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Insurgent legality: Luiz Gama's plebeian republicanism between law and prefiguration

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Abstract

This article reads the work of Luiz Gama (1830-1882), the Brazilian abolitionist, former slave, and self-taught lawyer, as both theorizing and enacting a politics of institutional prefiguration. Against oligarchic domination by slave-owning elites and the monarchical rule of the Brazilian Emperor, Gama defended a radical republican vision of the law: the 'right of revolution' (*direito de revolução*), which he saw as already being practiced in acts of resistance. Repurposing the legal pluralism of Friedrich Carl von Savigny for emancipatory politics, Gama's provocation – his insurgent legality – consisted in envisioning the resistance of the enslaved as an inaugural site for a republican order in the making. More than strategically mobilizing law in freedom suits, Gama presented the self-organization of maroons as both defending usurped rights, inherited from Roman law, and laying the foundations of an emergent republic. Drawing on broader currents of plebeian republicanism in the Atlantic world, he conceptualized the resistance of the enslaved as a 'civic virtue.' Gama's insurgent legality thereby recasts the relation between prefigurative politics and institutional forms, questioning dichotomies of resistance and order, rupture and durability. Beyond nineteenth-century Brazil, Gama's institutional thought speaks to debates in contemporary radical democratic and republican theory.

Keywords Brazil · Abolitionism · Prefigurative politics · Legal pluralism · Plebeian republicanism · Radical democracy

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The *right of revolution* is the name of the enigma.¹

–Luiz Gama (1869a, P. 375)

Luiz Gama (1830-1882), the Brazilian republican, satirical poet, former slave, and self-taught lawyer, dedicated his work to radical openings within hegemonic discourses and, above all, within the language of the law. Gama drew on ambiguities in the laws of the Brazilian Empire to achieve the liberation of over 500 human beings to whom he never referred to as slaves but as ‘free persons, illegally held in bondage’ (*peças livres, ilegalmente mantidas em cativo*) (Gama, 1871b, p. 253). In the world’s largest slave economy, which was the destination of close to five million deported Africans, ‘more than 45 percent of the total number of persons forcibly brought to the Americas’ (Fischer & Grinberg, 2023, p. 1), Gama charged slave owners with crime. Against top-down accounts of abolition in 1888, his involvement in ‘freedom suits’ exemplifies a ‘politics of ambiguity’ (Chalhoub, 2011) by which the enslaved drew on the law to achieve their liberation during prior decades, even as the freedom of millions remained precarious.² This article not only aims to introduce Gama to Anglophone readers in the history of political thought; more specifically, it turns to Gama to recover his understanding of the relation between transgressive action and institutional order in movements for social change.

Abolitionists’ legal strategies have been at the center of a vibrant scholarship on the contested operation of law in slave societies across the Americas (de la Fuente & Gross, 2020; Fischer & Grinberg, 2023; Mattos, 1998; Scott, 2011). Following Elciene Azevedo (1999, 2010) and Ligia Fonseca Ferreira (2007; 2020), Bruno Rodrigues de Lima’s ten-volume edition of Gama’s *Obras Completas* (2021a; 2021b; 2023a; 2023b) and his landmark biography (2024) have made a powerful case for Gama as the ‘author of the most radical juridical doctrine of the 19th century’ (2024, p. 53).

I build on this scholarship, which reads Gama not only as an abolitionist *actor* but as a *thinker* who challenges dismissals of the law as inherently and uni-dimensionally oppressive. But if Gama’s litigation is today receiving scholarly attention, his republicanism is still often pictured as motivated by social advancement into elite circles: ‘Gama’s style of activism, which revolved around the courts, required lawyers, and these were part of the *crème de la crème*’ (Alonso, 2021, p. 104). From this perspective, Gama’s republicanism was at best an ideological access key, at worst a betrayal of slave resistance, but at any rate not a site of political theorizing. What has consequently dropped out of view is Gama’s distinct vision of legally mediated revolutionary change, which pushes beyond binaries of resistance and

¹ ‘O *direito de revolução* é a palavra do enigma’. Gama’s phrase could also be rendered as ‘law of revolution’ or ‘right to revolution’. Gama describes rule by ‘divine right’ as ‘irresponsibility limited by the right to revolution [*direito de revolução*]’. Yet he immediately associates revolution with ‘institutions’ that ‘establish the government of the people by the people in all its plenitude’. I would like to suggest that the ambiguity between ‘law of revolution’ and ‘right to revolution’ mirrors the dialectical relation between transgression and order in Gama’s insurgent legality.

² In 1872, Brazil had a population of 9.9 million, among whom 1.5 million were enslaved, but also over 4.2 million free persons of African descent, representing ‘42.7 percent of the inhabitants of the country, just about the same number of people deemed white’ (Chalhoub, 2011, p. 406).



order, 'exodus' and 'hegemony' (Mouffe, 2009), fugitivity and legal containment. In the following, I offer a reading of Gama's 'insurgent legality' in order to rethink the relation between social movements and institutional forms, in nineteenth-century Brazil as much as our own time.

Luiz Gama was born in Salvador, Bahia, on June 21, 1830 as the son of Luiza Mahin, a free African woman 'of the Nagô nation, ... a pagan who always rejected baptism and Christian doctrine' and who, as Gama (1880b, p. 61) recounts with pride, was 'arrested more than once in Bahia for being suspected to be involved in plans of slave insurrections,' possibly the 1835 Malê Revolt.³ After 1837, date of the Sabinada revolt, Mahin left for Rio de Janeiro and never returned (Mendonça, 1880, p. 74). In 1840, Gama's Portuguese father illegally enslaved the ten-year old to pay for gambling debts. Luiz was deported to Rio de Janeiro and sold to the contrabandist Antônio Pereira Cardoso, who forced him to travel to São Paulo by foot. Cardoso had trouble selling the child, reportedly due to the latter's Bahian origins, which carried the connotation of rebelliousness. Gama subsequently spent eight years as Cardoso's slave.

