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SLAVERY, MOBILITY, AND FREEDOM IN THE SPANISH ATLANTIC DURING THE AGE OF REVOLUTIONS

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ABSTRACT

This article illustrates the strong connection between slave mobility and freedom in the late 18th and early 19th century Spanish Atlantic. As historiography has clearly revealed, slavery did not always mean living under the constant supervision of masters; it entailed some autonomy in terms of physical movement and the ability to socialize, especially in urban areas. This relative mobility was crucial in explaining the rise in civil litigation brought by slaves during this period. Through the analysis of some juridical cases, the paper will show how the slaves' notion that they could inhabit a transitional stage, getting closer to freedom as they pursued their cases or paid off their prices, drew on the practice of "conditional mobility" which allowed them to earn money or to sue.

Keywords: Slavery, Mobility, Freedom, Independence Wars, Spanish America.

Introduction

In May 1794, María Chiquinquirá Díaz, a mulatto slave woman from Guayaquil, initiated legal proceedings against her master, the presbyter Alfonso Cepeda de Ariscum Elizondo, claiming her own and her daughter's freedom. Maria was married to a free black tailor, who worked in a shop in the basement of the presbyter's house, where the family lived. At the time of the lawsuit, María Chiquinquirá was a *jornalera* (day-laboring) slave who was hired for her work, and owed a fixed sum to her owner. The defence counsel based his argument on the ill-treatment that María and her daughter suffered in the presbyter's house. The ill-treatment reported by María was not of a physical nature, but rather was an affront to her

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honour, challenging the argument that slaves were incapable of possessing honour.[1]

In 1817, Marta Zelaya, another slave woman from Tucumán, sought to have her price set in order to change her owner. Both Marta and her defence counsel in Buenos Aires based their argument on the fact that "the laws on slavery […] are diametrically opposed to the principles of the *equality system* that has been proclaimed" in Rio de la Plata.[2] Many years earlier she had been bought by Cornelio Zelaya for 409 pesos, a sum that her master continued to demand. To negotiate her price, Marta emphasized her broken health and, at the end, she succeeded in being valued at 200 pesos. Marta's goal was not manumission, but to negotiate her price so she could be bought by another owner.

The same year, Ignacio de los Santos, a former slave, tried to win his wife's freedom in the courts. When war broke out, he had been living in royalist-controlled Potosí, together with his wife Joaquina, slaves "of an individual" he described as "opposed by nature and opinion to the system of the *país*".[3] In 1811 they fled to Jujuy, where he offered his services to the patriotic army and Joaquina found work in the military hospital. He served for six years, until the patriot defeat at Vilcapugio, after which he made his way to Buenos Aires; eventually, Joaquina joined him there. He now was a sergeant assigned to the militia, but because of his broken health, he asked for an absolute discharge from the military. He also asked for the document confirming his wife's freedom, after having her price reduced.

These cases illustrate the ways slaves across Spanish America strove to secure freedom for themselves and for their loved ones. These examples also highlight another important commonality: manumission frequently was not a private matter between master and slave, but a public event that required the intervention of colonial officials and the creation of public documents endorsed by the colonial state. Though often portrayed by masters as a gift and an act of generosity toward their slaves, such a concession was rarely made spontaneously and of the master's own volition; rather, manumission was generally the outcome of slaves' long-term efforts, often extending over many years, to pressure and persuade their owners to grant them freedom.[4]

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[1] Chaves 2001: 147-182.

[2] "El Coronel Don Cornelio Zelaya, con su esclava Marta, por la libertad de esta", Buenos Aires, 1817. *Archivo General de la Nación*, *Buenos Aires*, Administrativos Tribunales, 23-8-6, exp. 1097, f. 2v.

[3] *Archivo General de la Nación*, *Buenos Aires*, Solicitudes Militares, X, 10-1-1.

[4] On manumission in the Atlantic world, see Schwartz 1974; Johnson 1979; Hünefeldt 1994; De la Fuente and Gross 2015.

Slaves' interactions with legal institutions have attracted many historians' and legal scholars' attention in the last two decades. This rich new literature has studied the ways slaves participated in the creation of legal meanings, customs, institutions, and rights through legal suits and claims.[5] In contrast to earlier analyses of legal regimes of slavery through legal codes, statutes, precedents, and doctrines, these scholars approach the study of the law "not as a fixed set of principles and precepts, but as a contentious social and political space in which different interests, including those of slaves, constantly collided".[6] What scholars find everywhere are slaves' attempts to exploit whatever breaches might be available to improve their lives. Despite their illiteracy, slaves, like other subaltern litigants, were able to shape and control many aspects of their cases, from the creation of the initial petition to the forum in which they were heard, from who penned them to the naming of an attorney. Looking closely at the lawsuit as a series of phases, rather than focusing on it as a singular entity reducible to its outcome, shows how slaves could actively shape it.[7] Although slaves had always had certain opportunities to use the law, it was in the 18th century that they really began to take advantage of royal courts as a forum for challenging owners. As they initiated lawsuits in greater numbers and forged a civil subjectivity as litigants, they were doing more than simply drawing on pre-existing laws to ameliorate the harshness of their condition: they were making Spanish law on slavery.

