to go begging, whether or not profit is obtained by them or for another". In that case the punishment was "imprisonment for one to three months". For the drunkards the sentence was imprisonment for fifteen to thirty days for anyone who "habitually gets drunk or appears in public in an obvious state of drunkenness" (*Código Penal de* 1890[28]).

The outreach of Article 399, according to Erika Bastos Arantes meant that the identification of vagrants was chiefly an attribution of the police, thereby facilitating "arrests merely on suspicion or which, in fact were based on personal issues involving the police authority and the accused" (Arantes 2010, 124). In the name of 'vagrancy' workers' customs at the time were persecuted and stigmatized. Thus, workers could be arrested when they were resting, having a drink with friends or playing. Furthermore, even those who tried but could not find work were reprimanded. That was a very common reality in Rio de Janeiro, the capital of the country, at the beginning of the twentieth century as the newspaper *A Noite* denounced:

> It is one of the most serious problems for our proletariat. Early in the morning they go to the public places, go along the Passeio, the 15 de Novembro square, the various quaysides, the old market and the new one, the Santa Luzia beach. What a depressing experience. We saw and counted 180 workers sleeping in the open air. All of them told

[25] https://www.planalto.gov.br/ccivil_03/decreto/1851-1899/d847.htm
[26] https://www.planalto.gov.br/ccivil_03/decreto/1851-1899/d847.htm
[27] https://www.planalto.gov.br/ccivil_03/decreto/1851-1899/d847.htm
[28] https://www.planalto.gov.br/ccivil_03/decreto/1851-1899/d847.htm

> the same story: the factory, work, their hope of finding work in the future. It is absolutely not a case of vagabondage, they are workers! (*A Noite*, 02.05.1914).

In the Republic, the persecution of vagrants and idlers which already existed became even more intense. Lerice de Castro Garzoni explains that it was the most frequent motive for the imprisonment of poor workers in the capital "mainly blacks or mixed race" (Garzoni 2007, 12).

Although the letter of the law made no gender-based distinction, Garzoni pointed out that the moral tone present in the definition of vagrancy was used in the judgments of women arrested for that crime. In that respect "many policemen and witnesses used arguments related to the honor of the accused with references to their moral wantonness and the practice of prostitution" (Garzoni 2009, 69). Thus, the question of honor arose mainly in the cases of vagrancy charges involving women.

The moral content of the definition of vagrancy was used to punish other types of behavior deemed to be unacceptable. According to James Green, imprisonment on vagrancy charges served to suppress public manifestations of homosexuality. Although the Brazilian State had decriminalized the practice at the beginning of the nineteenth century, vaguely defined ideas of morality led to "a legal network always ready to capture those who transgressed any of the socially approved sexual norms" (Green 2000, 58).

Later, other measures were established in the sense of creating corrective establishments for those convicted of vagrancy. An example was the decree of July 1893, which ordered the foundation of a correctional colony "for the correction, through work, of idlers, vagabonds and capoeiras found in the Federal Capital and tried as such" (Garzoni 2009, 71). In 1902 a law established the creation of "one or more correctional colonies for rehabilitation through work and instruction" (*Lei de 29 de dezembro de* 1902[29]).

The 1886 Penal law of the Portuguese Empire re-edited the definitions of the crime of vagrancy of the previous law of 1852. The real change however came with the approval of a law in 1892 that foresaw transportation of persons with more than one conviction to overseas colonies where they would be provided with free labor. However, even in the case of a first conviction for vagrancy, the person could opt to be transported to the colonies and unlike the other cases he could choose where he wished to go if he could show that it was where there was a better chance of making a living. The Minister of Justice at the time, Antonio Ayres de Gouveia, stated that even before the enactment of that law a practice had begun of "sending to the African colonies, those vagrants handed over to the government to be given work" (*Câmara dos Deputados da Nação Portuguesa*, Seção de 12 de março de 1892[30]).

According to the Minister of Justice himself, that 1892 law aimed to "remove and put them far away from the social milieu they live in and which they keep in a distressing state of alarm". The justification was that "the change in the social environment, even if it did not alter them in essence, would considerably modify some tendencies". Gouveia acknowledged that the

[29] https://www2.camara.leg.br/legin/fed/lei/1900-1909/lei-947-29-dezembro-1902-584264-republicacao-107075-pl.html
[30] https://debates.parlamento.pt/catalogo/mc/cd

deportation of vagrants and other criminals was not exactly a novelty in the Portuguese legislation. As shown previously, it was already provided for in the *Ordenações Filipinas.* The minister remarked on the history of "some colonies which today radiate splendors of civilization, that had their somber, lowly origins in the forced exodus of delinquents and paupers repelled by the motherland". He remembered the case of Brazil to which Portugal had sent "the layabouts that roamed the streets of Lisbon in gangs making a living mainly by stealing" (*Câmara dos Deputados da Nação Portuguesa*, Seção de 12 de março de 1892[31]).