In 1847, a law student, Antônio Rodrigues do Prado Júnior, befriended the seventeen-year old, teaching him how to read and write as well as introducing him to his first legal knowledge (Azevedo, 1999, p. 38). One year later, Gama (1880b, p. 65) 'obtained with cunning and in secret indefeasible proofs of my freedom,' which allowed him to escape and join the army. Until his death in 1882, Gama moved up the social ladder of São Paulo: first as police assistant, then as a self-trained lawyer, journalist, co-founder of the masonic lodge *América*, and ultimately as the leading voice of Brazil's abolitionist movement.

Gama's legal activism needs to be placed within a network of abolitionist lawyers who mobilized the 1831 *Lei Feijó* (outlawing the introduction of deported Africans), the 1850 *Lei Eusébio de Queirós* (banning the sale of enslaved Africans), and the 1871 *Lei do Ventre Livre* (liberating children of the enslaved to be born in Brazil), while also turning to millennia-old Roman law (Gama, 1870b). Unlike other abolitionist lawyers, however, Gama never litigated on the side of slave owners (Grinberg, 2019, pp. 176-198) and his presence as a 'Black tribune' (Mendonça, 1880, p. 83) posed a challenge to the symbolic order of the Brazilian Empire. But what set Gama apart as a political thinker was also a conception of the law that ran against the 'orderly legality' (*legalidade ordeira*) of slave owners and liberal reformers alike (Azevedo, 2010, p. 232). This article aims to clarify Gama's 'disorderly' understanding of the law, at the heart of which one finds a dialectical relationship between the struggles of the dominated and legal institutions. By connecting transgressive action with institution-building, Gama's thought resonates with broader currents of plebeian republicanism, and it might, in fact, helpfully inform debates on radical democracy and institutional durability today.

³ Even if Mahin's story combines 'potential reality, abusive fiction, and libertarian myth' (Reis, 2004, p. 303), she is celebrated as a symbol of Black women's resistance, especially following Ana Maria Gonçalves' novel *Um defeito de cor* (2006). Gonçalves' work was powerfully dramatized by the Portela samba school at the 2024 Rio de Janeiro carnival, in an award-winning performance of over 2,500 participants.



Yet, Gama is often associated with a narrowly juridical approach and placed in contrast to *quilombolas* (maroons) or the ‘immediatist’ strategies of Antônio Bento’s *caifazes*, who clandestinely organized aid to fugitives (Alonso, 2021, pp. 19-21). In periodizations of Brazilian abolitionism, Gama’s death and Bento’s rise to leadership have been taken as indicative of a shift from a ‘legalistic’ to a supposedly more radical phase (Azevedo, 2010, pp. 26-33). But if Gama’s abolitionism centered on the law, he refused to wait for court rulings to host maroons in his home, and his address was advertised alongside the promise to accept ‘all causes of freedom’ (Azevedo, 1999, p. 193). If judged by the oligarchic Brazilian Republic founded post-abolition in 1889 (Lynch, 2014), the emancipatory horizon of Gama’s republicanism might be overlooked: a victim to the wisdom of hindsight. Yet, the Republic’s racialized oligarchy was not a predetermined outcome (Albuquerque, 2009). It relied on the erasure of paths not taken, of ‘republics denied by the Republic’ (*repúblicas renegadas pela República*), to borrow José Murilo de Carvalho’s phrase (2019, p. 41), which, for Gama, carried the promise of a free order.

The article proceeds in two steps. A first part traces defining features of Gama’s legal thinking. What is at stake in Gama’s insurgent legality is not merely a strategic repurposing of laws that would leave the nature of legal order unchanged but a novel account of the law itself in relation to practices of resistance. Deploying the legal pluralism of the Brazilian Empire, and in particular Roman law, Gama defended marronage as a defense of inherited norms against transgressive elites. Citing codes of the past, from the 1831 *Lei Feijó* to the Justinian *Digest*, Gama decoupled the law from the state, such that ‘a claim perceived to be legally irrelevant could nonetheless be heard and registered as a novel legal inscription’ (Etxabe, 2018, p. 18). The ‘police’ order of assigned spaces was interrupted by enslaved people speaking the language of law so as to affirm the ‘rights of those who have no rights’ and thereby make them a reality (Rancière, 2015, p. 75). Gama’s pluralist approach differed from dominant varieties of Brazilian abolitionism: the decisionist concept of the law defended by Joaquim Nabuco, who appealed to the Emperor’s sovereignty, as much as the juridical liberalism of Rui Barbosa, who argued for reforms without questioning a positivist understanding of the law (Lynch, 2008). Gama pushes beyond binaries of marronage and reform, movement and institution, but also of decisionist and positivist theories of law.

In a second step, I place Gama’s legal thinking within his plebeian republican account of democratic institution-building. Inspired by Machiavelli (McCormick, 2011), plebeian republicans have extended the notion of ‘freedom as non-domination’ from the denunciation of arbitrary ‘tyrannical’ rule to the critique of oligarchic power (Biglieri & Cadahia, 2021; Vergara, 2020). Plebeian republican theories have been joined by new histories of republicanism’s ‘popular heritage’ (Leipold et al., 2020) beyond an Anglo-American North Atlantic. Recent studies have highlighted the conceptual innovations of Haitian revolutionaries (Getachew, 2016) and their transnational echoes (Dahl, 2017), or shown how Cuban independentist José Martí deployed a federalist republicanism against U.S. imperial rule (Simon, 2022). While important contributions have focused on Creole elites (Hooker, 2017, pp. 67-109; Simon, 2017, pp. 89-127), Alex Gourevitch’s study (2014) of U.S. ‘labor republicans,’ and Arturo Chang’s (2022) account of indigenous republicans in Mexico have



shifted from ideas of the *grandi* to those of popular classes. This article contributes to this scholarship by reading Gama as a plebeian republican. Naming his son Benedicto Graccho (Gama, 1870a), after the Roman tribunes, while celebrating the African heritage of his revolutionary mother, Gama cast himself as heir to anti-oligarchic republicanism as much as to Yoruba resistance. Part two discusses Gama's idea of 'resistance' as a 'civic virtue' in his response to the 1871 Paris Commune and connects it to his interest in the work of Italian poet Vittorio Alfieri (1749-1801), a leading proponent of a republican interpretation of Machiavelli.