The main goal of this paper is to emphasize the importance of slave mobility for manumission. The freedom to move – or the "power of locomotion", as William Blackstone defined it[8] – was essential both for earning the money to acquire liberty and for accessing justice. Mobility, among other factors, contributed to the increase of slave-initiated civil suits in the late colonial and early independent periods. In this regard, this paper will show that Atlantic slavery was not just about large distances, as in the case of the Middle Passage, and not just about imposed physical immobility in ships and plantations, but also about enslaved people moving autonomously within more limited spaces. Human movement underpinned slavery, yet it also helped shape its gradual demise: while slaves were often moved against their will, the determination to move of their own volition offered them a chance to escape from domination, to evade control, and to subvert the social order. Three main factors enhanced slave mobility – and consequently

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5 Mattos 1998; Gross 2000; Díaz 2000; Grinberg 2001; Scott 2005; Cowling 2013.

6 De la Fuente and Gross 2015: 18.

7 Premo 2017: 31-34.

8 Blackstone 1775, vol. I, bk I, chap. I, s. II: 134, quoted in McAdam 2011: 27-56.

the increase in slaves' appeals to justice – in this period: the development of different forms of non-exporting slavery, especially in urban areas; more opportunities to litigate in the courts; and the independence wars.

1. The multiformity of slavery in Spanish America: Urban slavery and *jornaleros*

New World slavery constituted an extraordinarily diversified and complex system of social relations, but in basically all of its variations, work remained its central organizing feature. A variety of factors shaped particular arrangements under slavery in different places and at different times: the technical and organizational requirements of specific crops or minerals, the vicissitudes of the slave trade, relative factor proportions (especially in relation to land), the size of slaveholdings, and the life cycles of both masters and slaves, among others.[9] At the same time, scholars have placed more emphasis on the importance of slavery in non-export activities and on the slaves themselves, producing a revised view of an institution that used to be considered under the dual images of the plantation complex and the master-slave dichotomy.[10] Even though masters enjoyed a near monopoly of violence and their arbitrary control over their property was protected by legal institutions, over time slaves had acquired customary rights that to some extent protected them from slaveowners' power. Indeed, more and more studies, whether on Brazil, Spanish America, the Caribbean, or the Old South, have recognized the existence of customary practices that moderated the pace and intensity of work rhythms in slave economies.[11]

By the second half of the 18th century, although commercial agriculture tied to the Atlantic economy continued to attract the bulk of slave imports, patterns of slaveholding seem to suggest that the plantation model was not the general rule. On the fringes of the major sugar and coffee producing zones as well as in urban areas, most slaves experienced slavery either on smaller units of production or in urban labour markets.[12] This was particularly true of Spanish America, where the development of early colonialism brought a model of slavery distinct from that in Brazil and the Caribbean.[13] The Spanish mainland system had, in fact, to reconcile the African pres-

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9 Monteiro 2006: 206.

10 Schwartz 1992, Hünefeldt 1994, Bernand 2001, Dantas 2008.

11 Berlin and Morgan 1991, De la Fuente 2004a, Thompson 2006.

12 Barickman 1998, quoted by Monteiro 2006: 207.

13 Wheat 2016.

ence with an influential, pre-existing indigenous heritage. In cases where the native populations were large and integrated into complex social systems, African slavery filled specialty roles in the colonial economy, often complementing and compensating for the effects of native demographic decline. In areas where the native population was scattered and minimally organized, African slavery had a more prominent position. Even in these areas, however, the local economies were quite varied. Although at times slaves could dominate certain economic sectors such as mining, they were at the same time distributed into many other fields.[14]

Since early Spanish populations were so small, and the task of managing conquered territories was so great, scholars have proposed considering Spanish American mainland African slaves as "auxiliaries".[15] Auxiliary slavery contrasts with plantation slavery, which was generally characterized by large units and production for a market economy. Most Spanish American mainland slavery in the 16th and 17th centuries was small-scale, with households having just a few slaves. Moreover, rather than being cantered on rural estates, Spanish mainland slavery was essentially urban, located precisely in the cities and towns where the majority of whites and mestizos were concentrated. In addition to menial labour, slaves performed tasks where there were not enough whites to do the job, thus working as artisans, apprentices, and vendors. Slave labour sometimes blurred with the jobs of the free to the extent that in several societies, free blacks, whites, and mestizos worked in many professions that were also filled by skilled slaves.[16]

The expansion of urban slavery produced other labour arrangements between slaveowners and slaves. Toward the end of the 18th century, with the expansion of the slave trade to Spanish America, slaves dominated certain segments of the urban labour market, such as petty commerce, and many of them worked in small properties around the cities, such as *estancias* or *ranchos*.[17] As Christine Hünefeldt has shown in her study on Lima and its surroundings during the first half of the 19th century, in some cases slaves belonged to owners who held both rural and urban properties, thus making the relations between countryside and city dynamic and fluid.[18] Indeed, many owners were absentee from their rural properties, and when they visited them, they were usually accompanied by one or several slaves, who thus moved regularly between the rural and urban spheres.

