

BRAZILIAN MIGRATION POLICY: HUMAN MOBILITY AND SOVEREIGNTY

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Abstract

This article examines the evolution of Brazilian migration policy from a historical and critical perspective, tracing its trajectory from the colonial period to the enactment of Law No. 13,445/2017 — the Migration Law. The analysis departs from the premise that migration policy in Brazil has never been a neutral phenomenon, but rather an instrument of state power oriented by national projects that, for centuries, prioritized racial, ideological, and security-based criteria over the protection of human beings. From the forced displacement of enslaved Africans and the subjugation of indigenous peoples, through the eugenic immigration policies of the 19th and early 20th centuries, to the securitarian logic of the Foreigners' Statute of 1980, the article demonstrates that the migrant was historically constructed as an object of control rather than a subject of rights. The 1988 Constitution marked a normative rupture, establishing human dignity and the prevalence of human rights as foundational principles. It was only in 2017 that Brazil produced a migration law fully aligned with international human rights standards, replacing the term "foreigner" with "migrant" and recognizing the universality of rights regardless of nationality or documentary status. Despite this advance, the article highlights persistent tensions between norm and practice, pointing to institutional and structural challenges that continue to undermine the full realization of the rights enshrined in the new legal framework.

Keywords

Migration policy. Human rights. Migration Law. Securitization. Brazilian history.

Summary

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1. INTRODUCTION

No topic can be addressed without first seeking in history the reasons behind things. While one may question the biases given to historical narratives, or even the choices made in presenting historical facts, I draw upon the words of Prof. George Galindo — in a brief yet no less important text on the importance of history for International Law — where he makes clear that the goal is not to seek a discourse of authority affirmation, but rather an understanding of what was, of how things were, in order to improve or, if necessary, completely change, vehemently refute, deconstruct, and decolonize.² In this sense, this article is about “Brazilian migration policy: from securitization to a human rights perspective” — a title that may seem simple, but is not essentially so, because the historical digression undertaken here shows, initially, that despite our existence as a State spanning 203 years, only in the last 8 years have we had a law (full of challenges, to be sure) that effectively addresses the migration issue from within the human rights perspective — that is, the “right to have rights” (paraphrasing Hannah Arendt). “The problem of stateless persons showed that the true human right is the right to belong to a political community, that is, the right to have rights.”³

² GALINDO 2015, 17- 18

³In *The Origins of Totalitarianism*, Arendt develops this concept by analyzing the situation of stateless persons and refugees in Europe between the two world wars. She observes that when people lose their political belonging to a State, the so-called “human rights” become, in practice, inapplicable.

The history of Brazil is, above all, a history of multiple migratory processes — some voluntary, others forced and profoundly brutal — and certainly never a neutral phenomenon. There was always a “national project” behind migration policy — and that project was not always compatible with human rights. Beginning with indigenous peoples, who obviously are not “migrants,” but rather the original subjects of the territory, whose presence predates the arrival of the Iberian Europeans, and who were displaced, incorporated, or eliminated by colonial policies of territorial occupation. In various regions, mechanisms such as the *aldeamento* (indigenous settlements) and catechism sought to integrate these populations into the colonial order, frequently under coercion. Thus, when thinking about Brazilian migration policy from a historical perspective, indigenous peoples do not fit as a “migrant group” among others, but as those whose presence was juridically redefined by the colonization process and, subsequently, by the nation-state, which transformed them from autonomous subjects into supervised populations. This operation is decisive: it reveals that the very construction of the categories of nationality and belonging in Brazil was built upon the negation — or the subordination — of the original peoples, establishing a structural tension between state sovereignty, territoriality, and indigenous rights that remains at the center of contemporary legal debate.

Let us return to the purpose of this article: to understand Brazilian migration policy, beginning with the duality of the arrival of European colonizers and the forced, systemic, and structural migrations of the

transatlantic trafficking of enslaved Africans⁴ — in which the mobility of millions of people occurred under extreme violence and without any recognition of humanity. This past profoundly marks the way in which the Brazilian State, for centuries,⁵ treated human mobility. The Portuguese economy in these indigenous lands — not yet Brazilian — in the geographic region known to Europeans as the West Indies, or as Portuguese America or the State of Brazil, was guided by the exploitation of land within a model of slave labor exploitation, first of indigenous peoples and then through the trafficking of Africans, and was always an instrument of power. It is worth quoting Achille Mbembe here: “As an instrument of labor, the slave has a price. As property, the slave has a value. His labor responds to a need and is used. The slave is, therefore, kept alive, but in a ‘state of injury,’ in a spectral world of intense horrors, cruelty and profanity.”⁶

⁴On this subject, see Manolo Florentino, “Em costas negras: Uma história do tráfico de escravos entre a África e o Rio de Janeiro (séculos XVIII e XIX)” [On Black Backs: A History of the Slave Trade between Africa and Rio de Janeiro (18th and 19th Centuries)].

⁵It is estimated that approximately 4 million Africans were brought to Brazil, approximately 40% of the total number of people trafficked to the Americas, making the country the largest destination of the Atlantic trade (Current Trends in Slavery Studies in Brazil. Edited by: Stephan Conermann, Mariana Dias Paes, Roberto Hofmeister Pich, and Paulo Cruz Terra).

⁶MBEMBE 2018, 28

2. THE COLONIAL PERIOD

This was nothing more than a continuation of the Portuguese production model in its colonies, rooted in that Iberian country's own colonizing process.⁷ Del Priore and Renato Venâncio show that “colonial economy began following the model used in the islands of Madeira and São Tomé: cultivation of sugarcane, construction of mills, and the use of slave labor. Thus began the lucrative enterprise of indigenous hunting, and with it the trade of *negros da terra* — a term used to distinguish them from African blacks, who, incidentally, began arriving in large numbers around 1550 — in order to supply the colonization centers.”⁸ They further add: “It should be remembered that since the 15th century, in southern Portugal and later in the islands of North Africa, the enslavement of blacks in association with sugar mills was common. This intensified throughout the 16th and 17th centuries, thanks to the trade to Brazil. The importation of Africans covered the lack of labor, since epidemics and mortality linked to forced labor, combined with the flight of entire tribes to the

⁷Clauses of the Treaty of Tordesillas — reiterated in the Agreement of Tomar (1581), sealing the Iberian dynastic union — guaranteed Portugal lordship over the trade and the African coast. Madrid fulfilled its part of the agreement, persecuting Lisbon's rivals in the ports of Africa, the Canaries, and the Caribbean. Gradually, Portuguese slave traders gained control of the Spanish-American markets, displacing Genoese traders in the last quarter of the 16th century. ALENCASTRO 2020, 104

⁸ DEL PRIORE; VENÂNCIO 2023, 28

interior, eventually made the enslavement of indigenous people unviable.”⁹

New migratory groups followed, without the continuous flow of trafficking of Africans and Portuguese ceasing. The Dutch and the Jews arrived in the 17th century.¹⁰

The Dutch presence in Brazil occurred in continuity with that country’s process of independence conflicts from Spain and its commercial expansion in maritime trade. “In the early years of the

⁹ DEL PRIORE; VENÂNCIO 2023, 57

¹⁰To understand the Dutch wars in Brazil, one must constantly bear in mind the vicissitudes of the conflict in Europe. It is certain that the interests of Portugal and its overseas empire carried specific weight in the decisions of the Madrid court, as is evident when the Twelve Years’ Truce was not renewed and Salvador da Bahia was restored by a Luso-Spanish fleet (1625). Even so, the war between Spaniards and Netherlanders overseas could not occupy, in the catalog of strategic priorities of the Castilian monarchy, the same place attributed to northern Italy, where Spain’s possession of Lombardy was being called into question, or to the Netherlands, where it had to defend its southern possessions against the United Provinces. From Madrid’s perspective, these represented the crucial stages of the conflict until 1640, when the revolt of Catalonia and the restoration of Portugal reshuffled the cards, making the security of Spain’s eastern and western borders the great concerns of Philip IV. Even during the most profitable period of exploitation of silver and gold from Spanish America, which coincided with the reign of Philip II (1555– 98), precious metals had not been enough to meet the financial responsibilities of the Empire. The specter of bankruptcy hovered incessantly over Madrid’s capacity for initiative, even if it played a subsidiary role in the decision-making process. MELLO 2021, 433