Gama's theoretical contributions open up generative ways to rethink the relation between radically democratic politics and institutional forms. While contemporary debates on a revival of the plebeian tribunate have animated cutting-edge scholarship on democratic institutions (Harting, 2024; Prinz & Westphal, 2024), they have too often relied on a familiar but misleading dichotomy between movements and institutions. Social movements have been either imagined as constrained by the law or as a vehicle for legislative claims: political means for a juridical end. Historians of Black and indigenous struggles have adopted this dichotomy when they characterize counter-hegemonic invocations of institutional forms as 'strategic' (Sanders, 2004, p. 23; Grinberg, 2019, p. 111; Chang, 2022, p. 8) without interrogating the relation of action to institutions beyond the logic of means and ends. Vergara's legislative proposals are likewise framed as a 'strategy' against oligarchic domination (2020, pp. 265-267). While the law is in both instances acknowledged as an arena of conflict, what tends to get obscured is the inventive work of actors already engaged in founding a new order. This is not to re-assert another dichotomy, between non-strategic prefiguration and strategic legislation (Swain 2019, pp. 48-52), but to recognize prefigurative politics as partially strategic, which should not lead back into a means-ends model of politics, which loses sight of the transformation of the ends themselves, under way in action. It is this anticipatory temporality that distinguishes insurgent legality from a strategic repurposing of dominant forms. Gama neither understood emancipation as a sudden break, nor as the instrumental pursuit of a well-defined 'freedom.' Instead, he viewed abolition as an open-ended re-founding in which the resistance of the enslaved would serve as a plebeian counter-power *and* as a space for experiments with a republic already in the making.

Insurgent legality: enacting freedom in the cracks of the law

Gama (1866, p. 76) denounced Brazil's constitution as 'anachronistic and absurd.' The continent's only monarchy and the last country to abolish slavery resembled a new Rome in which 'privileged castes' lived off the labor of 'obedient enslaved plebs,' with 'grotesque figures, half-noble or half-plebeian' constituting 'the deranged parliamentary oligarchy that serves as pedestal to the throne and as summit to the nation' (1866, p. 72). But Gama's invocation of non-synchronic times did not just target backwardness, as if criticizing the Brazilian present for lagging behind a Eurocentric script. Instead, what made Brazil 'anachronistic' was the co-presence of



multiple pasts: an idea that Gama both took up in vivid statements about the ‘spirits’ of past revolts and turned into a method of legal reasoning.

As Lima (2024) has brilliantly shown, Gama did not base his normative claims on transcendental rights but rather foregrounded the historicity of Brazil’s institutional order. He particularly drew on Roman law, inherited through Portuguese rule, and revisited through a perhaps surprising lens: the work of Friedrich Carl von Savigny and the German Historical School. As Lúcio de Mendonça (1880, p. 83) wrote after Gama’s death: ‘we do not call upon Victor Hugo, nor [Emilio] Castelar, but upon the historical Savigny.’ Neither the romantic heights of Hugo’s French poetry, nor the Spanish executive government of Castelar, but the arcane depths of Savigny’s jurisprudence offered Gama tools for the freedom of the enslaved. Lima (2024, pp. 37-40) has demonstrated the connection between Gama and Savigny’s jurisprudence, but I would like to suggest that Gama also took up Savigny’s legal pluralism. Crucially, Savigny’s constitutionalism was based on the assumption that intermediary powers can also legislate and, much like the state, are authorized to give themselves a ‘constitution’ (Meder, 2023, p. 297). In contrast to an abstract contractualism, Savigny insisted (1867, pp. 15-16) that ‘the people’ did not name a group of individuals ‘at any particular time’ but a historical community which becomes ‘the foundation of the gradual formation of law’ wherever a durable order ‘unites the present with the past and the future.’⁴ Roman law could thus sustain a German legal system in the absence of a nation-state. Yet, where the conservative Savigny articulated his pluralism in the idiom of national spirit (*Volksgeist*), Gama brought out the radical potential of his insight (1867, p. 15) that the life of the people ‘is the seat of the generation of law.’

In the absence of a unified slave code, like the French *Code Noir*, or a national civil code, Savigny offered Gama a toolkit to maneuver the Brazilian Empire’s normative pluriverse. But Gama not only *diagnosed* legal pluralism; he *extended* it into the future. Mendonça (1880, p. 83) alludes to this future-orientation when he connects Gama’s interest in Savigny to the ‘absolute affirmation of human freedom,’ an ‘immortal principle against which there are no rights, nor facts to be respected’: ‘wanting laws to respect already *acquired rights* is to essentially ignore the nature of the *laws of institution*.’ Gama’s debt to Savigny went beyond the authorization of freedom by courts to include unauthorized enactments of freedom as sites of legal institution-building.

This dialectical relation between the backward-looking pluralism of instituted laws and the forward-looking pluralism of instituting practices moves Gama’s insurgent legality from a jurisprudential doctrine towards a political theory of institutional transformation. Gama thereby also took his distance from the idea of an extra-institutional sovereign ‘people,’ typically accompanied by monist accounts of legal change (Bernál, 2017, p. 83). His historical method transformed the law

⁴ Gama worked with an 1856 French translation of Savigny (Lima, 2024, p. 456).



from the expression of a unitary will towards decentralized and cumulative acts of foundation.⁵

In 1831, the *Lei Feijó* had outlawed the introduction of enslaved Africans into Brazil, which largely went unenforced, with ca. 750,000 captives brought into the country between 1831 and the 1850 *Lei Eusébio de Queiros* (Reis, 2017, p. 132). Neither law contained stipulations to end the internal trade, nor to liberate the enslaved within Brazil. Yet, it is precisely for such liberation that Gama deployed these codes. Working as an assistant (*amanuense*) for the São Paulo police administrator and law professor Furtado de Mendonça (Azevedo, 1999, pp. 190-191; Lima, 2024, pp. 148-170), Gama had access to the São Paulo Law School library, while participating in assessments of whether arrested persons would be tried as citizens or slaves. In Gama's 1850 interrogation of the Congolese man Lourenço (Lima, 2024, p. 128-130), he first used the 1831 law, also citing an 1832 decree that instructed judges to assess when an enslaved person on trial had been brought to Brazil and to liberate those who had arrived after 1831.

