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Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited

ALEJANDRO DE LA FUENTE

Scholars of slavery in Latin America are giving renewed attention to the study of the law. Although this literature is not as developed and sophisticated as in the United States, where slavery has been a central concern of legal historians for quite some time, a specialized subfield seems to be in the making. This is a welcome development. After all, every important aspect of slaves' lives in the Iberian colonies, from birth and nourishment to marriage, leisure, punishment, and rest, was regulated in theory by a vast, indeed massive, array of positive laws. Some of these regulations had been part of the traditional statutes of Castile for centuries, others were passed by the Crown or by local organs of administration and power.

The subject is of course not new to the Latin American historiography.

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Earlier generations of scholars compiled, classified, and studied this body of positive laws.¹ Their work was limited in at least two ways, however. First, they privileged the study of the laws passed by the Consejo de Indias and other organs in the higher echelons of the institutional hierarchy of the state. Regulations passed by local organs of power, those that reflected better the concerns of the slave holders in the colonies, received less attention. Second, positive laws were frequently analyzed with little reference to social conditions and to the actual experiences and initiatives of slaves, masters, and colonial administrators.

The centrality of the law to understanding slavery in Latin America was underlined by Frank Tannenbaum's influential book *Slave and Citizen*, published in 1946. Tannenbaum argued that differences in race relations in the United States and Latin America stemmed from their respective slave systems, which had developed under dissimilar "moral and legal settings." A long legal tradition that came through the Justinian code and recognized that slavery was against nature and reason informed the development of slavery in Spanish and Portuguese America. Slaves were considered worthy of participating in the Christian community, had the right to receive the sacraments, and their marriages and families were protected by law, custom, and the church. In the British West Indies and the American colonies, by contrast, the lack of legal traditions concerning slavery allowed planters to define slaves as chattel. Blacks lacked "moral personality," their marriages and families enjoyed no legal protection. Furthermore, whereas legal and religious traditions were "biased in favor of freedom" in Latin America, thus opening avenues to manumission, all sorts of legal obstacles plagued the road to freedom in the United States. "The frequency and ease of manumission," Tannenbaum asserted, "more than any other factor, influence the character and ultimate outcome of the two slave systems in this hemisphere."²

Slave and Citizen thus contained two central claims. First, that in contrast to the British colonies, slaves in Iberian American societies were endowed with a legal and moral personality. Second, that these differences

1. For a few significant examples, see Fernando Ortiz, *Los negros esclavos* (1916; Havana: Editorial de Ciencias Sociales, 1975); Luis M. Díaz Soler, *Historia de la esclavitud negra en Puerto Rico (1493-1890)* (Madrid: Revista de Occidente, 1953); Carlos Larrazábal Blanco, *Los negros y la esclavitud en Santo Domingo* (Santo Domingo: J. D. Postigo, 1967); Idelfonso Pereda Valdés, *El negro en el Uruguay, pasado y presente* (Montevideo, 1965); Miguel Acosta Saignes, *Vida de los esclavos negros en Venezuela* (Caracas: Hespérides, 1967); Javier Malagón Barceló, *Código Negro Carolino (1784)* (Santo Domingo: Editora Taller, 1974).

2. Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (1946; Boston: Beacon Press, 1992), 69.

in the moral and legal settings of each slave system preconfigured or pre-determined postemancipation race relations in each area.

Both arguments came under attack, with some scholars going so far as to claim that the study of the law had little to contribute to our understanding of the slave experiences in Latin America. Yet this critique reinforced the centrality of Tannenbaum's work for the study of slavery and the law in the region. As legal scholar Robert Cottrol has asserted, the scholarship on comparative law has largely been dominated by frames of reference that were established by sociologist Frank Tannenbaum in the 1940s.³

Given the centrality of *Slave and Citizen*, in the following pages I review the controversy sparked by Tannenbaum's book to analyze the scholarship on slavery and the law in Spanish America during the last few decades. I question the validity of some of the criticism against Tannenbaum's work and claim that some of his arguments remain valid, in the sense that although high expressions of the law are not sufficient to understand slaves' everyday lives, they can not be ignored either. I concur with Cottrol that Tannenbaum's study "retains its importance" not only for setting the terms of the debate, but also "for presenting the case for the importance of legal norms in determining the often contrasting conditions under which slaves lived."⁴ Among these laws were the traditional statutes of Castile that, as Tannenbaum noted, continued to be invoked by the courts during the colonial period. The potential use and applicability of these laws were sanctioned numerous times by authorities and the courts as they attempted to regulate social relations in the colonies and to constrain slaves' attempts to improve their lives or to escape their status altogether.