17th century, the East India Company (VOC), a joint-stock company operating under a monopoly granted by the Dutch government, promoted trade and colonization in Asia at the expense of the Spanish and Portuguese presence in that part of the world. From the founding in 1621 of the West India Company (henceforth also referred to by its Dutch initials, WIC, or *West Indische Compagnie*), an identical institutional model was adopted for the Americas and for the western coast of Africa.”¹¹

Mello further highlights that “In 1624, three years after the founding of the West India Company, a pamphlet was published in Amsterdam authored by Jan Andries Moerbeek, entitled ‘Motives why the West India Company should attempt to wrest the land of Brazil from the King of Spain.’ The author summarized in a few pages the strategic and economic reasons in favor of a successful attack on Portuguese America. ‘Although the land of Brazil is larger than all of Germany, France, England, Spain, Scotland, Ireland, and the seventeen Netherlands combined, and although the Portuguese have settled along some four hundred miles of the maritime coasts, being thousands in number, there are nonetheless only two more important places in that country, namely Bahia and Pernambuco. And having been occupied and fortified and having established certain fortifications in certain places with competent garrisons, the West

¹¹MELLO 2010, 06-07.

India Company will not only become mistress of the entire country, but will be able to maintain its possession [...]”¹²

This was, however, a war that lasted 20 years (bloody, like all others), in which Portugal resisted, hundreds of locals died, and which left deep marks on Brazilian history — but is also known above all through the figure of Maurício de Nassau (as the Dutchman later known as Governor João Maurício de Nassau-Siegen was called)¹³, who managed the region and documented life in the colony, its peoples, its flora and fauna, through the personal financing of painters (such as Frans Post and Albert Eckhout) and scientists¹⁴, while still maintaining the brutalization of enslaved Africans.¹⁵

¹² MELLO 2010, 21-22

¹³Concerned with consolidating their dominion over the land and rebuilding the economy, the directors of the West India Company sent João Maurício, Count of Nassau-Siegen, here with the title of Governor-General of Brazil. He arrived in Recife on January 23, 1637, hastening to crush the last pockets of resistance. Nassau came with a veritable court, in which painters such as Frans Post and Albert Eckhout, and scholars such as George Marcgraf and Willem Piso, coexisted. DEL PRIORE; VENÂNCIO 2023, 61

¹⁴ MELLO 2010, 147

¹⁵The conquest of Elmina, a Portuguese possession on the western coast of Africa, aimed precisely to guarantee the supply of slaves to Dutch Brazil, although only the conquest of Luanda in 1641 would fully achieve this objective. During 1637 and 1638, the Recife government also proceeded with the financed sale of the sugar mills whose owners had emigrated, confiscating and reselling them. Of the 160 mills existing in the Northeast at the time of the Dutch invasion, nearly half had been

This period of Brazilian history also witnessed a religious experience, as Portuguese Catholics, Dutch Calvinists, and Jews converted due to the numerous persecutions suffered in Europe (known as *cristãos novos*, or New Christians)¹⁶ coexisted. And here, according to Mello, “governing Dutch Brazil consisted basically of managing a triangular relationship, frequently tense, among Luso-Brazilians, Dutch, and Jews, owing to confessional differences, national antagonisms, and economic rivalries. The daily notes of the Recife government illustrate the daily nature of such relationships.”¹⁷

Once foreign incursions — reflections of eminently European conflicts — had been overcome, 18th-century Brazil continued to receive waves of enslaved Africans and Portuguese due to the economic context based on mining in search of gold and precious stones, especially diamonds, which Del Priore and Venâncio call the “inward turn of Portuguese America,” because one’s back was turned to the coast and one ventured deep into the interior.¹⁸ Furthermore,

abandoned by their Luso-Brazilian owners. The terms granted were generally six years, with a six-month grace period. MELLO 2010, 154

¹⁶“The Jewish community of Dutch Brazil was composed mainly of Portuguese Jews who had emigrated to Amsterdam in order to escape the rigors of the Inquisition.” MELLO 2010, p. 242

¹⁷ MELLO 2010, 199

¹⁸Manuel Nunes Viana, armed men and their troops... such matters take us beyond Minas. While on the flanks of the Espinhaço mountain range gold veins caused the population to grow, the slave trade to increase, economic activities to diversify, and consequently the Metropolis’s pressures on the Colony to intensify, in the distant

“once the settlement of the coast had been consolidated, the movement of colonization pushed men toward the precious stones, indigenous peoples to be captured, or guiding lazy herds of cattle — free men and slaves effectively occupied such wilderness, upholding the Roman principle of *uti possidetis* (‘all that you have occupied’). Portugal thus came to own the vast interior.”¹⁹. This principle would give Portugal the consolidation of territory in America through the revision of the Treaty of Tordesillas by the Treaty of Madrid, idealized and negotiated by Alexandre de Gusmão with Spain. The treaty recognized Portuguese possession over part of what is today the Amazon and Mato Grosso regions, with Spain retaining Colônia do Sacramento. The treaty faced local resistance, especially in the Jesuit reductions of Rio Grande do Sul and present-day Paraguay, leading to the Guaraní War, which culminated in the annulment of the agreement by the Treaty of El Pardo. However, the borders delimited in the Treaty of Madrid served as the basis for the final Treaty of Santo Ildefonso, which consolidated Colônia do Sacramento (present-day Uruguay) and the Seven Missions, with Portugal recovering the island of Santa Catarina and retaining Rio Grande do Sul.

From a human/migratory perspective, the main group of people coming to Brazil originated from the African Diaspora — groups still

interior another story was being written. This, as a historian once said, “well away from the king.” VIANA 2023, 82

¹⁹ DEL PRIORE; VENÂNCIO 2023, 78

trafficked and enslaved. Brazil became the main destination; the population was heterogeneous and came primarily from West-Central Africa, especially Angola and the former Congo, and from West Africa, from the Bight of Benin — present-day Benin, Togo, and Nigeria. These were populations known as Kongo, Mbundu, and Ovimbundu, who were embarked mainly at ports such as Luanda (present-day Angola). These groups came primarily to the regions of Rio de Janeiro and Minas Gerais for mining activities, but also for urban and agricultural work. Their cultural influence was profound and widespread, manifesting in linguistic practices, forms of sociability, and cultural expressions that became broadly integrated into Brazilian social formation. Another group, composed of the Yoruba (known in Brazil as *Nagôs*) and the Fon (from the ancient Dahomey), went to Salvador and the Bahian *Recôncavo* and were decisive for the formation of religions and cultures of African origin, such as *Candomblé*. Also arriving in Brazil during this period, though in smaller numbers, were Africans from the Bight of Biafra (present-day southern Nigeria, the coast of Cameroon, the continental territory and the island of Bioko of Equatorial Guinea, the Estuaire province of Gabon, and the islands of São Tomé and Príncipe). Also arriving were individuals from Islamized regions of West Africa, such as the Hausa, who possessed knowledge of Arabic writing and Islamic religious practices, and went to urban areas, especially in Bahia.

And why, in a text focused on understanding Brazilian migration policy, does one delve back into moments of history before this nation-state was fully consolidated? Because, as Manolo Florentino

explains, “In 1789, the population of the captaincy of Rio de Janeiro was approaching 170,000 inhabitants, half of whom were slaves. Three out of every four captives were settled in rural areas, where they made up 51% of the total population.”²⁰ — which certainly influenced our own national project, as it reveals that the country’s demographic formation did not result from free flows regulated by state policies, but from a coercive system of human mobility that predates and conditions the very construction of the legal categories of nationality, belonging, and foreignness.

By highlighting the ethnic, cultural, and religious diversity of these groups — originating from regions such as Angola, Congo, and Benin — as well as the mechanisms of their classification and redistribution within the colonial territory, one comes to understand that the Brazilian State, in the 19th century, inherited a profoundly heterogeneous population whose integration would not be conceived through the valorization of diversity, but through projects of homogenization and control. In this sense, the transition from the colonial regime to the consolidation of the nation-state in Brazil entailed the transformation of a logic of forced and hierarchical circulation of persons into a legal-political system that redefined who belongs to the national community, establishing the foundations of modern migration policies and their structural tensions between inclusion, exclusion, and sovereignty.