In the case of Lourenço, as with dozens of subsequent cases, scars on the body and a lack of Portuguese skills (which made the arrested a *boçal*, an African non-Portuguese speaker) were used as evidence of a recent arrival and hence illegal enslavement (Gama, 1871a, p. 231). This produced the paradoxical outcome that an arrest would lead to liberation, through the granting of the status of 'free African' by police authorities (Mamigonian, 2017).

Transforming the municipal jail into a site of liberation, Gama pushed the limits of what a police official could achieve, which ultimately cost him his job after his defense of Jacinto and Ana in 1869 (Lima, 2024, pp. 312-329). But in 1870, Gama was granted a license to practice as a lawyer (Lima, 2024, pp. 335-336), and until his death in 1882, he refined his play with overlapping norms. Gama recognized how the murky status of inherited laws offered an arsenal of weapons – of 'undead rights of the prior,' in Natasha Wheatley's phrase (2020, p. 73) – which allowed those who could wield them to expose the state's orderliness as a myth, to enable practices of freedom, and thereby throw it into crisis.

Under Gama's pen, Brazilian laws were resituated within an imperial space-time and thus decoupled from the nation-state's claim to sovereign control. 'Historical rights of the prior do not allow the state to rest: it must always be remaking itself ... sealing off historical wellsprings of law, and devising new ways of making old rights dead' (Wheatley, 2020, p. 73). Gama's insurgent legality notably differed from the liberal vision of Rui Barbosa who denounced slavery but understood the law as 'an element of order,' 'balancing the development of the state between exaggerated extremes' (cited in Lynch, 2008, p. 115). While Barbosa contrasted 'savage democracy' to the 'rational democracy' of legal moderation (p. 117), Gama viewed law as the medium through which the dominated many could assert their power against the dominating few. He combined litigation

⁵ This is not to claim that Gama consistently rejected top-down models. In 1877, he called for a 'pure, Christian, and socialist democracy' to be built by a 'provisional and necessary dictatorship.' But even in this most 'Jacobin' moment, Gama viewed revolution as the act of 'establishing the Republic in the name of freedom,' which alone would assure 'the conservation of institutions' (1877, pp. 333-335).



with attacks on elites, under pseudonyms like Cincinatus, Philodemo, Democrata, Ultor (Latin for ‘avenger’), Graccho, and Afro I (Lima, 2021a, p. 23), turning the press into a tribunal by public shaming (Azevedo, 2010, p. 102). Where Joaquim Nabuco (1883, p. 84) called upon the ‘accumulated force’ of the Emperor to abolish slavery in an exceptional act, Gama hoped to transform rights from ‘obscure hieroglyphs’ (1866, p. 71) into a grammar of action: not only to ‘bring the inscription of rights to bear against situations in which those rights are denied’ but to ‘construct the world in which those rights are valid’ (Rancière, 2015, p. 69).

In cases of testamentary manumissions (liberation by a master’s last will), Roman law was particularly effective, which Gama put to the test in 1869. He had read about the death of Manoel Joaquim Ferreira Neto in a newspaper that reprinted a stipulation from his will regarding the liberation of 217 slaves: ‘I declare that all my slaves, who I bestow to the service of my wife, will be free in eight years counting from the date of this will, if they behave well, and will be sold, if they behave badly’ (Lima, 2024, pp. 364-365). Gama contacted the court in Santos to inquire whether the enslaved had been liberated, which the judge declined. Gama subsequently charged Neto’s heirs with the crime of enslaving free persons, in violation of Roman law via the *Ordenações Filipinas* of 1603, according to which freedom, once granted, became irrevocable (Lima, 2024, p. 372; Gama, 1881, p. 223). He cited jurist Agostinho Perdigão Malheiro (1866, p. 182), who maintained that during litigation for manumission, a custody arrangement or ‘deposit’ (*depósito*) would need to be established that would be ‘most favorable to the cause of freedom.’

The ‘deposit,’ Mariana Dias Paes and Pedro Jimenez Cantisano (2018, p. 419) explain, ‘was a common procedure to keep movable property safe. Despite treating the putative slave as a ‘thing,’ jurists argued that the deposit was a protective measure that enabled slaves and freedmen to exercise their right of action outside the reach of their putative master.’ The testament’s clause regarding a period of service notwithstanding, Gama used the *depósito* to demand that 217 enslaved people be immediately placed in his custody.

The heirs’ lawyer, José Bonifacio, responded with indignation: the ‘ultimate consequence’ of Gama’s reasoning would be ‘to place the whole of slavery in the country in a general deposit [*depósito geral*]’ (Lima, 2024, p. 354). In 1872, the Court of Appeals of Rio de Janeiro decided that the 217 enslaved be liberated by the end of eight years, pushing liberation to 1876 by counting from Neto’s death. Although this outcome was a belated and partial victory, Lima (2024, p. 378) is right to emphasize that the *Questão Neto* resulted in an unprecedented liberation by juridical means.

