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**Review: The Social Construction of Property Rights in 19th-century Brazil — by Mariana Armond Dias Paes**  
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**The Social Construction of Property  
Rights in 19th-century Brazil.  
By Mariana Armond Dias Paes.  
Global Perspectives on Legal History  
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Institute for Legal History and Legal  
Theory, 2021. Pp. 200.  
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REVIEWED BY

**Isabel Bedoya Palop**

ABOUT THE REVIEWER

Isabel Bedoya holds a BA in History and a BA in Law from the University of Jaén. She also finished an MA in Global History at Pompeu Fabra University of Barcelona, where she is currently working on her MPhil in History. Her research focuses on the history of Spanish law, specializing in slavery law and 19th-century Spanish colonial law. She is currently working on a study of enslaved women in Puerto Rico through legal cases. She is particularly interested in the relationship between the creation of law and its impact on societal structures and vice versa. Her work is supported by the predoctoral program Joan Oró (2023 FI-3 00065) of the Generalitat de Catalunya's Secretariat for Universities and Research and co-funded by the European Social Fund Plus.

In her latest book *The Social Construction of Property Rights in 19th-century Brazil*,<sup>1</sup> the Brazilian legal historian Mariana Armond Dias Paes analyzes Brazil's legal evolution in the context of the relations between people and things.<sup>2</sup> Utilizing disputes over dominion and possession of slaves and land as primary sources, she adopts a multilateral Atlantic circulation approach. Her central hypothesis is that the effects of this circulation influenced the shaping of legal norms, categories, and justice in nineteenth-century Brazil. Dias Paes explores the social construction of legal relations within the Brazilian context, considering the European *ius commune* legacy, Portuguese legal inheritance, and the involvement of diverse actors—Brazilians, Portuguese, Africans, and other European and American agents—in the development of Brazilian law.

Dias Paes' book challenges Eurocentric perspectives in colonial historiography by transcending a one-way transfer of knowledge from Europe to colonized territories. Emphasizing diverse viewpoints, particularly those of non-European cultures and enslaved individuals, she highlights agencies and voices which are often overlooked. The book explores intersections of race, gender, religion, and socioeconomic status. Critiquing Eurocentrism's impact on historical narratives, she demonstrates how the Brazilian local context played a significant role in shaping the broader scope of the "right to property," acknowledging the contributions of non-European civilizations to the field of law.

As the research group coordinator of Global Legal History on the Ground and a researcher at the Max Planck Institute for Legal History and Legal Theory, Dias Paes focuses on cultural exchanges, aligning her work with global history. Her research delves into the legal status of 19th-century Brazilian slaves, as seen in publications like *Escavidão e direito*.<sup>3</sup> By examining legal files and historical perspectives, she sheds light on global legal history, linking her work with broader narratives, including the shared Atlantic legal culture and the intricate connections between legal reasoning, land disputes, and colonialism. Her exploration of the construction of property rights transcends national borders, offering a framework for understanding present global dynamics. Unlike some existing research, her transnational approach, the in-depth exploration of cultural exchanges and interconnectedness and

1 Original title: *Esclavos y tierras entre posesión y títulos. La construcción social del derecho de propiedad en Brasil (siglo XIX)*.

2 In *ius commune*, the term "thing" is a flexible concept encompassing a wide array of external entities, from concrete to abstract, corporeal to incorporeal. It transcends a strict object-oriented definition, allowing for more abstract interpretations. This framework blurs the line between persons and things, as seen in the analysis of enslaved individuals, whose rights and status are treated akin to immaterial "things" like freedom.

3 Mariana Armond Dias Paes, *Escavidão e direito. O estatuto jurídico dos escravos no Brasil oitocentista (1860-1888)* (São Paulo: Alameda, 2019).

the employment of *ius commune* in America, ensures a balanced historical narrative that avoids overemphasizing European history.

Dias Paes' work adds depth to global legal history by addressing gaps in cultural perspectives and offering nuanced insights into the legal status of slaves and the construction of property rights. In the book, she employs microhistory by gathering testimonies and arguments presented in legal proceedings to delineate the development of the subjective concept of "property right" across different legal cultures. Considering law and society as mutually influential, the book asserts that legal traditions and customs shape the studied cases, reciprocally influencing the jurisprudence defining the right to property. By conducting analysis at the micro level while considering the Atlantic dimension of *ius commune*, European heritage, African tradition and the American colonial context, Dias Paes unravels larger-scale processes in the evolution of property rights.