²⁰ FLORENTINO 2017, 39

But the 18th century still needs to be examined, for it was marked by Portugal's impoverishment and the abandonment of the colony, whose relationship with the Metropolis was always "marked by episodes of discontent and revolt."²¹ Indeed, it must be clarified that these discontents marked the entire colonial period, as the authors explain, and had external and internal origins. The first arose from Portugal's increasing exploitation of Brazil — colonial authorities acted with violence through rigorous mercantilist practices that translated into fiscal austerity, corruption, nepotism, and arrogance. The growing impoverishment of Portugal since the loss of its revenues in Asia, the constant invasions and wars against the Dutch and the Spanish, as well as the presence of an increasingly parasitic Lisbon Court, were good excuses for the Metropolis to extract maximum wealth from the Colony or, at times, to attempt this without success. Throughout the 18th century, such reasons unfolded further. The internal focus, in part, derived from fiscal greed and was linked to crises in food supply. Fiscal extortion generated enormous tensions and collective hunger stimulated popular mobilization. Even before the expansion of mining, the framework of tensions had already been outlined. Important colonial revolts and rebellions occurred, expressing internal tensions within Portuguese administration. Episodes such as the Acclamation of Amador Bueno, the Beckman Revolt, protests against authorities in Pernambuco, the War of the

²¹ DEL PRIORE; VENÂNCIO 2023, 124

Emboabas, and the War of the Mascates expressed disputes over power, commerce, and wealth, as well as dissatisfaction with monopoly. In 1736, riots in Minas Gerais — in places such as Chapel of Souls, Montes Claros, and São Romão — gathered hundreds of men demanding “relief from the *capitação*” (head tax), demonstrating resistance to taxation. Military mutinies, such as the one in Bahia, also revealed indiscipline and discontent within colonial forces themselves. Together, these events demonstrate a colony marked by economic conflicts, administrative abuses, and recurring forms of collective contestation.²²

In this chaotic 18th-century context, Brazil’s migratory dynamics must be understood in light of the colonial model of exploitation implemented by Portugal, in which territorial occupation was guided by the maximization of resource extraction — especially with the expansion of the mining economy — within a productive structure based on slavery, as previously discussed, intensified by the height of the transatlantic trafficking of Africans.

The process of consolidating Brazil’s independence from Portugal continued. As a nascent nation-state, it was in search of its own concept of “Brazilian nationality,” within that 19th century marked by identity-based nationalisms — that is, those formed on the basis of a sense of belonging to a “natural” group united by shared traits, establishing symbolic borders and strongly tied to the idea of

²² DEL PRIORE; VENÂNCIO 2023, 125

sovereignty. A German naturalist, ironically, would define the history of Brazilian nationality from the fusion of three races — white, black, and indigenous — and that it was therefore differentiated from the colonizer. As Del Priore and Venâncio explain, “certainly, by today’s standards, such a definition is not taken seriously, for we know that history is not a byproduct of races. Furthermore, from a cultural standpoint, the three groups mentioned did not form homogeneous units, nor did they maintain egalitarian relationships in the New World, as the notion of fusion suggests.”²³ But such a desire for differentiation was contradictory, because, as much of the monarchical elite was of Portuguese descent, they sought, on the other hand, archaeological and linguistic traces of European civilization, as Del Priore and Venâncio explain: “with respect to this segment, Martius’s position was not to mention a contribution, but rather to indicate that they were ‘ruins of peoples’ — that is, they descended from an ancient civilization that had migrated to the New World and entered into decline, regressing to a state of savagery. This subtle distinction in relation to the other two founding peoples of Brazilian nationality had important implications. If we reflect a little, we will notice that Martius transferred to the future the definition of what the indigenous contribution would be, depending on the directions taken by archaeological and linguistic studies.”²⁴ In this context, there was

²³ DEL PRIORE; VENÂNCIO 2023, 194

²⁴ DEL PRIORE; VENÂNCIO 2023, 196

no “migration policy” in the colony, but rather a selective mobility regime with African slavery as its main axis. The turning point came with the arrival of the Portuguese Court in 1808.²⁵ D. João VI, in his Royal Letter (*Carta Régia*) of 1808, decreed the opening of the ports, stimulating immigration. This was still part of the European political arrangements of the 19th century in their Napoleonic conflicts, which were producing effects in the colonies. Europe was profoundly destabilized, and one of the central instruments of this dispute was the Continental Blockade of 1806, which prohibited European countries from trading with England. Portugal, a British ally, refused to fully adhere to the blockade. The Letter therefore determined the opening of ports to friendly nations. This broke the old colonial pact, which had restricted trade only to Portugal. Although primarily a commercial measure, it shattered the Portuguese monopoly and flung open Brazil’s doors to European travelers, merchants, scientists, and artisans. “The opening of the ports, already in 1808, represented the rapid growth of external competition in various sectors. Furthermore, the end of restrictions on the entry of foreigners meant a large influx of professionals who were often outside the frameworks of the

²⁵It is worth recalling that, from a political standpoint, the arrival of the Court had an ambiguous effect. It was not simply a visit by the queen, “D. Maria, the Mad,” and D. João, the prince regent, with their other family members and lackeys. Far from it: the transmigration entailed the transfer of numerous royal officials, a good part of them belonging to the cream of Portuguese administration and aristocracy. DEL PRIORE; VENÂNCIO 2023, 182–183)

guilds.”²⁶ D. João signed a decree allowing the granting of *sesmarias* (land grants) to foreigners in Brazil — a revolutionary measure, because previously, to own land in the colony, one had to be Portuguese or naturalized. In this sense, the Crown created an economic incentive to attract European immigrants. The royal strategy was to populate and defend the borders, especially in the south, which was a demographic vacuum and vulnerable to invasions. “Since the colonial period, the southern region had been the target of endless border conflicts. Once independent, the countries that emerged in the Río de la Plata basin maintained the old rivalries. Brazil, as expected, was not outside these disputes. During the 19th century, a central question for the Empire was to prevent the emergence of a hegemonic power in the region. On one hand, there was fear that a powerful focus of republican irradiation might emerge, given that the countries born from the struggle against Spanish domination adopted that form of government. On the other hand, this position aimed to guarantee the free circulation of vessels on the Paraná, Paraguay, and São Lourenço rivers, since without this ‘river road,’ access to Mato Grosso would become considerably more costly and risky, as the other routes to that province confronted two difficult barriers: rapids and hostile indigenous peoples.”²⁷ Furthermore, the decree aimed to encourage agricultural diversification and supply the

²⁶ JUCÁ 2026, 14

²⁷ DEL PRIORE; VENÂNCIO 2023, 211

Court, which — with the sudden arrival of thousands of Portuguese with the Court — had caused a collapse and food shortage, since farming was conducted on large latifundia producing sugar or for subsistence. But this policy also had a religious and racial bias, as the priority was for Catholic immigrants and for increasing the white population.

From the perspective of the slave trade, it “became prohibited in Brazil in 1810, by the Treaty of Peace and Friendship with England; such commerce would be the subject of much debate and a long campaign of nearly half a century. According to Article 10 of that treaty, the Prince, declaring himself ‘convinced of the injustice and bad policy of the slave trade,’ committed himself to accompanying British efforts to prohibit the trade to subjects outside his African domains. Even if the advance was not as great as England’s ambitions — which had abolished the trade in its empire and intended to do the same throughout the rest of its domains, thereby favoring mercantile trade — it at least made the slave trade illicit. Or rather: when the trade was carried out outside Portuguese domains, slave ships could be legally seized. However, however well equipped it might be, England could not capture every ship, and could do nothing against the slow-moving nature of Lusitanian policy: everything was done merely ‘for English eyes’ [...]. In a slave-owning society like Brazil’s, this type of regulation tended to be shelved. Between the legal statute and reality there was an immense gap, which could not be bridged by decrees alone. Moreover, D. João’s attitude was always to accept with one hand and neglect with the other, as if he were thereby gaining time in that

admittedly lost cause. And the pressure kept coming. Even the King of France, in a letter dated November 24, 1818, urged his ‘good brother and cousin’ to abolish the trade altogether. A little later, as a result of the deliberations of the Congress of Aix-la-Chapelle, other members of the Holy Alliance positioned themselves in the same direction.”²⁸