But Gama combined arguments on testamentary manumission with an insistence on protective custody even where the enslaved had *already* enacted their freedom through marronage. In the case of Narciso, he argued that the fugitive in his house was not a criminal run-away but a free man, defending his rights against kidnappers (Gama, 1870b). Gama’s reasoning (p. 209) followed Caetano Alberto Soares who, in the case of João in Rio de Janeiro in 1857, had deployed a Roman distinction between *direct* and *fideicommissary* manumissions. As Augusto Teixeira de Freitas put it (1857, art. 1131, §46), manumission ‘is given *directly* if the testator confers it without intervention of another person. It is given through *fideicommissum* when the



testator appoints his heirs ... to confer manumission after his death.⁶ In direct testamentary manumissions, Teixeira de Freitas argued, 'the lightest provision should be observed, so that if there are several, that is to be regarded as lightest which is easiest for the man manumitted' (Watson, 1998, p. 428). Gama used this passage to argue that, even where ostensibly tied to conditions, manumissions could, in fact, be *direct*: freedom had *already* been granted by the deceased, and in that moment, had become effective immediately.

Gama was of course aware that, by 1870, the status of Roman law in Brazil had undergone drastic changes. In 1769, the Portuguese *Lei da Boa Razão* had 'established that Roman law would be considered subsidiary' to local codes and judges' 'good reason' (Grinberg, 2019, p. 113). Without Brazilian legislation, however, Roman law continued to be invoked as binding until at least the end of the 1870s (Rosa, 2020). Gama's insurgent legality could thus shift the terms of debate from the testamentary rights of slave owners to the Roman inheritance of rights among the enslaved.

As the examples of Lourenço (1859), the 'Neto Question' (1869), and Narciso (1870) demonstrate, Gama presented resistant enactments of freedom as the maintenance of historically inherited legal norms: the emancipatory potential of the law was not philosophically grounded but practically tested through an art of citing the past. Gama's historical method should nevertheless not blind his readers to his uses of natural law. In a letter to José Ferreira de Menezes, Gama famously asserted that 'the slave who kills his master carries out an inevitable prescription of natural law' (1880c, p. 281). He denounced the 'positivism of soft slavery,' to which he opposed 'the revolutions of freedom: I want to be mad like John Brown, like Spartacus, like Lincoln, like Jesus' (1880d, p. 363). Gama's evocations of Jesus Christ did not contradict masonic anti-clericalism: he read the Bible through Ernest Renan's *Vie de Jésus* (1863), which presented Jesus in secular terms as a hero of equal rights (Fonseca Ferreira, 2007, pp. 280-283). 'Be republican like the Man-Christ was,' he told Benedicto Graccho (1870a, p. 150).

Yet, Gama astutely translated even the most radically egalitarian natural law doctrine into the language of historical jurisprudence. A resource in this regard were the writings of Roman jurist Ulpian (Gama, 1871a, p. 228), whom Gama (1881, p. 222) cited in saying that 'where natural law is concerned, all men are equal' (Honoré, 2002, p. 88). Drawing on Ulpian via Perdigão Malheiro (1866, art. VII, §42), Gama (1881) went as far as arguing that slavery was 'against nature' and inherently illegal according to Roman law, which maintained the primacy of 'axiomatic principles in favor of freedom, even if they break the general rules of law.'

Gama's vision of the law had little in common with orderly procedures: he did not advocate revolution by way of reform but 'reform by way of revolution [*reforma pela revolução*]: we have principles, we have a program' (Gama, 1877, p. 333). Instead of following Barbosa or Nabuco in making claims on legislators, whether parliament or Crown, Gama understood that a free republic required

⁶ Teixeira de Freitas' *Consolidação das Leis Civis* (1857) practically stood in for a civil code, which was not passed until 1916 (Grinberg, 2019, pp. 125-128).



more than a change of laws – namely, a change in the concept of law. Rather than sketching blueprints, he experimented with a constitutionalism of ‘sociogenic marronage’ (Roberts, 2015, p. 130); in 1870 alone, Gama was involved in over 200 cases (Azevedo, 1999, p. 96), many of which presented fugitives as guardians of order against oligarchic transgression.

Having shown insurgent legality at work in litigation, the next section is going to situate it within Gama’s plebeian republicanism. While each ‘freedom suit’ involved the rights of individuals, Gama also viewed the law as enabling collective counter-power: ‘underneath the city of Augustus, this petrified orgy, the fugitives of the banquets of Trimalchio are hiding,’ building a maroon republic from the catacombs of Empire (1880a, p. 91).

‘Resistance, which is a civic virtue’: Gama’s plebeian republicanism

In May 1869, Gama gave a lecture series at São Paulo’s *Clube Republicano* that laid out a theory of revolutionary institution-building. Drawing on the republican opposition between freedom and slavery (Gourevitch, 2015; Roberts, 2015, pp. 27-49), Gama argued that the ‘irresponsibility’ of monarchical rule, this ‘fabulous monster’ (Gama, 1869, p. 371), resembled the rule of a slave owner. Deliberately blurring the line between the monarch’s subjects and the enslaved, Gama called for an alliance between elite republicans and resistant slaves: to ‘unite our forces’ to ‘escape the iron chains of captivity’ (1869a, p. 372). Against monarchy and enslavement, Gama argued for ‘the right of revolution,’ which he saw as *already* being practiced by ‘enslaved Brazilians who organize themselves in diverse clubs’ (p. 372): in its practice, a new kind of law, with ‘other rights and other powers,’ was emerging from below.

In 1869, Gama was still hoping to build a radical wing within Brazil’s Liberal Party, which led to the foundation of the Partido Republicano Paulistano in 1873 (Azevedo, 1999, p. 143). Soon afterward, he realized that even among progressive elites, immediate abolition was not on the agenda; by late 1873, he came to distinguish between the ‘transigent’ republicans of an oligarchic kind and ‘intransigent’ republicans like himself, who formed a ‘revolutionary faction’ that also included Pompílio de Albuquerque (Azevedo, 1999, pp. 165-188). In the 1876 municipal elections, Gama and Albuquerque defended ‘complete abstention as a means of organization’ (Azevedo, 1999, p. 165). While Gama never fully abandoned attempts at forming alliances with abolitionist elites, his republicanism was articulated in anti-oligarchic terms. He called himself a ‘stubborn partisan of the freest institutions’ (1866, p. 68), and argued (1867, p. 96) that ‘this great people of slaves ... has to save itself’ by ‘overthrowing the powerful oligarchy, composed of the two militant parties that oppress it.’ ‘Government by the people for the people’ depended on counter-power against ‘Caesarism’ and ‘partisan oligarchies’ (1869b, p. 381), explicitly referencing the plebeian tribunate and the Gracchi (1869d, pp. 385-387).