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[14] Klein and Vinson III 2007: 40.

[15] *Ibid*.

[16] *Ibid*.: 41. On slave urban professions, see, for example, Johnson 2011, Solano 2016.

[17] Monteiro 2006: 210.

[18] Hünefeldt 1994: 112-117.

Conversely, when owners or overseers had to leave the hacienda to buy or sell products, they were accompanied by one or more slaves who had privileged positions within the rural environment. Urban slavery was also characterized by a clear sexual division of labour, where women occupied strategic roles, not only in domestic services, but also especially as vendors. Still, the distinction between domestic service and petty commerce was not clear-cut, since many house slaves spent part of their day on the streets selling food and other goods for their owners. This regular movement between the countryside and the city not only challenges assumptions based on a rigid contrast between rural and urban slavery, but also favoured slave mobility between the two areas, allowing rural slaves to build their networks and have access to resources and information.

Many Spanish American cities were filled with *jornaleros* or day-labouring slaves, who lived on their own or in the houses of the people who owned or rented them, performing all skilled and unskilled urban labour. In exchange, slaves would give a fixed sum to their owners, retaining whatever else they might have earned for themselves. Beyond the stipulated payment to their masters, slaves could save money to purchase their freedom or use their earnings in a range of other social and devotional activities. This was the situation of María Chiquinquirá. In Guayaquil, as in other port cities such as Cartagena and Lima, the practice of the *jornal* was one of many ways in which the master-slave relationship was shaped.[19] Here, the labour market for *jornalero* slaves flourished because manual work, especially in the city's important shipyard, was largely performed by people of African descent, both slave and free. Slave women usually worked inside private houses or outdoors. Still, slavery in Guayaquil was not solely an urban phenomenon; on the contrary, slaves worked temporarily on the rural properties in the hinterland of the city or in the mines further north.[20] This spatial and labour diversification was the result of both the diverse economic activities of the slaveholders and the opportunities that slaves had obtained to pay the *jornal* required by their owners.

The practice of hiring slaves implied a mitigation of the master's power of possession and enabled the former to move between the urban and rural areas, thus establishing different relations with the rest of colonial society. In this way, they could build a network of an assortment of people, which could include runaway slaves and former slaves, as well as criminals. As María Eugenia Chaves has clearly demonstrated, this almost anonymous support network took shape as the lawsuit initiated by Maria Chiquinquirá

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[19] Townsend 1998: 110-112.

[20] Hamerly 1973: 71.

proceeded: she was able to call on dozens of witnesses, from both town and countryside, who reported the details of her life.[21] Still, slaves' social relationships were not limited to the marginal world. Thanks to their intimate relationship with their masters and mistresses, slaves serving powerful families were familiar with the latter's social networks and in certain situations might take advantage of their owners' adversaries and allies. The knowledge that slaves gathered in the domestic realm could easily be translated into legal arguments in a system where there was no clear distinction between public and private spheres. María Chiquinquirá exploited such knowledge throughout the trial and instructed her defence counsel about the presbyter's supporters and opponents.[22]

Christine Hünefeldt's work on Lima reports other cases of slave women who, as they were *jornaleras*, managed to obtain their freedom and that of their family members. In a petition dated 1806 Catalina, married to Miguel, related how – thanks to daily wages – she was able to obtain the freedom of both. Even though she had to give her owner a fixed part of her daily wage, in five years she had managed to free her husband and then herself. Once one spouse was free, the couple could reside outside the master's household and gain the total amount of money needed to free the other partner.[23]

From an analytical standpoint, slaves for hire present an anomalous situation, where wage labour was intertwined with chattel slavery. Some historians have proposed that this practice represented a "wage breach" analogous to the "peasant breach" identified in plantation provision grounds, that permitted slaves to pursue agricultural activities in the plantation system.[24] However, even though wages were regulated by market forces, slaves by definition could never aspire to be free labourers. As Leila Algranti has pointed out, slaves for hire negotiated their labour power in a competitive market, but their first and foremost obligation was to their owners, who collected a fixed amount and held discretionary power over their charges.[25] Nonetheless, the distinction between slaves for hire and the free workers was not always so clear, in social as well as economic terms, because they often shared urban neighbourhoods and lodgings. Slavery, after all, despite its seemingly rigid institutional contours, was something of a hybrid labour system.[26]

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21 Chaves 2001: 76-85.