3. The Monarchical Period

Dolinger, Thibúrcio, and Albuquerque teach that “under these Brazilian constitutions, the law could always discretionarily set limits on immigration.”²⁹

From 1822, with the proclamation of independence by Dom Pedro I, Brazil began a process of state-building marked by the continuity of structures inherited from the colonial period and by political centralization under a monarchical form. As Schwarcz and Starling teach, “the imperial solution also meant the juxtaposition of new and old elements. First, D. Pedro I had the examples of two very different emperors: Napoleon I and Francis II. The former, a French general who had declared himself Emperor; the latter, Pedro’s powerful father-in-law, who kept for himself the distinction of being the head of the traditional Kingdom of Austria. But the immediate references were not only European. In the same year of 1822, in order to contain Spanish attempts at recolonization and to deal with the republican and

²⁸ SCHWARCZ; STARLING 2015, 331

²⁹ DOLINGER, THIBURCIO, ALBUQUERQUE 2025, 122

nativist rebellion spreading in Mexico, the local high aristocracy proclaimed General Iturbide Emperor, who received the title of ‘Agustín I.’³⁰

Independence was then consolidated in the granted Constitution of 1824, during the First Reign of Dom Pedro I³¹ — the prince regent, son of Dom João VI, who had now returned to Portugal, which was in upheaval. From a migratory point of view, the Imperial Constitution provided that “anyone may remain or leave the Empire as it suits them, taking their property and goods, subject to police regulations and not to the detriment of third parties.”³² The country sought to

³⁰ SCHWARCZ; STARLING 2015, 383

³¹D. Pedro’s position, however, was ambiguous. The support he gave to the constitutionalist movement was marked by reservations such as: “The Constitution must be worthy of my power,” and so forth. It is not surprising, therefore, that after September 7, the regional elites were divided. Supporting the Portuguese courts meant submitting to a liberal government, whereas accepting the emperor implied the risk of a return to absolutism. Furthermore, there were divisions in the troops stationed in the various provinces, some loyal to the Portuguese Court and others to the court in Rio. For this reason, independence was followed by a series of wars. In the North and Northeast, the process of breaking with Portugal was far from peaceful. Between March and May 1823, Belém recorded pro-Lisbon uprisings. The same occurred in Maranhão, Piauí, and Ceará, where armed conflicts extended from October 1822 to January 1823. In Bahia, the struggles unfolded for almost a year. These clashes did not stop there. In fact, they had far more serious consequences in other regions, and they called into question the domination of both courts. DEL PRIORE; VENÂNCIO 2023, 185

³² DOLINGER, THIBÚRCIO, ALBUQUERQUE 2025, 121

affirm its territorial unity, stabilize its institutions, and insert itself into the international system as a sovereign state, while still maintaining profound social inequalities, slavery as the economic base, and a restricted citizenship — revealing an independence that was simultaneously a political break with Portugal and a continuation of the social and economic hierarchies of the colonial period. The process continued to be harmful and turbulent, as Beatriz G. Mamigonian explains: “The turbulent process of state building and definition of the boundaries of citizenship in post-independence Brazil were intrinsically related to the continuation of the illegal slave trade and expansion of slavery, affecting the landscape of the exercise of rights for liberated Africans. Whether formally or informally, these rights would be questioned, undermined, and revoked in practice, to the point that liberated Africans’ experiences and expectations diverged very little from those of enslaved persons.”³³

In 1830, Brazil faced a climate of civil war. “Rio de Janeiro, Ceará, Bahia, Pernambuco, and Alagoas were the scenes of armed uprisings in which landowners, troops, smallholders, indigenous peoples, and slaves stood side by side — sometimes against the centralization of power, sometimes as an expression of revolt against poverty and slavery. It is in this context that Dom Pedro I, on April 7, 1831, renounced the Brazilian throne.”³⁴ The heir to the throne, Dom Pedro

³³MAMIGONIAN 2023, 78

³⁴DEL PRIORE; VENÂNCIO 2023, 187

II, was a child; the government was assumed by a tripartite regency, followed by Diogo Feijó (1835–1837) and Araújo Lima (1837–1840). During this regency period (1831–1840), there was no specific migration policy, owing to the scenario of political instability, territorial fragmentation, and social crisis, with everything subordinated to the urgencies of consolidating the imperial state.

During the Second Reign, on the other hand, there was a structured, systematic migration policy, directed toward the massive attraction of foreigners — especially from the 1850s onward, with the effective end of the slave trade (the “infamous trade”) through the advent of the Eusébio de Queirós Law³⁵, and the other laws that followed (the Free Womb Law, the Sexagenarian Law, and finally the Golden Law) — without, however, resolving the problem of segregation caused by slavery, since the Land Law reorganized access to land by requiring its acquisition through purchase, consequently restricting access for formerly enslaved people. Subsequently, territorial occupation through directed immigration — of a racial-ideological nature — was regulated by Decree No. 1,318 of 1854, with European immigrants. In this context, migration policy ceased to be episodic and became a state

³⁵Between 1841 and 1850, the destination of 83% of the total number of Africans transported to America was Brazil; 12% were bound for Cuba, and the remainder was divided between Puerto Rico and the United States. This does not include the profit obtained by the slave traders, since the organization had continental repercussions and involved other parallel trades. SCHWARCZ; STARLING 2015, 474

policy, articulating incentives for subsidized immigration, agricultural colonization, and the economic interests of the coffee industry.

Between 1864 and 1870, Brazil was the scene of one of the bloodiest wars — in the words of Del Priore and Venâncio, the greatest war in South America — the Paraguayan War, which claimed thousands of Brazilian, Paraguayan, Argentine, and Uruguayan lives, endangered the already anachronistic monarchy, and would culminate in the end of the regime. As for migration data, according to SEYFERTH, “entries of immigrants during the Empire point to the greater numerical relevance of the Portuguese, and after 1875, the Germans were largely surpassed by the Italians.”³⁶

The Golden Law concluded the process of abolishing slavery. The republican phase of Brazil began, and migration policy — through Decree No. 528 of 1890 — established criteria restricting the entry of African and Asian immigrants, consolidating a migration policy marked by the ideal of “whitening” (*branqueamento*) and by the attempt to redefine the demographic composition of the country.

Institutional structures aimed at the reception and distribution of immigrants were created, such as boarding houses (*hospedarias*) and labor contracts. A new Constitution came into force in 1891, establishing “the institutional foundations of the new regime — presidentialism, federalism, and a bicameral system — and implemented a series of changes, clearly marking the rupture. The

³⁶SEYFERTH 2002, 10

Church was separated from the State, and civil registration of births, marriages, and deaths was introduced. The federalist proposal, in turn, organized the new regime on a decentralized basis, giving the former provinces, now transformed into states, greater autonomy and fiscal control, and did away with the belief in monarchical centralism as an agent of national cohesion.”³⁷

In this Constitution, however, a provision similar to the previous one was maintained, with a more explicit rule regarding the departure of immigrants and their goods: “In times of peace, any person may enter the national territory or leave it, along with their wealth and goods, whenever and as they see fit, without requiring a passport” — with the expressions “whenever and as they see fit, without requiring a passport” subsequently removed.³⁸ The new regime incorporated and expanded immigration policy, now also with the prominence of individual states — especially São Paulo, which began directly financing the arrival of immigrants (mainly Italians, but also Spaniards and Portuguese). 4. Brazilian Migration Policies Throughout the 20th Century.