On almost every page, Gama assembled a ‘creative Afro-Greek-Latin pantheon’ (Lima, 2021a, p. 45), although the place of African traditions in his thought remains more difficult to trace. During Gama’s childhood, Nagô was the *lingua franca* of



Bahia (Parés, 2005, p. 188), which makes it likely that he learned Yoruba. Gama's familiarity with Afro-diasporic traditions can also be inferred from his description (1880b) of his mother's arrest in 1838 in a 'house of fortune-telling' (likely a Candomblé *terreiro*), alongside a group of *malungos desordeiros*, 'disorderly' *malungos*. As Robert Slenes (1992, pp. 52-54) has shown, *malungo* is not of Nagô but Bantu origin, mixing the Kimbundu word *mulungu*, canoe, with the Umbundu *malungo*, friend, relative, or comrade. In Brazil, the creolized word came to denote the shipmate: a person deported on the same slave ship. When Gama spoke of 'disorderly' *malungos*, the term referenced a political signifier that transformed a condition of racial domination into a name for Black solidarity. 'The history of *malungo* ... illustrates how there was an Africa that remained hidden to the owner class, even when they seemed to share the same discursive field with the Africans' (Slenes, 1992, p. 54). What the word *malungo* reveals is a political vision that does not only celebrate the Roman plebs but emerges from cultures of survival in the Black Atlantic. When Gama mobilized republican and masonic discourses of fraternity, the solidarity he had in mind was also shaped by his identification with *malungos desordeiros*.

In 1871, when the Paris Commune sent shockwaves to Brazil, Gama and the São Paulo freemasons were suspected of preparing a slave insurrection. On 18 May, the *Correio Paulistano* included a report on the bill that would become the Free Womb Law on the same page as a translated *communard* manifesto.⁷ In the *Correio* of 14 July, one finds a speech by Senator Silveira da Motta, who argued against the ban of the International Workingmen's Association, which would only give undue attention to the *communard* cause: the Free Womb Law 'is causing more disturbances than the successes of Paris. It is of this commune that I am afraid: it will be a black commune [*será uma communa negra*].'⁸ In a white imagination still marked by the Haitian Revolution more than half a century earlier (Queiroz, 2018), the specter of the Commune blurred into that of the *quilombo*, with the masons as their secret mid-dlemen. Gama (1871b, pp. 251-252) responded to these charges with characteristic verve, ridiculing the idea that the lodge *América* was collaborating with 'agents of the INTERNATIONAL! ... and that I (who could certainly not be missing from any sinister commotion) would be commanding a tremendous insurrection of slaves,' with 'war canoes on the Tamanduateí river.' If such accusations appeared like 'rumors of a humoristic kind,' they slanderously portrayed republicans as "'communist, abolitionists, and internationalists,'" and many other highly dangerous "irreligious" associates.' Although distancing himself from the Commune, Gama's tone also mocked the *anti-communard* panic among its critics. If he denied any affiliation with the International in November 1871, Gama proudly came to the defense of an Italian client, Ardemagni Bartholomeu, 'a member of the great Workers' League, presided by Mazzini and Garibaldi' (1872, p. 282), six months later.

The theoretical importance of Gama's, 1871a, 1871b letter, however, lies in the distinction he drew between legal resistance and the lawlessness of insurrection (1871b, pp. 253-254):

⁷ *Correio Paulistano*, May 18, 1871, http://memoria.bn.gov.br/DocReader/090972_03/1456.

⁸ *Correio Paulistano*, July 14, 1871. http://memoria.bn.gov.br/DocReader/090972_03/1634.



I will always advise and promote, not insurrection, which is a crime, but ‘resistance’, which is a civic virtue, as the necessary sanction to induce principle into noblemen-robbers, impure contrabandists, transgressor-judges, and false, shameless owners.

Gama positioned himself as a representative of law and order against insurrectionaries, while placing ‘resistance’ at the heart of legality. To be sure, his distinction partially served the function of appeasing fears among elites to protect his social standing; conceptually, it does not seem to hold water, let alone cohere with Gama’s later argument for the killing of slave owners (1880c). But perhaps its merits should not be dismissed too quickly. If placed within Gama’s understanding of institutional transformation, the difference between ‘resistance’ and ‘insurrection’ does not track dichotomies of moral vs. immoral or violent vs. nonviolent modes of action but rather marks the more subtle distinction between legally mediated revolution and absolute rupture.

Gama dismisses insurrection as ‘crime,’ not only because he wishes to benefit from elite sponsors, and certainly not because he opposes emancipatory violence. Instead, Gama is aware that Brazil’s legal order is capacious enough to cast even the killing of slave owners as an enforcement of inherited norms, and that, secondly, the durability of freedom among the dominated will depend on institutionally mediated counter-power (‘necessary sanction’) against elites. Gama ‘criminalizes’ a hypothetical break so as to defend *already ongoing* practices of slave resistance as forms of orderly civiness against ‘transgressor-judges,’ reversing images of white order and Black disorder. Perhaps, there is hence no contradiction between Gama’s critique of ‘insurrection’ and his defense of violence (1880c): it was the rule of slave owners that resembled an ‘insurrection,’ whereas maroon resistance ‘virtuously’ upheld the law, even when turning to violence.