The inspiration for the 1892 law came, not only from Portugal's past but also from the law enacted in France in 1885 which sentenced incorrigible criminals to permanent exile in its colonies. Gouveia added that the law had a swift effect insofar as there was a drop in the number of convictions for vagrancy (*Câmara dos Deputados da Nação Portuguesa*, Seção de 12 de março de 1892[32]). Thus, there was a considerable transformation in the Portuguese Law because the vagrant came to be considered an incorrigible criminal. Also, the practice of deportation, widely applied in imperial times, was taken up once more.

Some additions to the definitions of vagrancy and begging were made with the issuing of a decree by the Ministry of Justice in 1894. The first was the inclusion of he who "being capable of earning a living by his own labor, has decided to live at the expense of women prostitutes". The former benefit of the bail option foreseen in the 1852 Penal Code was invalidated in the case of a recurrence in the crime vagrancy (*Câmara dos Deputados da Nação Portuguesa*, Seção de 20 de outubro de 1894[33]). In regard to begging, the punishment was extended to include those who ordered or consented that "a person under fourteen years old who is under their paternal or guardianship authority or entrusted with their education, direction, guard or vigilance should give them over into begging or the effect of begging shall incur a sentence of correctional imprisonment of up to six months and a corresponding fine". That inclusion was similar to what already existed in the Brazilian Penal Law of 1890 and the sentence was valid even when the begging "is done while simulating the sale of objects" (*Câmara dos Deputados da Nação Portuguesa*, Seção de 20 de outubro de 1894[34]).

According to the formulators of the decree, the proposal to expand the definitions of crimes was related to the idea of "debilitating criminality, predominantly in urban centers with denser populations". The aim was to "persecute criminality in the sinister alleyways of the cities, in the brothels, in the most secret hideouts in order to submit educational discipline and penal repression, those who, if unpunished, could become transformed into incorrigible delinquents" (*Câmara dos Deputados da Nação Portuguesa*, Seção de 20 de outubro de 1894[35]).

However, the sentences for those inclusions in the crime of vagrancy were not susceptible to being converted to sentences of exile as was formerly the case. The formulators of the decree

[31] https://debates.parlamento.pt/catalogo/mc/cd
[32] https://debates.parlamento.pt/catalogo/mc/cd
[33] https://debates.parlamento.pt/catalogo/mc/cd
[34] https://debates.parlamento.pt/catalogo/mc/cd
[35] https://debates.parlamento.pt/catalogo/mc/cd

introducing changes stated that "experience has shown the inconveniences associated to the immoderate use that has been made of the provisions" of the 1892 law. Furthermore, they indicated that "when the convicted person is indigent and in the place of exile finds it difficult to find a means to a living, the said sentence, instead of having a moralizing effect may actually be an incentive, perhaps an irresistible one, to commit new offenses" (*Câmara dos Deputados da Nação Portuguesa*, Seção de 20 de outubro de 1894[36]).

In the parliamentary discussion of the decree in the House of Representatives in 1896, parliamentarian Teixeira Gomes questioned the inclusion of begging as a crime. In his opinion, if someone suffered an accident and was temporarily unable to work "and not having anyone who could come help him to obtain his subsistence, he had necessarily to have recourse to alms", or "send his wife and children to implore for public charity". He also pointed out that begging was not "a specific ill, but the symptom of another" and the way to destroy it was "not prohibiting it, but developing the country's economic conditions" so that it would no longer be necessary (*Câmara dos Deputados da Nação Portuguesa*, Seção de 7 de março de 1896[37]).

In 1896 an important alteration was made to the terms of the 1894 decree insofar as those condemned for vagrancy and begging, including the earlier prescription for those living at the expense of prostitutes, who were over 18 and fit for work, after serving their sentences could be put at the government's disposal and be deported. The convicted individuals could also be interned and compelled "to work in an asylum or deposit for beggary for that period of from two to five years, when there are public institutions suitable for that purpose" (*Câmara dos Deputados da Nação Portuguesa*, Seção de 7 de março de 1896[38]). Thus, in addition to the option of punishment by deportation, foreseen in the 1892 law, there was forced labor in specifically designed institutions similar to what the Brazilian Penal Code of 1890 had established.

Another decree, issued in 1899 regulated the 1892 law setting out the practical procedures for its execution. In regard to repression, in addition to all the previously mentioned measures – bail, labor for the state transportation overseas, and exile from the kingdom – there was the sentence of forced internment in the Villa Fernando School of Agriculture. That was the first reference to appear to an institution specifically designed for the internment of vagrants. Another novel feature was the inclusion of the option "voluntary presentation for military service" (*Decreto de 23 de março de 1899*[39]).