Immigrants to Brazil continued to be seen as a threat or useful labor — but almost never as subjects of rights. The State and the elites of the First Republic viewed migration as a tool for an explicit project of “whitening the population,” based on theories of eugenics and

³⁷SCHWARCZ; STARLING 2015, 553

³⁸ DOLINGER, THIBÚRCIO, ALBUQUERQUE 2025, 121

scientific racism imported from Europe. Some key characteristics can be highlighted: the incentive to attract European migration, especially Italians, Germans, Spaniards, Portuguese, and, to a lesser extent, Swiss and Slavic peoples. The goal was twofold: to replace free Black labor and to “improve” the racial composition of the Brazilian population. At the beginning of the 20th century (more precisely from 1900 to 1930), incentivized migrations continued, now expanded to include Asians — with numerical prominence for the Japanese — and, finally, Arabs, especially Lebanese and Syrians. The use of migration policies for a project of “nationality” and “modernization” continued — marked by profound changes, always guided by state projects of national formation and based on racial theories rather than human rights concerns. According to Del Priore and Venâncio, “the years following the proclamation of the Republic were marked by a whirlwind of changes. Europeanization, previously restricted to the domestic environment, now became an objective — or better, an ‘obsession’ — of public policy.”³⁹ On the other hand, “the early Republic coexisted with economic crises, marked by inflation, unemployment, and overproduction of coffee. This situation, combined with land concentration and the absence of a comprehensive school system, meant that the majority of newly freed enslaved people came to live in a state of almost complete abandonment. In addition to the suffering of poverty, they had to face

³⁹ DEL PRIORE; VENÂNCIO 2023, 247

a series of prejudices crystallized in institutions and laws designed to stigmatize them as second-class citizens, elements without a voice in Brazilian society.”⁴⁰ It thus becomes evident that Brazilian migration policy maintained the characteristics of the imperial period, sustaining the humanitarian tragedy produced by the slave trade and now transformed into racial segregation.

As Thomas Skidmore observes, the ideal of whitening was deeply rooted in the thinking of Brazilian elites at the end of the 19th century and the beginning of the 20th century, who believed that European immigration would progressively lead to the “racial improvement” of the Brazilian population.⁴¹

The end of slavery caused a momentary disorganization of the labor system, and a series of efforts was made to attract immigrants — in this sense, selling the idea of a “terrestrial paradise.”⁴² However, “Deceived by illusory propaganda, Poles, Germans, Spaniards, Italians, Portuguese, and later (starting from the final years of the 1910s) Japanese were seized by an immigration fever. The myth of tropical abundance suited well a Europe that was expelling its poor population and indebted smallholders. Finally, the considerable global population increase, combined with improvements in transportation, ended up placing large groups of unemployed peasants at the disposal of

⁴⁰ DEL PRIORE; VENÂNCIO 2023, 247–248

⁴¹ SKIDMORE 1974, 64–89

⁴² SCHWARCZ; STARLING 2015, 559

recruiters. It is estimated that more than 50 million Europeans left their continent of origin in search of the so-desired ‘freedom.’⁴³ From the immigrants’ perspective, according to SCHWARCZ and STARLING, “financial difficulties appeared as early as the voyage. Victims of exploiters of others’ misery, immigrants paid surcharges and high prices for their passage. Crowded onto low-quality ships, they discovered cultural differences early in the ocean crossing, which sharpened in their new home. Immigrants not only originated from different regions of the same country but also came from rival countries or those with very different customs, so that forced coexistence generated endless conflicts: northern Germans quarreled with those from the south; Japanese clashed with Italians; Poles with Germans, and all of them with the locals. The languages were many, the dialects too, and all were unfamiliar with the diet of flour, rice, and beans, and the row houses built with mud bricks and thatched roofs. Thus, far from constituting a homogeneous group, the newcomers recreated their distinct customs in the tropics. Some, coming from the more northern regions of Italy, were accustomed to urban life. Others, like most from the Veneto, simply readjusted old rural habits here. These populations had to replace polenta with rice, discover new vegetables and fruits, and wait a while before being able to hang dried sausages and bacon from the ceilings of their homes.”⁴⁴

⁴³ SCHWARCZ; STARLING 2015, 559

⁴⁴ SCHWARCZ; STARLING 2015, 560–561

Internally, a policy of forced assimilation developed, which sought to erase the cultural differences of already established immigrants, as evidenced by the prohibition on the use of foreign languages in schools and community institutions.

In 1934, the quota system was maintained in a Decree consolidating this orientation by limiting the entry of immigrants according to national origin, linking the future demographic composition of the country to a previously defined ideal of nation. Thus, immigration ceased to be merely an instrument for supplying labor and became mobilized as a strategic tool of social engineering, aimed at building a unified national identity under strong state control.

The Brazilian Constituent of 1934 provided that “the entry of immigrants into the national territory will be subject to the restrictions necessary to guarantee the ethnic integration and the physical and civil capacity of the immigrant; however, the flow of immigrants from each country may not annually exceed the limit of two percent of the total number of the respective nationals settled in Brazil during the last fifty years.”

In light of this innovation, the practical effect of the constitutional provision contained in the Constitution of 1891 — maintained in the 1926 Amendment, and which the Constituent itself of 1934 repeated in Art. 113, §14 — was restricted: “In times of peace, subject to passport requirements regarding the entry of foreigners and the restrictions of the law, anyone may enter the national territory, take up residence therein, or leave it.”

The quota system was maintained in the Charter of 1937, which — more consistently — omitted from Art. 122 — corresponding to Art. 113 of the Constitution of 1934 — the proclamation regarding freedom of entry into the country.⁴⁵

The Vargas Era (1930–1945) was marked by a migration policy guided by national-developmentalism and the closing of borders. With the rise of Getúlio Vargas, the discourse changed: instead of “whitening,” the goal became “nationalizing.” The mark of exacerbated nationalism in this period was characterized by ideological control and suspicion of foreigners, who could be potential ideological agents — in other words, the focus shifted from race to political ideology. In addition, there was intense repression of cultural plurality, especially during the period known as the *Estado Novo* (New State, 1937–1945), which implemented policies of forced assimilation such as prohibiting foreign-language schools, restricting the use of foreign languages, and promoting surveillance of immigrant associations. In other words, “the ‘ideal’ immigrant was one who had something to contribute to the country’s economic development, without abandoning racial selection, which presupposed the superiority of the white European race.”⁴⁶ The Constitution of 1934 introduced a quota policy based on the criterion of nationality, making it difficult for “undesirable” groups to enter and reinforcing the national-developmental project, which

⁴⁵ DOLINGER, THIBURCIO, ALBUQUERQUE 2025, 122

⁴⁶ WERMUTH 2020, 2338-2339

was further strengthened in 1937. There was also a systematic refusal of European refugees (including Jews). In the period from 1930 to 1940, Brazil refused thousands of refugees fleeing Nazism. It was a deliberate policy of “closing the doors,” especially to Jews, Syrians, Lebanese, and other groups considered “problematic.” Furthermore, “The selective and utilitarian bias of the migration policies of the first half of the 20th century remains evident in the restrictive immigration measures established, at the outbreak of World War II, by Decree-Law No. 3,175, of April 7, 1941. This legislation was responsible for the suspension of the granting of visas (temporary or permanent) to foreigners.”⁴⁷ A series of “restrictions were tied to the premises of an assimilationist nation that could not tolerate the presence of ethnically identifiable groups within its territory. It was not, strictly speaking, a greater attachment to *jus sanguinis*; for nationality and citizenship, *jus soli* prevailed, although the idea of *Brazilianness* had a far broader scope than belonging to the State. Hence the systematic use of the term *alienígena* (alien) to designate foreigners and also the descendants of immigrants born in Brazil whose ethnicities diverged from the national ideal.”⁴⁸

The period from 1945 to 1964 was marked by an ambivalence between reception and surveillance. With the end of the *Estado Novo* and the initial re-democratization, there was some relaxation of the more

⁴⁷ WERMUTH 2020, 2339

⁴⁸ SEYFERTH 2002, 146

restrictive policies. “The Constitution of 1946 abolished the quota system, reestablished the norm of freedom of entry: ‘In times of peace, any person may, along with their goods, enter the national territory, remain therein, or leave it, subject to the provisions of the Law,’⁴⁹ and determined the establishment of a federal body responsible for coordinating the selection, entry, distribution, and settlement of immigrants, as well as their naturalization and colonization.”⁵⁰

Brazil received post-war European migrations (Italians, Spaniards, some Germans), which helped in the country’s industrialization process. The country welcomed economically useful migrants for development but maintained strict ideological control. Furthermore, foreigners continued to be seen as a potential risk, and the political police (DOPS — Department of Political and Social Order) kept detailed files on migrants, trade unionists, Arabs, Chinese, Jews, Japanese, and Latin Americans. There was still no consolidated statute,

⁴⁹The law most similar to the Brazilian one is Argentina’s Migration Law (Law 25,871/2004). Among all the world’s laws, the one most similar to the Brazilian one — and which even influenced part of the normative discussion in Brazil — recognizes migration as an essential human right; guarantees access to health, education, and justice regardless of status; adopts social integration as a state objective; prohibits immigration detention as a rule; and incorporates principles of equality and non-discrimination. Like the Brazilian law, Argentine legislation broke with a securitarian past and became one of the most advanced in the world. Both represent a humanitarian counterpoint to the restrictive legislation in force in Europe, the United States, and much of Asia.