22 *Ibid.*: 121-126.

23 Hünefeldt 1994: 116-117.

24 Cardoso 1988, quoted by Monteiro 2006: 212.

25 Algranti 1988: 68-70.

26 Monteiro 2006: 213.

2. Slave access to justice

As historiography has widely demonstrated, people of African descent across the Americas sought and shaped liminal spaces in the law through which they could claim freedom for themselves and their loved ones and create communities that challenged slaveholders' efforts to align blackness with enslavement. Legal historians have looked at the way legal practices, emerging not only from doctrines and traditions but also from participants' own strategies, shaped institutional change.[27]

Law in the Spanish empire during this period was pluralistic, emanating from diverse sources and embodied in multiple and overlapping jurisdictions, including royal, ecclesiastical, military, and inquisitorial. It took place in high courts as well as in village councils, including those presided over by indigenous judges. As in other pluralistic regimes, Spanish imperialism did not provide a hierarchy that supported colonial rule as much as a framework for conflict, since judges could apply a variety of forms and sources of law. In these contexts – and in all ancien régime societies – "law" was defined broadly and included the codes and royal edicts emanating from the metropole as well as local statutes, trials, and adjudications in which different social actors, including slaves, articulated competing notions of rights. This approach assumes the mutual constitutiveness of law and culture: legal traditions shaped society, as local politics and culture, and the actions of ordinary people, in turn shaped the law.[28]

In Spanish America, civil laws on slavery stemmed from different sources. They emanated, in part, from a complex and evolving corpus of Spanish law, including the 13th-century Castilian code of *Siete Partidas* (which drew heavily on Justinian's 6th-century *Corpus Juris Civilis*); from Iberian regional law (*fueros*); and, lastly, from more contemporary royal edicts issued for the Americas, some of which appeared in compilations.[29] Where legislation was vague or absent, legal practitioners and jurists turned to Roman law, to a variety of commentators and glossators, or to jurisprudence.[30] Furthermore, given the close link between slavery and religion, the ecclesiastical court retained jurisdiction over a wide range of litigation involving slaves: slaves sued before ecclesiastical magistrates to keep their families together and to force their masters to permit them to marry.[31] They also brought

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27 De la Fuente and Gross 2020.

28 Grossi 2001; Hespanha 1994; 2001.

29 Mirow 2004: 49-50.

30 Premo 2011: 497.

31 McKinley 2016: 74-100.

charges in criminal courts when they had been victims of crimes, and they used and were subject to the tribunal of the Inquisition.

Slaves also possessed certain abilities to sue masters civilly, particularly for mistreatment. Their ability to become legal actors stems from their insertion in the category of *pobres y miserables* (poor and miserable), which meant that they could count on a public defender, a lawyer or attorney of the poor.[32] Coming from *ius commune*, this legal tradition established that orphans, widows, the diseased, and other miserable people – such as enslaved men and women – could receive special attention for their rights. Starting from the mid-16th century, indigenous Americans were also included in this category, but it was only in the next century that this kind of justice was actually used by Indians and slaves. Thanks to the public defender, slaves became increasingly acquainted with their rights; legal knowledge was transmitted by the attorney of the poor to litigants through the spoken word.[33] This was evident, for instance, when Marta Zelaya affirmed that her petition was based on "legal rules which are entrenched in, and prescribed and upheld by public law itself".[34] The reference to *derecho público* (public law) in those years is extremely indicative of the slave's legal knowledge, since it was quite a new concept. Jurists and state authorities alluded to public law to claim a superiority of sovereign or state law over other legal sources. In the meantime, slaves transmitted to the attorney another kind of knowledge that was the result of the social practice of slavery. The intersection between these two kinds of knowledge during a lawsuit ultimately became part of juridical culture. Slave law thus did not stem only from ancient codes or laws, but was also forged in practice and was often understood to be a matter of local customary law.[35]

Although slaves had always had certain opportunities to use the law, it was in the second half of the 18th century that they really began to take advantage of royal courts as a forum for challenging owners. As Sherwin Bryant recognizes for colonial Quito: "the extant record contains far more civil cases [brought by slaves] after 1750, especially those addressing masters' mistreatment of slaves (*sevicia*)".[36] Quito's litigation rates are consonant

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[32] This legal figure became especially common in Italy and Spain during the 15th century. See Díaz Hernández 2016: 64.

[33] González Undurraga 2012.

[34] "El Coronel Don Cornelio Zelaya, con su esclava Marta, por la libertad de esta", Buenos Aires, 1817. *Archivo General de la Nación*, *Buenos Aires*, Administrativos Tribunales, 23-8-6, exp. 1097, f. 11.

[35] On the importance of customary law in Spanish America, see Tau Anzoátegui 2001.