In that same year the Indigenous Labor Regulations were approved. The Minister of the Navy stated that it had set up a commission, presided over by António Enes, to formulate the said document and made it clear that it was intended to seek for "practical means to make the indigenes undertake regular work". According to the minister, work was a social and moral obligation of all men and all the more so for the Africans who still lived "in social conditions

[36] https://debates.parlamento.pt/catalogo/mc/cd
[37] https://debates.parlamento.pt/catalogo/mc/cd
[38] https://debates.parlamento.pt/catalogo/mc/cd
[39] https://www.fd.unl.pt/Anexos/Investigacao/1895.pdf

close to barbarism". For them work was a way to "qualify them to enter in the collectivity of civilization" (*Câmara dos Deputados da Nação Portuguesa*, Seção de 20 de março de 1899[40]).

The president of the commission, António Enes expressed similar ideas. As previously mentioned regarding the formulations that the laws regulating African labor were based on, the indigenes appear as if they were "invincibly rebellious against work". Enes was extremely critical of the previous measures which according to him, "for fear that the practices of the abolished regime should survive, laws and regulations were elaborated based on a species of declaration of the rights of blacks which textually stated that *from now on, no one is obliged to work*". Enes declared that in Portugal "similar rights for whites" were not recognized, because all were obliged to acquire, "through their labors, the means of subsistence that they needed on pain of being punished as vagrants" (Enes 1971, 70).

Enes considered that the legislation treated "the black as a minor or an interdicted person incapable of self-determination which restricts the possibilities of hiring his services while at the same time it surrounds him with gentle, maternal precepts such as not sleeping other than in a bed raised off the floor". In Africa:

> millions of blacks sleep on the bare ground and rheumatisms and catarrh have yet to exterminate them, but if any one of them hires out his services under the aegis of Portuguese law, then a bed raised off the floor must be provided for him, which is what that that pious law determines (Enes 1971, 71).

Thus, the regulations that he helped to organize in 1899 sought to correct that past mistake which in his view consisted in attributing obligations to the masters alone.

Accordingly, in its very first article the regulation of 1899 proposed that all "the indigenes of the Portuguese Ultramarine Provinces are subject to the moral, legal obligation to seek to acquire, through work, the means they lack to subsist and improve their own social condition". That obligation would be considered fulfilled in the case of those indigenes: who owned capital or had an income, or who performed an activity that guaranteed them a living; those who worked for wages for a certain number of months in each year; or those who cultivated, on their own account, land producing products for exportation. Others exempt from that obligation to work were women, minors under fourteen and adults over sixty, as well as the sick, "chiefs and important indigenes" (*Regulamento do Trabalho Indígena*, 1899[41]).

Those who failed to voluntarily comply with the obligation established in the regulation would be "intimated by the administrative authority to work at the service of the State, of the municipality or of private individuals". Those who disobeyed the intimation, resisted the act of compulsion, got away from the workplaces or refused to provide service would be condemned to correctional labor (*Regulamento do Trabalho Indígena*, 1899[42]).

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[40] https://debates.parlamento.pt/catalogo/mc/cd
[41] https://www.fd.unl.pt/Anexos/Investigacao/1427.pdf
[42] https://www.fd.unl.pt/Anexos/Investigacao/1427.pdf

Enes's complaints about the previous regulations seem to have been addressed by attributing power to the employers in order to "ensure the fulfillment of the obligations accepted by the workers or legitimate repression should they fail to fulfill them." That being so, the employers were endowed with power to arrest any employee who committed an offense as foreseen in the penal laws and to "correct, moderately, the employee's faults and use 'all indispensable means' to ensure that the employees did not leave the service before the contract ended, capturing them if they got away" (*Regulamento do Trabalho Indígena*, 1899[43]).

While both the Portuguese Empire and Brazil created specific punishments for the population of those recently released from captivity, it can readily be verified that in the post-abolition period, they followed different paths. Initially the Portuguese Empire maintained the specific legal provisions for the indigenous population of the colonies and later intensified it. Brazil, on the other hand removed all explicit references to race in the letter of the law, although it did link the practice of an Afro-Brazilian martial art to the crime of vagrancy and in the everyday application of the law it was the black population that was the main target of imprisonment for vagrancy.

Brazil and the Portuguese Empire, in those legal measures directed at Portugal itself, considerably broadened their definitions of vagrancy and the respective punishments and often did so in an intense dialogue between the formulations of the two countries. There was the introduction of a moral aspect in the definition of vagrancy in Brazil's case, deportation as the most expanded form of punishment on the part of Portugal and the introduction of institutions dedicated to the rehabilitation of vagrants in both.