⁵⁰DOLINGER, THIBURCIO, ALBUQUERQUE 2025, 122

and “legislation” continued to be a mosaic of decrees and administrative orders that created documentary controls, issued police authorizations for entry, and determined deportations for “reasons of public order.” In addition, these decrees and orders required prior authorization for political and associative activities. During this period, the discourse about migration as a risk to “national security” grew, and this was precisely the embryo of the law that would emerge in the subsequent phase of the Military Dictatorship — a migration policy used as an instrument of control, with a securitarian, militarized spirit aimed at the defense of the State, opposed to the idea of protecting the migrant person, as we shall see in the fourth phase with the implementation of the infamous *Estatuto do Estrangeiro* (Foreigners’ Statute).

With the coup of 1964, migration came to be formally incorporated into the repressive apparatus of the National Security Doctrine. The foreigner was systematically treated as a potential enemy of order. “The Constitution of 1967 and the Constitutional Amendment of 1969 maintained specific provisions on freedom of entry and on the Union’s competence to legislate on emigration and immigration, the entry, extradition, and expulsion of foreigners.”⁵¹ And, in this sense, “under the regime of the Constitution of 1967, amended in 1969, Decree-Law No. 941 of October 13, 1969, the ‘Foreigners’ Statute,’ encompassing

⁵¹DOLINGER, THIBURCIO, ALBUQUERQUE 2025, 122

various matters relating to the entry and life of foreigners in Brazil, was in force for approximately 12 years.”

This legal instrument was replaced by Law No. 6,815, of August 19, 1980, to govern the institutions of admission and entry of foreigners into the national territory, the various types of visa, the transformation of one into another, the extension of the period of stay, the condition of the asylee, the registration of foreigners, their departure from and return to the national territory, their travel documentation, deportation, expulsion, extradition, the rights and duties of foreigners, naturalization, and the creation of the National Immigration Council. Law No. 6,815 was amended in several provisions by Law No. 6,964 of 1981. On May 24, 2017, Law No. 13,445 (the Migration Law) was enacted, which currently regulates the matter.”⁵²

The apex of this model was Law 6,815/1980. This law expressed the logic of national security. The immigrant was seen as a potential threat, not as a subject of rights, and was therefore treated as a “foreigner” — that is, someone who causes estrangement. The idea of sovereignty was interpreted as the need for surveillance over those who arrived, especially in a global context of the Cold War and ideological mistrust, and the foreigner was treated as a “risk” — that is, the presumption that the foreigner was a potential infiltrator and subversive.

⁵²DOLINGER, THIBURCIO, ALBUQUERQUE 2025, 122

The main criticisms of the Foreigners' Statute were that this law placed the foreigner as an object of state control rather than as a person holding rights; it privileged the interest of the State to the detriment of individual guarantees; it did not provide for social integration, anti-discrimination measures, or reception policies; it reinforced a policing logic in which irregular migration was treated as an indicator of dangerousness; and it authorized restrictive and punitive measures with a low degree of procedural protection. Therefore, the law allowed for the symbolic criminalization of migration and linked the entry, stay, and expulsion of foreigners to the defense of national security. There was absolute discretion on the part of the authorities, and the political police as well as the Ministry of Justice had autonomy to deny entry without justification, revoke visas, order expulsions on grounds of "national convenience," and prevent political or cultural activities by immigrants.

The law did not guarantee due process (i.e., broad defense and adversarial proceedings), judicial review (everything remained within the administrative sphere), family protection, or social rights. In addition, there was intense surveillance of foreign associations and collectivities. In other words, the law synthesized the authoritarian and securitarian logic.

It is therefore clear that it is impossible to understand the importance of the 2017 Migration Law without examining this statute, which regulated Brazilian migration policy for almost four decades.

In summary, it was a legal instrument anchored in the paradigm of distrust, profoundly incompatible with the values of the 1988

Constitution and of international human rights treaties. This trajectory explains why Law 13,445/2017, the Migration Law, represents a historical rupture: for the first time, Brazil formulated a migration policy not based on race, nationality, ideology, or security — but on human rights. But before delving into this law, let us examine how the 1988 Constitution addresses migration issues.

5. The 1988 Constitution and the Guaranteeing Turn: A New Paradigm

The 1988 Constitution represents a rupture with the securitarian logic of the military regime. It inaugurates a humanist paradigm, committed to human dignity, equality, and fundamental rights. The constitutional order comes to understand human mobility as a phenomenon linked to citizenship, pluralism, non-discrimination, and community belonging — no longer as a threat to sovereignty. Accordingly, it does not receive the Foreigners' Statute.

It is essential to highlight that the 1988 Constitution was already aligned with the logic of the main international human rights treaties to which Brazil would become party in the following years, which explains why it offers, from its origin, a protective and inclusive treatment of immigrants. The Constitution incorporates principles that directly dialogue with International Human Rights Law, such as equality between Brazilians and resident foreigners (Art. 5, caput), the repudiation of racism (Art. 4, VIII), the prevalence of human rights (Art. 4, II), family protection (Art. 226), access to education and health without discrimination, and broad judicial protection. It should be

noted that paragraph 2 of Art. 5 (which deals with Fundamental Rights and Guarantees, which for Ulisses Guimarães represents the very name of the 1988 Brazilian Constitution as the “Citizens’ Constitution”) elevated international Human Rights treaties — even before their ratification — to a status complementary to the article. See Cançado Trindade, Flávia Piovesan, André de Carvalho Ramos, and George Galindo, to name but a few.⁵³

The constitutional starting point lies in the caput of Article 5 of the 1988 Constitution, which establishes that “all are equal before the law, without distinction of any kind,” guaranteeing to Brazilians and

⁵³These are: International Covenant on Civil and Political Rights (ICCPR) — ratified in 1992; International Covenant on Economic, Social and Cultural Rights (ICESCR) — ratified in 1992; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) — ratified in 1989; Convention on the Rights of the Child (CRC) — ratified in 1990; International Convention on the Elimination of All Forms of Racial Discrimination (CERD) — ratified in 1968, but reaffirmed in the new constitutional context; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) — ratified in 1984, also re-signified by the CF/88; Protocol of San Salvador (Social Rights) — ratified in 1996; American Convention on Human Rights (Pact of San José, Costa Rica) — ratified in 1992; 1951 Convention Relating to the Status of Refugees and its 1967 Protocol — already ratified, but whose implementation was strengthened after CF/88; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families — not ratified by Brazil, but many of its principles were already present in the CF and later in Law 13,445/2017.

foreigners residing in the country the inviolability of fundamental rights such as life, liberty, equality, and security.

Based on this clause, the Supreme Federal Court (STF) has established the understanding that constitutional protection cannot be interpreted restrictively, even when the text expressly mentions resident foreigners — recognizing that various fundamental rights also apply to foreigners in general, including those in transit or not domiciled in the country. This interpretation reinforced the idea that the Brazilian constitutional system is now guided by the universality of human rights, a principle also articulated in Article 4 of the Constitution, which enshrines the prevalence of human rights in Brazil's international relations.

Therefore, the central point is that the Constitution anticipated, at the domestic level, normative structures that would only be fully integrated into the International Human Rights System years later. This makes it an open charter for pluralism, diversity, and the protection of the migrant person.

In this sense, the Foreigners' Statute was not received by the 1988 Constitution, and a new law became absolutely necessary — but it took 37 years!

6. The 2017 Migration Law and the Centrality of Human Rights

The true turning point came with Law No. 13,445/2017, known as the Migration Law.