In his defense of ‘civic virtue,’ Gama agreed with the classical republican insistence on ‘behavioral dispositions contributing to the health and maintenance of republican institutions’ (Lovett, 2022, p. 196); yet in the same gesture, he radically subverted the classical account by presenting those excluded from citizenship as its most virtuous custodians. While it remains difficult to reconstruct Gama’s sources, notable references are those of Félicité de Lamennais (Gama, 1867a, p. 101), Victor Hugo (Gama, 1867b, p. 107), John Brown (1880d, p. 363), Pierre-Joseph Proudhon, whom Gama called ‘one of the greatest geniuses to have brightened the world’ (Lima, 2021b, p. 330) as well as Garibaldi (Gama, 1872, p. 282). Another Italian name, that of Vittorio Alfieri (1749-1801), quoted numerous times (Lima, 2021a, pp. 186, 222, 240, 250, 278, 450), carries particular importance. This is not only due to both authors’ love of satire, a shared emphasis on virtue, and involvement in freemasonry. Gama’s reference to Alfieri is suggestive as he was among the leading proponents of a radical republican reading of Machiavelli (Viroli, 2014, p. 121). Like Alfieri’s Machiavelli, Gama envisioned a resistance that would serve as anti-oligarchic and anti-tyrannical counter-power but also already instantiate a free order. Such an alternative concept of law was Gama’s ‘enigma’ of a ‘right of revolution’ (1869a, p. 375): not just a defensive right to insurrection but the enactment of free order against the rule of usurpers.



In his *Discourses on Livy* (1517), Machiavelli had argued that plebeian resistance did not signify a disturbance to freedom in the Roman republic but its guarantee: 'Hence if tumults led to the creation of the tribunes, tumults deserve the highest praise, since, besides giving the populace a share in the administration, they served as the guardian of Roman liberties' (Machiavelli, 2003, p. 115). Alfieri, likewise, argued that 'in true republics ... internal dissensions become part of its life; and that, wisely preserved and used, they augment its liberty' (cited in Pedullà, 2018, p. 239). In an 1876 anonymous short story, published in Gama's journal *O Polichinelo*, the nobleman Bernardo Avelino Gavião Peixoto is satirically portrayed as exclaiming: 'Immortal Titus Livius, you who constitute my eternal nightmare!'⁹ For Gama, the 'enslaved plebs' upheld the banner of order and, in their resistance, built a republic in a 'proleptic projection, in the form of a "rehearsal" or "trying out" of abolition (Swain, 2019, p. 59). As Gama (1869c, pp. 396-398) proclaimed under the pseudonym Philodemo:

Let us carefully lay broad foundations for the vast edifice that we intend to build. ... Let us put our force into the founding of a democratic government: because neither imperial rule, nor its dazzled worshippers will prepare the people for the great social happiness. ... As many Spartacus emancipate themselves, the blood-covered star of Caesars is burning out in a massive sunset.

Rejecting a false binary between law and prefiguration, Gama's insurgent legality is akin to what Davina Cooper (2020) has called 'institutional prefiguration,' which questions the misconception of prefigurative politics as taking place in a square (or maroon community), whereas the real business of institutional power would get pursued in a legislative chamber, a lobby, or a courtroom. 'Institutional prefiguration' describes a mode of transformation in which acting 'as if' the meaning of order (virtue, law, etc.) were *already* otherwise, brings about a 'coexisting, overlapping, multiplicity of institutional worlds' (Cooper, 2020, p. 909). What to the eyes of the state appeared as a group of fugitives was, in Gama's writings, reimagined as a fraternity of virtuous citizens, legitimized by ancient norms, and posited as the nucleus of a future republic. Whether judges confirmed his legal reasoning remained a life-or-death question, but no ruling could contain the performative effects of institutional prefiguration, which left their imprint on instituted meanings (Thorpe & Morgan, 2023). Insurgent legality thus bridges the gap between what Margaret Davies (2017, p. 17) has called 'the legal present' and 'legal futures,' leaving 'indelible traces of what is to come in the here and now.' In Gama's (1867, p. 98) words, 'the people, without being aware, have transformed themselves into the perennial bonfire of their own rights and their own freedom.'

Institutional prefiguration also contains a strategic dimension: for one, actors aim at exemplarity insofar as prefigurative action is meant to transform the context in which future acts are held to be orderly or disruptive, resetting discursive conditions for the future. But Gama's insurgent legality is also prefigurative in the sense that Swain (2019, p. 51) has described as 'developmental': it offers 'an answer to the

⁹ 'Piparotes,' *O Polichinelo*, no. 4, May 7, 1876, p. 6, <https://www.arquivoestado.sp.gov.br/uploads/acervo/periodicos/jornais/PO18760507.pdf>.



question, “How do you expect people to build an alternative society if they never have the chance to live it?” When Gama (1869a, p. 372) asks abolitionist republicans to build alliances with ‘clubs of enslaved Brazilians,’ he is picturing associational spaces as sites of an egalitarian learning process. As Paul Raekstad (2018, p. 365) puts the idea: ‘the only way for people to develop their powers and capacities for collective self-organization is through experiences and experiments of doing so.’

This non-instrumental aspect of prefiguration as an open-ended learning process stands out most clearly if one reads Gama’s commitment to adult education as complementing his use of the law. The organization of a night school was among the main activities of the *América* lodge, bringing together free and enslaved students in efforts of alphabetization and, at least potentially, dissident self-organization (Gama, 1869c). While many abolitionists paternalistically viewed night schools as preparing the enslaved for the ‘freedom’ of wage labor and as a step on a ‘civilizing’ road to progress, Gama (1868a, p. 162) insisted that no European state combined obligatory schooling with the freedom of teaching, ‘for the mere suspicion of it being an emissary of democratic propaganda.’ Only if organized autonomously from ‘governments and reverends’ could schools become spaces of a citizenship to be invented (1868b, p. 188):

Free education establishes in school, which is the cradle of intelligence, the inseparable bonds of present-day socialism [*socialismo hodierno*]. It is the *germ of confraternization* [*confraternização em germen*]: the fragile union of moral links from which enlightened manhood will in the future form the great steel chain of universal patriotism.