[36] Bryant 2004: 9-10.

with the impressive increase in cases elsewhere in the empire.[37] Thus, the mid-18th century is when slaves in Spanish America began to concentrate their efforts for gaining freedom or autonomy in royal courts and, in doing so, they became secular legal subjects who could access all levels of the civil judicial system. This was more than a shift of forums from church to royal courts. While in ecclesiastical courts, slaves could base their allegations on the respect of Christian norms, in the civil courts, their accusations against their owners cantered on the latter's breaches of secular and contractual obligations, and on questions of violence, even though the shift never completely deracinated slaves' discourses from religious bases.

Some scholars argue that this shift was the result of the changing legal context produced by the Spanish Bourbon reforms, particularly those included in the so-called 'Black Codes', which were designed to provide slaves with certain guarantees in terms of treatment by masters in an effort to prevent rebellions.[38] But these codes did not radically innovate on the slave legislation that the Crown had issued for its American colonies since the late 16th century. For example, Carlos IV's 1789 *Instruction on the Education, Treatment and Occupation of Slaves* reiterated the medieval law of the *Siete Partidas*, which established that any owner who used excessive cruelty could be forced to sell the slave.[39] Other scholars argue that the slaves themselves produced customary legal understandings of rights in the courts and that Spanish slave codes incorporated these legal practices. As historian Alejandro de la Fuente notes, "neither *coartación* nor the possibility of changing masters appeared as slave rights in Castilian legal codes. Rather, it seems that these prerogatives emerged as a pragmatic response to the frequent litigation initiated by slaves themselves".[40] As they started many lawsuits and forged a civil subjectivity as litigants, slaves were doing more than simply drawing on pre-existing laws to ameliorate the harshness of their condition: slaves were making Spanish law on slavery and also on freedom. As Bianca Premo has demonstrated, slave litigants elaborated on abstract philosophical questions that had become more pressing during the century, such as the meaning of natural rights, tyranny, and humanity. Among these concepts, one stands out: in these suits, "slaves brought to life the modern conception of freedom as the objective of human action".[41]

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[37] Premo 2017: 200-206; Johnson 2007; Proctor III 2011: chap. 6.

[38] See Lucena Salmoral 1996. On other Bourbon reform legislation affecting the lives of people of African descent, see Bennett 2009: 198, 202.

[39] "Real Cédula de Su Magestad Sobre educación, trato y ocupaciones de los esclavos, 1789", in Lucena Salmoral 2002: 279-284.

[40] De la Fuente 2004a: 663.

[41] Premo 2017: 193.

Faced with references to natural rights and liberty in late colonial Spanish American slave suits, historians have attempted to pinpoint their origin. Some have suggested that the ideas arrived from news that sailors brought about the American, French, and Haitian Revolutions.[42] Others argue that the defenders of the poor or the protectors of slaves – as defined by the 1789 royal decree – played an important role in propagating ideas against slavery. Not only were they educated in universities or the new academies of jurisprudence that were open to enlightened ideas, but they were also influenced by everyday slave practices, especially in urban settings. In those suits, many slave litigants systematically sought the legally prescribed punishment for abusive masters. Some, like Marta Zelaya, began to actively seek new owners themselves, searching for someone amenable to financial deals that could result in the slaves' freedom, affirming as did Zelaya, that the claim was driven by the "natural desire to redeem [oneself] from slavery".[43]

Another case similar to Marta Zelaya's is that of Vicenta Conde y Marin recounted by Bianca Premo. Vicenta, whose new owner was attempting to sell her in 1791 at what she regarded as an exorbitant price, appealed to the intendent of Lima. In her petition, she said that for the "conservation" of "her person" she should find another master, implicitly referring to natural law. Vicenta, like Marta, did not want freedom but a new owner, and she believed she possessed the right since her master had written a piece of paper requesting bidders for her the year before. The price established in that paper was lower than that fixed in 1791.[44]

Beyond revealing an extraordinary increase in slave lawsuits in royal courts across Spanish America, data collected by historians highlight two trends: the large number of urban cases and the considerable number of lawsuits over slavery brought by women, either for their own freedom or on behalf of family members.[45] This indicates that urban inhabitants of African descent who worked for wages as street vendors, wet nurses, and artisans formed the vanguard of the suing classes because they had access to cash and the mobility to seek their own freedom or that of relatives. For urban slaves especially, slavery did not mean living under the constant supervision of masters; it entailed some autonomy in terms of physical movement and the ability to socialize. Mobility not only allowed slaves

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[42] See for example, Gomez 2013; Soriano 2018.

[43] "El Coronel Don Cornelio Zelaya, con su esclava Marta, por la libertad de esta", Buenos Aires, 1817. *Archivo General de la Nación*, *Buenos Aires*, Administrativos Tribunales, 23-8-6, exp. 1097, f. 11.

[44] Premo 2017: 209-210.