It replaced the securitarian paradigm of the Foreigners' Statute with a completely different vision: human mobility as a global,

multidimensional phenomenon essentially linked to human rights. It abandons the pejorative term “foreigner” (*estrangeiro*) — that is, one who is strange, who causes estrangement — and defines migrants, by dictionary definition, as “he/she who migrates”: an adjective (qualifying things) or noun (subject of rights). What a semantic difference!

As Wermuth highlights, “Law No. 13,445/2017 promotes an ‘adaptation of the treatment of the subject to the principles established by the Federal Constitution of 1988 and by the International Treaties on the subject — such as the UN Universal Declaration of Human Rights, the UN Convention on Migrant Workers, the UN Convention on the Status of Refugees of 1951, and the Protocols on Trafficking of Persons and Smuggling of Immigrants.”⁵⁴

In this sense, André de Carvalho Ramos teaches that “the central axis of the new law is the protection of human rights in the field of migration, already indicated in the choice of the epigraph: it is a migration law, applicable to the migrant living in Brazil and, additionally, to the Brazilian living abroad. The recognition of the universality, indivisibility, and interdependence of human rights as a governing principle of Brazilian migration policy (Art. 3, I) derives from the protection of human dignity, the axiological vector of the

⁵⁴WERMUTH 2020, 2338-2339

Constitution (Art. 1, III) and of the human rights treaties concluded by Brazil.”⁵⁵

The subjects now protected are: migrants (any person who moves from country to country, regardless of documentary status); visitors (those who enter Brazil temporarily, for various purposes); residents (those who hold any type of residence authorization); stateless persons (people with no nationality recognized by any State); refugees and asylum seekers (under the terms of Law 9,474/1997, with explicit protection in the migration law); returned Brazilians (including those in vulnerable situations) — an important recognition, since mobility also involves the diaspora; victims of human trafficking or transnational violence, with a provision for humanitarian reception; and persons in irregular documentary situations, who are no longer treated as offenders and have come to be recognized as subjects with guaranteed rights.

This law breaks with the logic of exclusion. Under the 1980 Statute, the irregular foreigner was treated as a threat, as we saw earlier; now, the person in an irregular situation is someone who must be protected. The Migration Law therefore aligned Brazilian migration policy with international human rights law, in which protection is conceived prior to migratory status. This avoids legal grey areas and guarantees access to basic services. In addition, it recognizes the plurality of contemporary mobilities — oriented toward non-differentiation of

⁵⁵RAMOS 2025, 590

rights based on nationality, origin, race, or professional qualification — and includes historically invisible groups. In turn, stateless persons and returned Brazilians become legal categories with specific protection, and, finally but not least importantly, it strengthens integration and combats xenophobia.

When all those present in the territory have guaranteed rights, state discretion is reduced and discriminatory practices diminish.

This expansion of protected subjects represents a profound shift in the way the State views human mobility: no longer as a risk, but as a social reality to be received with dignity.

As the main pillars of this law, we have: the recognition of the migrant as a subject of rights — when the law unequivocally affirms that all migrants, including refugees, stateless persons, and persons in irregular documentary situations, have their rights guaranteed regardless of nationality or status, thus respecting the caput of Article 5 mentioned above. Art. 3 adopts the guiding principles of Brazilian migration policy, such as non-discrimination; the promotion and defense of human rights; humanitarian reception; equal treatment; rejection of xenophobia and racism; and international cooperation for the protection of the migrant person. It also restores fundamental constitutional principles, with particular emphasis on access to public services (health, education, justice), the right to work and social security, the right to family reunification, freedom of movement and migratory regularization, and protection against arbitrary expulsion — guaranteed in the administrative phase of compulsory departures (repatriation, deportation, expulsion) through due process with

mandatory accompaniment by the Federal Public Defender's Office (DPU), ensuring that these procedures are humanized. It establishes new reception instruments such as the humanitarian visa, residence for humanitarian reasons, and documentary regularization mechanisms.

This new legal framework places Brazil among the countries with migration legislation most aligned with international human rights norms — even if its implementation faces many obstacles, which led the country, in 2022, to create a strategic plan to operationalize and consolidate a State (rather than government) policy of the Migration Law: the “National Policy on Migrations, Refuge, and Statelessness — PNAMRA,” which coordinates various bodies and defines goals related to humanitarian reception, the socioeconomic integration of migrants and refugees, combating xenophobia and human trafficking, access to documentation, and the protection of vulnerable groups.

However, despite becoming the best legal framework in Brazilian history, the aforementioned law has not been without criticism since its drafting, especially because “despite demonstrating numerous advances when compared to previous legislation, particularly with regard to the centrality conferred to the respect for Human Rights, the Law in question fails to address issues of extreme relevance, such as, for example, the exercise of the political rights of immigrants.”⁵⁶

⁵⁶ WERMUTH 2020, 2342

7. The Importance of the Migration Law in the International Context
Beyond the domestic context, Law 13,445/2017 has international relevance because it aligns Brazil with the contemporary human rights paradigm applied to human mobility — something that is not the rule, but the exception in the global scenario.

Among the world's migration laws, securitarian, restrictive, border-control-oriented models still predominate. Few countries explicitly adopt laws based on human rights, with the primacy of non-discrimination, humanitarian reception, and social integration.

This is why the Brazilian Migration Law stands out: it breaks with the criminalizing logic that predominates globally. While many countries — including established democracies — expand immigration detention, summary expulsions, and visa restrictions, Brazilian legislation favors due process, the protection of vulnerable groups, and access to public services. Furthermore, it incorporates the principles of international treaties without creating categories of exclusion. Unlike other models — which frequently differentiate rights based on nationality, origin, or professional qualification — Brazilian law adopts a universalist principle, more in line with international human rights law. Therefore, it serves as a model for regional policies, especially in South America, becoming a reference for debates in Mercosur and regional forums on human mobility, particularly regarding: residence for humanitarian reasons; the reception of

nationals of countries in crisis; and combating xenophobia as a state policy.⁵⁷

8. Tensions Between Norm and Practice: Challenges and Paths Forward

Despite this normative framework, Brazil faces important contradictions between what the law promises and what the public system delivers. Border and police patrol operations — especially in the north of the country, particularly in Roraima, since 2017, with the arrival of Venezuelans — expose challenges of federative coordination and violations, including discriminatory practices and obstacles to access to basic rights. The initial idea, in the drafts and preliminary drafts of the migration law, of creating a specific migration police force separate from the Federal Police never left the drawing board. In addition, regularization difficulties remain enormous: bureaucracy is excessive, there are significant delays in issuing documents, and the

⁵⁷The law most similar to the Brazilian one is Argentina's Migration Law (Law 25,871/2004). Among all the world's laws, the one most similar to the Brazilian one — and which even influenced part of the normative discussion in Brazil — recognizes migration as an essential human right; guarantees access to health, education, and justice regardless of status; adopts social integration as a state objective; prohibits immigration detention as a rule; and incorporates principles of equality and non-discrimination. Like the Brazilian law, Argentine legislation broke with a securitarian past and became one of the most advanced in the world. Both represent a humanitarian counterpoint to the restrictive legislation in force in Europe, the United States, and much of Asia.

insufficient number of Federal Police posts makes regularization a challenge for thousands of people. Despite the humanist legislation, xenophobia and structural racism do not protect, in practice, Black migrants, Haitians, and Africans, who face systematic discrimination with a direct impact on access to employment and housing. Challenges in socioeconomic integration persist, as reception is only the first step; without public policies for labor inclusion, recognition of qualifications, language courses, and access to dignified housing, migration continues to be marked by precariousness.

Finally, policies are oscillating, marked by administrative changes and political disputes that affect the continuity and budget of migration policies, revealing institutional fragility. To consolidate a migration policy fully aligned with human rights, some key paths are central: strengthening PNAMRA with adequate funding; continuous training of public agents; expansion of integration policies; active participation of migrants in policy formulation; institutional combat against xenophobia and racism; and ever-closer alignment with the Global Compact for Safe, Orderly, and Regular Migration.

9. Conclusion

Brazilian migration policy has undergone — and continues to undergo — a profound transformation. From a model of control, surveillance, and exclusion, we have moved toward a paradigm of human rights, reception, and dignity. But this path is not complete, and much of the future will depend on the capacity of the State and of society to transform principles into concrete practices.