Tannenbaum, however, gave laws a social agency that they did not have. In this article I use the notion of slaves' claims-making to bridge the gap between the law as an abstract declaration of rights and slaves as social actors with their own strategies and goals. Rather than assuming that positive laws endowed slaves with a "moral" personality, as Tannenbaum

3. Robert J. Cottrol, "The Long Linger Shadow: Law, Liberalism, and Cultures of Racial Hierarchy and Identity in the Americas," *Tulane Law Review* 76.1 (2001): 40. The continuing relevance of Tannenbaum's book is confirmed by the frequency with which his work is explicitly engaged by recent scholarship. For some additional examples, see Frederick Cooper, Thomas C. Holt, and Rebecca J. Scott, *Beyond Slavery: Explorations of Race, Labor, and Citizenship in Postemancipation Societies* (Chapel Hill: University of North Carolina Press, 2000), 1–32; Jane Landers, *Black Society in Spanish Florida* (Urbana: University of Illinois Press, 1999), 1–2; Thomas N. Ingersoll, *Mammon and Manon in Early New Orleans: The First Slave Society in the Deep South, 1718–1819* (Knoxville: The University of Tennessee Press, 1999), xviii–xix, 120–22; Gilbert C. Din, *Spaniards, Planters, and Slaves: The Spanish Regulation of Slavery in Louisiana, 1763–1803* (College Station: Texas A & M University Press, 1999), xiii–xiv.

4. Cottrol, "The Long Linger Shadow," 41–42.

would put it, I imply that it was the slaves, as they made claims and pressed for benefits, who gave concrete social meaning to the abstract rights regulated in the positive laws. Through these interactions with colonial authorities and judges, slaves acted (and were seen) as subjects with at least a limited legal standing.

After reviewing the scholarship, I focus on an empirically based discussion of slavery in Cuba. One of the main critiques against *Slave and Citizen* refers to its geographical and chronological vagueness, a criticism that I share. I use the Cuban case to test Tannenbaum's assertions about the Latin American "legal setting" and to discuss some of the ways in which slaves were able to use the legal system to their advantage. The article thus deals with Tannenbaum's first claim, concerning the centrality of the law to our understanding of slavery. It does not seek to address his problematic correlation between slavery and "race relations."

Slave and Citizen

Tannenbaum's insightful book generated a passionate, if not always productive, historiographic debate in the decades following its publication. One by one, his main arguments were scrutinized and in many cases modified, criticized, or rejected altogether. The issue of precedents and traditions, for instance, was challenged early on by anthropologist Sidney Mintz, who questioned whether they were truly absent in the non-Iberian world. Mintz found evidence to the contrary in the British villeinage laws, which were still applied in sixteenth-century England. "The argument that there was no working tradition for slavery in the non-Catholic New World is not entirely convincing," he argued. "There was an English legal, and to some extent even institutional, background for British West Indian and North American slavery."⁵ Contested, also, was the notion that the Roman foundations of Iberian legal precedents truly conferred a moral personality to slaves. In a 1965 article, Arnold A. Sio concluded that, in several key areas, there was "nothing sufficiently distinctive to distinguish the legal status of the slave as property in the United States from that in Rome" and

5. Sidney Mintz, *Caribbean Transformations* (Chicago: Aldine Publishing, 1974), 70. Mintz had made this argument earlier, in a 1961 review of Stanley Elkins's *Slavery*, which was reproduced as "Slavery and Emergent Capitalisms" in *Slavery in the New World: A Reader in Comparative Perspective*, ed. Laura Foner and Eugene Genovese (Englewood Cliffs, N.J.: Prentice-Hall, 1969), 27–37. For an opposite point of view, see Alan Watson, *Slave Law in the Americas* (Athens: The University of Georgia Press, 1989), 63–66. Watson quotes a case (p. 11) in which a Virginia court stated in 1826 that villeinage could not be considered "the prototype of slavery, as it has always existed here."

that extensive assimilation of slave rights to property had taken place not only in the U.S. and Rome, but also in Latin America. Other studies elaborated on these criticisms, questioning whether Iberian cultural and legal precedents actually recognized slaves' humanity and were free from racism. As Sweet contends in a recent article, "the racism that came to characterize American slavery was well established in cultural and religious attitudes in Spain and Portugal by the fifteenth century."⁶

Even more powerful than the criticism concerning the existence and nature of legal and cultural precedents was the argument of whether legislation mattered at all. At the core of this argument were two different issues. One concerned the "effective transfer" of these European traditions to the colonies, the other the actual enforcement of the laws. Both points, his critics rightly noted, had been almost completely ignored by Tannenbaum in his analysis.