Gama’s account of public schooling connects revolutionary change with a concern for durable institutions, even if it was not free of a hierarchical vision of educational uplift and ‘confraternization’ carried the gendered marks of masonic ‘brotherhood.’ In April 1869, Gama was one of four teachers at the masonic night school, which brought together 252 male students, of whom 217 were free (including twenty-four European foreigners and five ‘free Africans’) and 35 enslaved; only a children section included female students (Fonseca Ferreira, 2020). Gama’s defense of the school echoed the temporal structure of insurgent legality: just like maroons were guardians of rights *and* founders of a new order, he presented the school, following Alfieri (1868b, p. 186), as an institution of ‘social and political regeneration’ that ‘maintains and shelters true democratic principles’ against ‘partisan oligarchies’ and ‘despotic dictatorships’ (1869c, pp. 393-394). Gama again reconceived institution-building as emerging from collective action rather than the decision of legislators. In a parallel to the Mexican Anáhuac movement, Gama, too, ‘portrayed the emergence of the republic as a moment of emancipatory renewal rather than nascent foundation’ (Chang, 2023, p. 2). Where maroons upheld ancient rights, enacted counter-power, and built a future republic, so the night school served as a site of ‘regeneration,’ a ‘sanction’ against elites, and the prefiguration of ‘present-day socialism.’



Conclusion

Gama combined Roman law with the republican language of civic virtue to defend maroons as the guardians of order against transgression by slave-owning elites. In the words of Barbosa (1885, p. 197), he was 'a citizen of ancient Rome, who could not acclimate to the lowly Empire.' Gama presented the resistance of the enslaved, in alliance with the abolitionist movement, as the germinal space of a new kind of law, which connected the recovery of inherited rights to the enactment of anti-oligarchic power and, in this backward-looking gesture, laid 'broad foundations' for the 'vast edifice' of a 'democratic government' (1869c, pp. 396). Gama's insurgent legality, understood as the subversive juncture of legal form and prefigurative action, reframes the relation between social movements and law by offering a vision of legal order in which resistance and durability are internally related, not opposed.

Insofar as Gama framed Black struggles of the Americas through a Roman lens, 'Afro-Latin political thought' is a uniquely apt description of his plebeian republicanism (Guridy & Hooker, 2018, pp. 190-191). Where Gama cited Rome, it was never to celebrate European grandeur but to inscribe a 'plebeian' struggle against racial slavery in the *longue durée* of oligarchic corruption. But even if Gama's plebeian republicanism thus echoes contemporary returns to the plebeian tribunate (Harting, 2024; Prinz & Westphal, 2024; Vergara, 2020), his insurgent legality sits uneasily with the ways in which the latter have tended to think about institution-building: namely, as a second-order activity of legislation that responds to extra-institutional movements. Gama, by contrast, connects a Renaissance sensibility for ancient freedoms with a legal pluralism that undoes the unity of law and state. As a result, he is able to present resistance as enacting legal norms while building a republic of the future, joining a restorative politics of institutional care to a prefigurative politics of revolutionary founding. Where theorists of the tribunate understand 'institutionalization' as the legislative production of juridical durability, Gama thinks of it the other way around: it is 'virtuous' resistance that enacts and maintains the political durability of legal order. The 'laboratory' of action (Gama, 1880a, p. 94) revitalizes the dead letter of the law, connects the past to an open future, and thereby defends a republic that is constantly threatened by oligarchic usurpation and yet always re-emerging with the help of legal mediation.

In contrast to state-centric approaches to tribunician power, Gama's insurgent legality seems closer to what Massimiliano Tomba (2019, p. 83), has called '*insurgent institutions*': 'new institutions that provide universal access to politics' through the bottom-up reactivation of alternatives from the past. Tomba (2019, p. 208), like Gama, moves from an absolutist understanding of revolution as a negative rupture to a 'new institutional fabric' (p. 2). While he initially contrasted 'insurgent institutions' to 'juridical universalism' (2019, pp. 31-32), Tomba has recently clarified his legal pluralism: 'insurgent institutions' mark the durational time of '*another* legal system' (2022, p. 6), close to Mendonça's 'laws of institution' (1880, p. 83), himself echoing Savigny's striking argument (1867, p. 41) about a 'people's law,' 'hidden by legislation and legal science, in which it lives on.' Yet, despite these resonances, Tomba remains ambiguous on two questions that Gama addressed: how to



transform the law into a medium for counter-power against elites, and how to durably abolish – rather than merely disrupt – relations of domination? If Gama and Tomba share a democratic pluralism that reveals the people as a ‘perennial bonfire of their own rights’ (1867, p. 98), their institutional theories diverge on the problems of antagonistic power and durable founding. Here, Gama’s approach bears a greater resemblance to Miguel Abensour’s (2012, p. xxvi) rendering of ‘insurgent institutions’ as ‘dikes stemming the *grandees*’ desire to dominate and thereby allowing the people to experience liberty.’ For Abensour (2012, p. xxiii-xxiv; cf. Plaetzer, 2022), ‘insurgent democracy,’ much like Gama’s ‘right of revolution,’ connects an antagonistic counter-power to a revolutionary abolition of domination: ‘to defeat the counter-movements that threaten to annihilate it and to effect a return to a state of domination.’ Tomba (2022, p. 6), by contrast, has distanced ‘insurgent institutions’ from a ‘polemical logic of non-domination,’ even approximating the idea of defeating domination to a Jacobin ‘justification for the Terror.’

Gama’s insurgent legality names a plebeian variety of legal pluralism, which emerged from abolitionist struggles; its most important conceptual innovation consists in rethinking the law from a mechanism of hierarchical rule to a medium for the ‘durable institutionalization of prefigurative democracy’ (van de Sande, 2022, p. 97). Gama reactivated Roman law to liberate enslaved individuals, but his political aim was the foundation of an egalitarian republic from within movements of resistance: to enact a ‘necessary sanction’ (1871b, pp. 253) against slave-owning elites while building ‘the freest institutions’ for ‘democracy up to its ultimate consequences’ (1866, p. 75, p. 68).

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