At the beginning of Brazil, as we have seen, migration policy was part of a project of “social engineering” and was therefore not seen as a right, but as a state instrument for building a white, Europeanized, and agrarian nation. Numerous administrative control regulations existed, and there was no single law or statute guiding these policies. Everything was ad hoc, issued through government decrees that recorded entries and classified immigrants as “useful” or “harmful,” defined embarkation restrictions, and allowed for summary deportations.

To think about migration from the perspective of human rights is, therefore, to recognize that mobility is a fundamental expression of human freedom — and that no democratic project can sustain itself without protecting those who are on the move.

This author, as always, proposes works of historical breadth, unable to contain the desire to understand how we have constituted ourselves as a nation. And, by virtue of the requirements imposed by the type of work proposed, it contains generalizations — but these allow us some starting points for future deepening, also because everything is reflected even in the bibliographic choices, which can and should always be expanded and improved.

REFERENCES

ARENDT, Hannah. *The Origins of Totalitarianism*. Tradução: Roberto Raposo. Origens do Totalitarismo.. São Paulo: Companhia das Letras. 1998.

ALENCASTRO, Luiz Felipe de. *O trato dos viventes: formação do Brasil no Atlântico Sul* [The Trade of the Living: The Formation of Brazil in the South Atlantic]. 1st ed. São Paulo: Companhia das Letras, 2020. E-book (Kindle).

BRASIL. *Constituição (1988). Constituição da República Federativa do Brasil de 1988* [Constitution of the Federative Republic of Brazil of 1988]. Brasília, DF: Presidency of the Republic, 1988. Available at: <http://www.planalto.gov.br>. Accessed: September 19, 2026.

BAENINGER, Rosana; DEMÉTRIO, Natália Belmonte; FERNANDES, Duval Magalhães; DOMENICONI, Joice. Cenário das migrações internacionais no Brasil: antes e depois do início da pandemia de Covid-19 [Scenario of International Migrations in Brazil: Before and After the Start of the COVID-19 Pandemic]. *Revista Jurídica Trabalho e Desenvolvimento Humano*, Campinas, v. 4, 2021. Available at: <https://rjtdh-prt15.mpt.mp.br/Revista-TDH/article/view/89/75>. Accessed: October 30, 2025.

BOXER, C. R. *Os holandeses no Brasil: 1624–1654* [The Dutch in Brazil: 1624–1654]. Translated by Olivério M. de Oliveira Pinto. São Paulo: Companhia Editora Nacional, 1961.

BRASIL. *Lei nº 13.445 de 24 de maio de 2017. Institui a Lei de Migração* [Law No. 13,445 of May 24, 2017. Establishing the Migration Law]. Brasília, DF: Presidency of the Republic. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm. Accessed: October 19, 2025.

CONERMANN, Stephan; PAES, Mariana Dias; PICH, Roberto Hofmeister; TERRA, Paulo Cruz (org.). *Current Trends in Slavery*

Studies in Brazil. Berlin: De Gruyter Oldenbourg, 2023. Available at: <https://library.oapen.org/handle/20.500.12657/63786>. Accessed: October 31, 2025.

DEL PRIORE, Mary; VENÂNCIO, R. *Uma breve história do Brasil* [A Brief History of Brazil]. Editora Planeta do Brasil. 2023. Available at: <https://biblioteca.baxeducao.com/pt/pucmg/resource-detail/e56f2c77-d41b-42ee-ab72-89221d4bc852/>

DOLINGER, Jacob; TIBURCIO, Carmen; ALBUQUERQUE, Felipe Gomes de Almeida. *Direito internacional privado* [Private International Law]. [electronic resource]. 16th ed. Rio de Janeiro: Forense, 2025. e-book.

FLORENTINO, Manolo. *Em costas negras: uma história do tráfico de escravos entre a África e o Rio de Janeiro* [On Black Backs: A History of the Slave Trade between Africa and Rio de Janeiro]. São Paulo: Companhia das Letras, 1997.

GALINDO, George Rodrigo Bandeira. Para que serve a história do direito internacional? [What is the History of International Law Good For?]. *Revista de Direito Internacional*, Brasília, v. 12, n. 1, pp. 338–354, 2015. Available at: <https://www.publicacoes.uniceub.br/rdi/article/view/3368>. Accessed: October 31, 2025.

JUCÁ, Antonio Carlos. *Brasil Império: economia e sociedade* [Imperial Brazil: Economy and Society]. São Paulo: Contexto, 2026.

LAGO, Mayra Coan. *Política migratória brasileira e comparada na América do Sul* [Brazilian and Comparative Migration Policy in South America]. 2nd ed. Florianópolis: Editora da UFSC, 2021. Available at:

<https://repositorio.ufsc.br/handle/123456789/229235>. Accessed: October 16, 2025.

MAMIGONIAN, Beatriz G. The Rights of Liberated Africans in Nineteenth-Century Brazil. In: CONERMANN, Stephan; DIAS PAES, Mariana; HOFMEISTER PICH, Roberto; CRUZ TERRA, Paulo (org.). *Current Trends in Slavery Studies in Brazil*. Berlin; Boston: De Gruyter, 2023. p. 71–100. in <https://www.degruyterbrill.com/document/doi/10.1515/9783111026527-005/html>. Accessed: January, 16, 2026.

MBEMBE, Achille. *Necropolitics*. Translated by Renata Santini. São Paulo: n-1 edições, 2018.

MELLO, Evaldo Cabral de. *A guerra holandesa: conflito, negociação, imaginário* [The Dutch War: Conflict, Negotiation, Imagination]. São Paulo: Companhia das Letras, 2021. E-book (Kindle).

MELLO, Evaldo Cabral de (org.). *O Brasil holandês* [Dutch Brazil]. São Paulo: Companhia das Letras, 2010. E-book (Kindle).

RAMOS, André de Carvalho. *Curso de direitos humanos* [Course on Human Rights]. [electronic resource]. 12th ed. São Paulo: Saraiva, 2025. E-book.

RAMOS, André de Carvalho. *Curso de direito internacional privado* [Course on Private International Law]. [electronic resource]. 4th ed. São Paulo: Saraiva, 2025.

SAYAD, Abdelmalek. *La double absence: des illusions de l'émigré aux souffrances de l'immigré* [The Double Absence: From the Illusions of the Emigrant to the Sufferings of the Immigrant]. Paris: Seuil, 1999.

SCHWARCZ, Lilia Moritz; STARLING, Heloisa Murgel. *Brasil: uma biografia: com novo pós-escrito* [Brazil: A Biography: With a New Postscript]. E-book. São Paulo: Companhia das Letras, 2015.

SEYFERTH, Giralda. Colonização, imigração e a questão racial no Brasil [Colonization, Immigration, and the Racial Question in Brazil]. *Revista USP*, São Paulo, Brazil, n. 53, pp. 117– 149, 2002. DOI: 10.11606/issn.2316-9036.v0i53p117-149. Available at: <https://revistas.usp.br/revusp/article/view/33192>. Accessed: September 23, 2025.

SEYFERTH, Giralda. *Imigração e cultura no Brasil* [Immigration and Culture in Brazil]. Brasília: Editora UnB, 2000.

SKIDMORE, Thomas E. *Black into White: Race and Nationality in Brazilian Thought*. Durham: Duke University Press, 1974.

THE TRANS-ATLANTIC SLAVE TRADE DATABASE Available at: <https://www.slavevoyages.org/blog/the-transatlantic-slave-trade-database/166>. Accessed: November 10, 2025.

UNIVERSIDADE DO VALE DO ITAJAÍ (UNIVALI). *Desafios e perspectivas do direito das migrações* [Challenges and Perspectives of Migration Law]. Itajaí: UNIVALI, 2024. Available at: https://authenticcuddle-867e555521.media.strapiapp.com/Desafios_e_perspectivas_do_direito_das_migracoes_2024_938104402b.pdf. Accessed: November 20, 2025.

WERMUTH, Maiquel Ângelo Dezordi. As políticas migratórias brasileiras do século XIX ao século XXI: uma leitura biopolítica do

movimento pendular entre democracia e autoritarismo. *Revista Direito e Práxis*, Rio de Janeiro, v. 11, n. 4, p. 2330-2358, 2020.