[45] Hünefeldt 1994; Cowling 2013; Premo 2017.

to build their own networks, but it also permitted them to acquire legal personality. As commercial producers and consumers, selling their wares or working their own plots of land, especially in and around cities, they gained in practice the civil contractual personality which was required to sue.[46]

The legal personality of slaves was also recognized by the fact that slaves did not have to return to their master during the trial. They had the right to bond themselves and to be personally secured either with a person or in an institution. This line of argumentation about slaves' need for freedom to pursue freedom became quite common. It was also used by María Chiquinquirá and her daughter's defence counsel, who requested that the judge grant the slaves their freedom in order to litigate; in other words, that they be allowed to leave the house of the master for the duration of the trial. The judge ruled in favour of the slaves, permitting them to leave the master's house and authority (*potestad*).[47] The petition of another slave woman, Maria Antonia Hipólita, who sought the opportunity to stay in Lima to perform the "diligences" relating to her suit, captured this version of freedom with a phrase: she invoked the "freedom that the lawsuit demands".[48]

Slaves' notion that they could inhabit a transitional condition, getting closer to freedom as they pursued their cases or paid off their prices, drew from a common legal experience. In particular, it drew from the practice of conditional liberty, which frequently established a temporal limit to bondage: most often that limit was the lifetime of an owner; sometimes it was the age of the slave. Still, in the 18th century, this limit was fixed by slaves' rights, often their right to be recognized as free or becoming free, as well as to be heard in court over the circumstances of their condition. In their suits, they relied heavily on testaments, sale papers, and free papers, which served as tangible proof of their status. Importantly, litigants who went to court over the issue of freedom only infrequently claimed that they had been born free; most claimed that they had been freed or should be freed. Thus, they tended to be heavily invested in documents that were generated in the secular sphere, such as sale papers or price appraisals, rather than by Church notaries, such as a record of baptism. The very sequence of papers in which court notaries organized the dossiers of slave lawsuits reflects the primacy of documented proof of status.[49]

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[46] Premo 2017: 213.

[47] Chaves 2001: 91-92.

[48] "María Antonia Hipólita, negra criolla esclava de don Tomás Bustillo, en autos contra éste demandando libertad que le hubo ofrecido por el trato ilícito", *Archivo General de la Nación de Perú*, Real Audiencia, Civ., Leg. 103, c. 866, 1746, quoted in Premo 2017: 216.

[49] Premo 2017: 206.

3. Manumission in the late colonial and early independent period

Most of the late colonial slave lawsuits aimed at obtaining or getting closer to freedom by the litigants or their loved ones. Manumissions were quite widespread in Iberian American societies and most took place through self-purchase. However, the level of manumission in a society should not necessarily be seen as an indicator of friendly "attitudes" toward slaves, as Tannenbaum argued.[50] It is undoubtedly true that Iberian masters freed their slaves in greater numbers than did the British or the French, not because the Portuguese or Spanish had favourable views of the slaves or lacked racial prejudice, but for a variety of demographic and economic as well as legal and religious reasons. Iberian colonies lacked the steady flow of European migration enjoyed by the British American colonies, so free people of colour performed interstitial economic roles that might otherwise have been filled by white immigrants. Iberian colonists also inherited a legal regime deeply entrenched in the slavery practices of the Mediterranean, in which a variety of customs had established that slavery was not necessarily a permanent condition.[51] Although the widespread practice of *rescate* or ransom, by which Christians and Muslims liberated co-religionists either through payments or through the exchange of enslaved captives, rarely extended to sub-Saharan slaves, Spanish tradition made the purchase of freedom a frequent and common legal practice. African slaves seized opportunities to free themselves through a variety of well-known and traditional practices and legal means, so that by the mid-16th century in the slave centres of the peninsula – Seville, Lisbon, Valencia – there were large communities of free people of African origin.[52] Because of this tradition, neither the possibility of "giving freedom" nor the practice of the slaves paying for it were questioned or treated as polemical issues in Spanish America. Manumission was clearly regulated in the *Siete Partidas* and numerous colonial regulations ratified the validity of questions of slave management. For instance, a royal decree of 1540 ordered that slaves who claimed to be free were to be heard by the *audiencias*, the highest courts in the colonies. This provision clearly established that slaves who claimed to be victims of deplorable abuses had the right to be heard in court.

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[50] Tannenbaum 1946. For a critique of Tannenbaum's approach, De la Fuente 2004b; 2010.

[51] On the main characteristics of Mediterranean slavery, see Bono 2016; Guillén and Trabelsi 2012; Fiume 2009; Kaiser 2008.

[52] Piqueras 2011: 27-57; Stella 2000; Phillips 1990.