In the introduction, Dias Paes presents the *ius commune*: a flexible, arbitrary and non-hierarchical European law spread orally and through custom that was extrapolated to colonial America. She highlights its broad definition of "thing," encompassing both land and abstract entities like freedom. The concept of "domain" is explored, more related to the faculty of use and objective utility of things than to the liberal conception of "property," the latter linked to a subjective concept of "appropriative will." This flexibility allowed historical subjects to reappropriate, mobilize and resignify their interpretations.

The first chapter focuses on possession as a legal category during a period dominated by the *ius commune*, where utility remains a key consideration. Dias Paes illustrates this through a legal procedure, emphasizing the necessity of exercising possession and effective dominion in a useful, public, and peaceful manner to secure land "property." She draws parallels with slavery, highlighting the significance of the "appearance" of living as a slave or a free person in judicial determinations. Social recognition plays a crucial role in shaping possession situations, impacting the weight of witness testimony based on social hierarchy. The colonial settlement model acknowledges diverse forms of possession, including *terra nullis*, which involves occupying "no-man's lands" with considerations like the "danger of the place" or the "extermination of Indigenous people" influencing effective domain determinations. It incorporates "skilled" and "useful" occupations for legal effects. Colonial law introduces categories of dependents like *agregados*, whose status is not valid for effective possession as they act on behalf of the domain owner. Many *agregados*, often *libertos*, mirror African patterns of dependency relationships towards prestigious chiefs, highlighting local

influences on the broader construction of property rights.

The second chapter explores the document production processes and domain titles in legal proceedings during a period when the authority competent to issue such titles had not yet been established. The recognition of a title as valid or invalid was still a rather arbitrary matter. The validation of titles was subjective, and individuals, particularly the elites, attempted to legitimize their “domain” through “chains of documents.” Despite the growing influence of state authority and scientific knowledge, the lack of regulation allowed community recognition and common knowledge to remain fundamental in proving active and uninterrupted possession. Additionally, the chapter addresses the position of married women, who, despite needing their husbands’ consent for civil capacity in doctrinal and jurisprudential practices, often engaged in business, participated in the slave trade, and undertook actions demonstrating financial independence, highlighting the ongoing tension between evolving liberal law and the influence of European, African and colonial customs.

The final chapter explores illegal land and slave acquisitions within the context of slavery and integration into the Atlantic economy. Dias Paes illustrates, through legal cases, how *ius commune* structures were strategically resignified to build property rights, employing technically illegal methods like altering legal categories on documents. For instance, changing “slave” to “servant” in passports<sup>4</sup> or modifying baptism certificates. Social recognition and “appearance” remained pivotal for ownership recognition, even as the elites, transitioning to a liberal model, attempted to formalize registers. However, during this period, registers accepted documents without verifying acquisition origins, akin to *ius commune* practices, resulting in illicit land and slave ownership titles.

Through narratives that interlace social and legal history, the author underscores a central argument: the mutual constitution of law and society. Parties, lawyers, and witnesses interpret laws, creating contradictions that prompt judges to develop new doctrines, contributing significantly to shaping Brazilian law. Dias Paes demonstrates how the accumulation of provisions from diverse legal traditions enables actors to reinterpret laws, adapting them to evolving conditions and legal theories. Her approach adeptly examines the coexistence of liberal ideology with old paternalistic or community patterns. A key thesis point emphasizes the paradoxical reinforcement of

4 Scott and Hébrard talk about illegal enslavement through official documents on trips from Santo Domingo to Cuba, New Orleans and Louisiana in their book. See Rebecca Scott and Jean M. Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA: Harvard University Press, 2012).

power dynamics, where liberal civil law, ostensibly focused on individualism and private law regulation, intensifies inequalities and relationships of dependence among owners, people, and possessions.

Another argument that Dias Paes strongly defends is that the construction of the right to property was gradual and that was structuring the relations between people and things. Through the study of these cases, she shows how over time the role of the community is marginalized in favor of specialized and bureaucratic knowledge. In addition, she includes legal sources from different contexts that helped to shape it, such as the African customs in which slaves, mixed race and *libertos* operate, the *ius commune* of European origin with its customs and proofs of domination and, the Brazilian colonial context itself, which finds room for new ways of acquiring the domain.

Dias Paes contributes to the legal history by examining judicial cases where possession and dominion are central, regulating relations between people and “things.” Derived from the *ius commune*, these concepts remain crucial in contemporary property-related legal actions. The well-structured book opens avenues for research into law construction in colonial contexts, showcasing Dias Paes’ adept application of the more flexible *ius commune* in the colonies. The case-study format allows readers to comprehend diverse contexts where legal traditions converge. Essential for scholars of colonial law, the book challenges the notion that history is constructed in separate, specific contexts, emphasizing the fluid and permeable nature of knowledge, norms, customs, and societies drawn from various sources, contexts, and geographies.