IV. Vagrancy – Class, Race and Gender

The following text was published in 1880 in the Brazilian abolitionist newspaper *Gazeta da Tarde* and displays some of the main arguments elaborated in this article. Firstly, it reveals the class distinctions present in the definition of who was a vagrant and who was not, because the masters, who did not work but lived at the expense of their slaves' labors, were not considered vagrants.

> Slavery and vagrancy
>
> Among the innumerable senseless arguments of the slavocrats, there is none more irritating than that which proposes that Emancipation will launch the slaves of today into vagrancy and idleness.
>
> Those who are admittedly absentees dare to speak of vagrancy and idleness while living in Paris and other capitals at the cost of the sweat and blood of their slaves, delivered into the hands of brutish foremen; insatiable parasites of the poverty-stricken African race!

[43] https://www.fd.unl.pt/Anexos/Investigacao/1427.pdf

> But it is you who are the eternal and perpetual vagrants. It was you who have turned the name of vagrant into an honorable title; vilified labor, degraded it to be a punishment (*Gazeta da Tarde*, 21.10.1880: 2).

In the cases this article has analyzed, ranging from the Portuguese Ancient Regime to the later changes made towards the end of the nineteenth and at the beginning of the twentieth century, what defined the crime of vagrancy was the idleness precisely of those who did not have a sufficient income for them not to need to work. Thus, it was in effect, a criminalization of poverty and it stipulated work as the duty and obligation of the poor population. It is also noticeable that, in the course of time, the meaning of work as an obligation underwent transformation from being something legitimated as a relation of personal dependency on and subjection to another to increasingly taking on the guise of an economic function of the market.

In its aspect as the criminalization of poverty, the persecution of vagrancy not only obliged the poor individual to work but also obliged him to find work and punished him if he did not succeed. In the course of the nineteenth century there was an observable tendency in Brazil and in the Portuguese Empire to distinguish between the 'true' and the 'false' beggar. The former was one incapable of obtaining work and would be the object of charity, while the latter would go to jail and, increasingly, as time passed, to forced labor itself.

The excerpt from the *Gazeta da Tarde* reveals another argument identified in this article, namely that the context of emancipation in the situations portrayed led to the formulation of specific legal devices for the repression of the population emerging from captivity. In that sense, the foundation of the argument questioned by the newspaper, was precisely the racial issue: that is to say, the blacks were naturally idle and so vagrancy in their case had to be most harshly repressed and they had to be forced to work.

The concern of owners and proprietors to guarantee the labor force in the transition context resulted in vagrancy's becoming the main legal device to that end, not only in Brazil and the Portuguese Empire but also in a broader sphere. Alessandro Stanziani described how, even though the repression of vagrancy was strongly criticized in France, in the mid-nineteenth century it "was introduced in the colonies after emancipation and justified by the 'natural indolence' of former slaves and new immigrants as well as the need to maintain order in post-abolition society" (Stanziani 2008, 193–194). Brazilian and Portuguese politicians sought to base their arguments precisely on the numerous examples of the international experiences.

While class and race were intimately entwined in the definitions of vagrancy in the emancipation period, it is also important to underscore the implications of gender aspects. Sá da Bandeira's warning that in general it was the black women that carried out agricultural work and other tasks and not the men, was completely ignored in the process of criminalizing vagrancy in the African colonies of the Portuguese Empire. In fact, the colonial exploitation process subverted the gender divisions in traditional labor relations when in 1899 it determined that African women would be exempt from the obligation to work. Thus, there was an apparent attempt introduce the same separation of the spheres of production and reproduction taking place in other spaces that were undergoing industrialization processes.

That however was not the case with the Portuguese colonies at that time and the measure was to have a direct impact on women.[44]

It should also be remembered that the addition of a moral component to the legal definition of vagrancy introduced in the post-abolition period in Brazil affected women the most as they were judged for their sexual behavior rather than for failing to go to work or for not having a fixed address. On the other hand, that moral prerogative also affected other behaviors considered to be deviant such as homosexuality.

This article has endeavored to present the connections and points of comparison between Brazil and the Portuguese Empire and the relevant references to other spaces in regard to the definitions of vagrancy. On the one hand it has shown that they altered in the course of the abolition period and were permeated by the categories of class, race and gender. On the other, it has shown how the punishments for vagrancy also underwent transformations which were related to transformations in labor relations and to the production of new workers.

[44] In the case of the USA, Angela Davis proposed that when production manufacture was transferred from the home to the factory "femininity ideology began to forge mother and wife as ideal models". That being so "an ideological consequence of industrial capitalism has been the development of a more rigorous idea of the inferiority of women" (Davis 2016, 45).

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