Opportunities for manumission increased during the last few decades of the 18th century, as the slaves' access to justice became easier. Although none of the Bourbon reforms sought to modify manumission practices, some of them produced new opportunities for slaves to gain their freedom. In particular, slaves' initiatives received considerable and unexpected support from the reforms geared towards the more efficient management of royal justice and governance in the colony, such as the creation of the office of *síndico procurador* in the 1760s. A municipal institution transplanted to the colonies in 1766, the *síndico* also became the legal representative for slaves and mediated in their conflicts with masters. The royal cedula of 1789, "on the education, treatment, and occupation of the slaves", referred to the *síndico* as the "slaves' protector" and established that no slave could be criminally prosecuted without his intervention. He was also responsible for charging against slave owners and overseers in cases of excessive punishment.[53]

Since the *síndico* was elected by the town council and the position was considered an honourable public duty, many who held the position were themselves slave owners and not particularly concerned with the well-being of the slaves. Over time, however, the *síndicos* appear to have developed procedures that many owners perceived as intolerable intrusions against their own rights of ownership. Their presence expanded the colonial state's involvement in the master-slave relationship and created institutional channels through which daring slaves could claim rights. The *Real Cédula* of 1789 added legitimacy and visibility to those channels, which is why slaveholders resolutely opposed its dissemination and enforcement. In their view, the mere existence of a new legal text that sought to regulate slave-master relations would result in endless litigation and insubordination. As a group of Cuban planters explained to the King, "this law […] in and of itself, is extremely just. But, once the slaves come to understand it, they will rise up against their masters. Owners will suffer unwarranted insults from their slaves on a daily basis […] [and] no one will be able to restrain their arrogance".[54]

In Spanish America certain categories of slaves had clear advantages in conducting manumission negotiations, and thus won their freedom more frequently than others. This helps us understand the extent to which mobilities were racialized, gendered, and class-based, but also how freedom could entail a certain social mobility among people of African descent. Ur-

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53 De la Fuente and Gross 2020: 104.

54 "Expediente instructivo para suavizar la suerte de los esclavos negros" (1790), Archivo Nacional de Cuba, Junta de Fomento 150/7405, quoted in García Rodríguez 2011: 57.

ban slaves obtained freedom at higher rates than rural slaves; women at higher rates than men; native-born Creoles at higher rates than Africans; and racially mixed mulattoes at higher rates than people of unmixed African ancestry.

Urban slaves were more likely than rural slaves to obtain freedom because of their greater opportunities to earn cash wages, which could then be used to buy freedom. Since most manumission in Spanish colonial societies took place by self-purchase, we can understand why a higher percentage of town- and city-dwelling slaves were manumitted than those who lived in the countryside. The latter were not completely deprived of such opportunities, but by comparison with their plantation counterparts, slaves in cities had access to a much more active and varied labour market.

Women managed to purchase and obtain their freedom in significantly higher proportions than men. This was due to several factors. First, women performed occupations that allowed them to accumulate savings at a higher rate than men. Women were generally preferred for domestic work, which provided intimate access to the owner's family. There is evidence that both male and female slave owners favoured women in manumissions. The higher frequency of female manumission was also the result of sexual relations between male masters and female slaves. The prevalence of women in manumissions had important long-term consequences, since, according to the principle of *partum sequitur ventrem*, children followed the social condition of the mother and thus the progeny of these women would be free. The high percentage of manumitted women was also the result of the strategies followed by slave families. In negotiating for the freedom of family members, slave families showed a marked preference for manumitting women, especially when their freedom could be purchased at somewhat lower prices than for men.[55]

Sexual relations between slaves and masters also help explain mulattoes' greater success, as compared to slaves of unmixed African ancestry, in winning manumission. Racially mixed slaves were not infrequently the children of their owners, or of members of the owners' families. Even in cases in which there was no blood relation between owner and slave, mulattoes, almost all of whom were American-born, benefited from the relative advantages enjoyed by Creole slaves. Indeed, many mulatto slaves filled the professions of artisans, apprentices, and vendors. Thus, slaves born in the Americas had the opportunity to learn how colonial society functioned and how best to manoeuvre through that society in pursuit of freedom.

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[55] Klein and Vinson III 2007: 131.

Even though the social mobility entailed by manumission was limited by the weight of the slave past, African origin, skin colour, and the kind of professions normally performed by former slaves, research has recently demonstrated that in some cases manumission turned out to be the springboard for the social ascendance of black families. For example, work on the succession of property in colonial Brazil has revealed a process in which African and Afro-descending women challenged the social and racial limits that society imposed on them. Aware of the benefits that ownership of slaves and other property could afford their sons, or that a dowry and the right reputation could offer their daughters, black mothers attempted to control the transmission of their estate to their descendants. These women appropriated some dominant practices and norms to claim for their families the benefits that structurally the colonial economy, social culture, and legal culture offered its white elites, creating a social environment in which Africans and their descendants were in some cases able to successfully employ the language of honour and quality.[56]

Conclusion: Independence wars, rights, and mobility

Opportunities to be manumitted radically increased with the outbreak of the independence wars in 1810. Wars strengthened slaves' bargaining position towards their masters and the state in three ways. First, as in Haiti, the turmoil produced by war greatly reduced owners' control over their slaves, while increasing slaves' opportunities to flee. Second, war gave thousands of male slaves the opportunity to obtain freedom through military service. Lastly, the price of slave participation in the independence armies was the enactment throughout Spanish America of programs of gradual emancipation. While most slaves were recruited or donated by their owners, large numbers took advantage of the situation to act on their own initiative: running away, joining one of the armies, claiming to be free, and even rebelling.[57] The widespread participation of slaves unleashed an unanticipated and unwanted social and physical movement in the midst of the political struggle. It reduced the number of slaves left in bondage, and thereby helped to weaken a pillar of the colonial system. Recruits obtained their own freedom and then used their new status, as well as the wages they earned, to free family members, as in the case of Ignacio de los Santos, who, after having achieved his freedom through his service in the patriotic army, liberated his wife, Joaquina.[58]

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[56] Furtado 2003, Dantas 2006; 2016.

[57] Blanchard 2008.

[58] *Archivo General de la Nación*, *Buenos Aires*, Solicitudes Militares, X, 10-1-1.

At the same time, association with soldiers empowered many female slaves. In the case of Joaquina, her work at the military hospital might have helped her husband to reduce her price and buy her freedom. Other women accompanied their husbands or lovers as camp followers and demanded their freedom in return for their contribution. The case of Ignacio de los Santos and his wife is thus indicative of how the mobility produced by the independence wars allowed slaves not only to become free, but also to negotiate freedom for their loved ones. Wartime gave Ignacio and Joaquina the opportunity to flee from their owner, to gain liberty in exchange for military service, and to earn some money through Ignacio's participation in the local militia. Thus, wars provided women not only with the possibility of buying their freedom thanks to their husband's military pay or pension, but also through their direct commitment by serving as nurses – as did Joaquina – spies, and occasionally even soldiers.[59]

During this period, a flurry of antislavery legislation that was designed to win slave support for the patriotic cause further undermined the institution of slavery. The legislative attack, together with the recruitment efforts and the growing commitment to the concept of freedom, aroused large sections of the slave population. In this regard, the case of Marta Zelaya entailed an interesting discussion on the coherence of slavery with the republican principles of Rio de la Plata revolutionary society. Marta had been bought by her owner, the militia colonel Cornelio Zelaya, in 1812, when the government of Buenos Aires had decreed the *libertad de vientre* (freedom of the womb). Five years later, the defender of the poor asked for her price to be reduced from 409 pesos to 200 pesos since time "changes the physical attitude and weakens the natural vigour". Marta hoped to change her master because the colonel punished her with beatings and confinement. Yet, she and her defender stressed that slavery was not in line with "the principles of the equality system that has been proclaimed" and argued that it was not legitimate "to deprive the exercise of freedom" of people that had been declared free.[60] Despite the recurring references to the concept of 'freedom', Marta's aim was not manumission but the negotiation of her price so she could be bought by another owner. In other words, for her and her defence counsel, 'liberty' did not mean moving away from the condition of slavery but negotiating the terms of this condition. Marta's defence counsel in Buenos Aires also questioned her master's reluctance to receive only 200 pesos – instead of 409 – for her sale and pointed out that his attitude was

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[59] Blanchard 2008: 142.

[60] *Archivo General de la Nación, Buenos Aires*, Administrativos Tribunales, 23-8-6, exp. 1097, f. 2v.

not "compatible with the liberal ideas of our system". Marta's master, Cornelio Zelaya, was in fact a patriot and a colonel of the *dragones* militia who should have embraced these principles.

Marta Zelaya's case – like many others – illustrates that lawsuits were opportunities for the dissemination of legal knowledge and political language. Slaves were not extraneous to this process since they directly adopted such knowledge and language or allowed their defenders to use them in their favour. In the meantime, these lawsuits are indicative of how, during the revolutionary period, slaves individually sought means to release themselves from slavery or to negotiate some of its aspects. In this sense, liberty did not mean the definitive end to slavery; slaves took advantage of the language and loopholes of the legal system to claim what they considered fair, even though it did not mean leaving the condition of slavery.

Yet, through litigation, slaves and their representatives began to conceive of natural rights as more universal and inclusive than in the past. The three cases analysed in this text demonstrate how lawsuits were spaces for negotiating rights and spreading political language among subaltern groups, weakening the distinction between slavery and freedom. The latter not only referred to manumission, but also to the slaves' right to move, to earn money for themselves, to sue, or to negotiate their price. Through lawsuits, slaves were gaining a transitional status toward freedom; still, without mobility, as these cases make clear, this transition would have been impracticable. Even though this shift did not intend to break up the slave system, the latter was no longer the same as it had been when warfare erupted.

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