The issue of the effective transfer of traditions, first raised by Mintz and developed later by Herbert Klein in his comparative study of Virginia and Cuba, had important ramifications. To begin with, it placed the whole debate about the nature of slave regimes in an institutional framework, independent from the planters' individual attitudes, character, and benevolence. A key element in this analysis was to determine where the "center of power" was located—whether in the colonies or across the Atlantic. Did slave owners have the institutional ability to define the surrounding social and legal environment according to their most immediate interests or was such capacity mediated, even obstructed, by an intrusive metropolitan government? As Mintz put it, "The English, for instance, appear to have given their colonists maximum local authority—which in practice could mean maximum power to abuse the slaves and to bypass any imperial concern for their protection. In contrast, the Spanish colonies were administered from the metropolis. . . . Slavery under Spain, consequently, was more subject to control from afar."⁷

Even taking into account these qualifications, some critics challenged the value of Tannenbaum's approach as a whole. They emphasized the wide

6. Arnold A. Sio, "Interpretations of Slavery: The Slave Status in the Americas," *Comparative Studies in Society and History* 7.3 (April 1965): 296; James Sweet, "The Iberian Roots of American Racist Thought," *The William and Mary Quarterly* 44.1 (January 1997): 144.

7. Mintz, *Caribbean Transformations*, 69; Herbert Klein, *Slavery in the Americas: A Comparative Study of Virginia and Cuba* (1967; Chicago: Elephant Paperbacks, 1989).

The importance of institutional differences, already present in Tannenbaum's work, was discussed by Elkins as well, who noted that in Latin America several competing powers—Crown, church, masters—intervened in regulating the lives of slaves. See Stanley M. Elkins, *Slavery: A Problem in American Institutional and Intellectual Life* (Chicago: University of Chicago Press, 1968), 52–80.

gap that separated legal formulations from social realities and questioned the analytical usefulness of law and regulations for understanding the character and nature of slave regimes. The Crown, anthropologist Marvin Harris asserted, "could publish all the laws it wanted, but in the lowlands, sugar was king." Both in the United States and Latin America "law and reality bore an equally small resemblance to each other," so scholars of comparative slavery had to examine "material conditions first, before concluding that it was the mystique of the Portuguese or Spanish soul that made the difference."⁸ Among those conditions, Harris found that demographic factors were key. He argued that whereas British migration to America had been large enough to account for population growth and for whites to perform interstitial roles in the economy, Portuguese and Spanish migration had been much lower, so race ratios were the opposite in both areas. As a result, population growth in Latin America had taken place mainly through miscegenation and natural increase, with intermediate groups of mestizos performing economic and military functions for which slave labor was not adequate, and for which no whites were available.⁹

In his rejection of Tannenbaum, Harris fell into a determinism that was at least as extreme as that of the author he opposed.¹⁰ Yet he was not alone in his criticism. Other scholars, including those who subscribed to Tannenbaum's main arguments, agreed that production systems were a key element that had to be incorporated into the analysis. By the 1970s a new consensus was emerging in the scholarship: slave systems in Latin America and the United States were not truly different and slaves' experiences were remarkably similar when they were immersed in comparable systems of production. Case studies confirmed that the dehumanizing effects of plantation slavery cut across ethnic and colonial lines.¹¹ Regardless of the

8. Marvin Harris, *Patterns of Race in the Americas* (New York: Walker and Co., 1964), 76. Also critical of Tannenbaum's reliance on legal precepts was David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1966), 223–43; and Gwendolyn Midlo Hall, *Social Control in Slave Plantation Societies: A Comparison of St. Domingue and Cuba* (Baltimore: Johns Hopkins University Press, 1971). For a more recent example, see Ingersoll, *Mammon and Manon in Early New Orleans*, xviii, who asserts that "laws or religion had little or no influence on either the planter class or the condition of black slaves or free blacks."

9. Harris, *Patterns of Race*, 84–92. Harris's demographic explanation was later echoed in numerous studies. For a notable example, see Carl N. Degler, *Neither White Nor Black: Slavery and Race Relations in Brazil and the United States* (Madison: The University of Wisconsin Press, 1971), 41–47.

10. For a thoughtful critique of Harris, see Genovese, "Materialism and Idealism in the History of Negro Slavery in the Americas," in *Slavery in the New World: A Reader in Comparative Perspective*, ed. Laura Foner and Eugene Genovese (Englewood Cliffs, N.J.: Prentice-Hall, 1969), 238–55.

11. For examples of this scholarship see Mintz, *Caribbean Transformations*; Manuel Moreno Fraginals, *El ingenio: complejo económico-social cubano del azúcar* (Havana:

colonial setting, in the plantations the master's will was the only valid law. Some authors even suggested that North American slavery might in fact have been less harsh than in Latin America, as indicated by the capacity of its slave population to reproduce itself, and contended that slaves in the U.S. had never been considered just chattel in the eyes of the law.¹²

Thus Tannenbaum's central argument—i.e., that differences in postemancipation race relations were based on equally different experiences under slavery—was under full attack by the 1970s. After a careful comparative analysis of slave systems in Brazil and the United States, for instance, Carl Degler concluded that whatever differences might have existed—and these he acknowledged only reluctantly—were “not fundamental to an explanation of differences in contemporary race relations” and were “a result of historical circumstances in the New World, not of inherited moral intent or law.” In his comparative study of South Africa and the United States, Cell arrived at a similar conclusion, claiming that conditions before the late nineteenth century had “relatively little to do with the origins of segregation.” Emilia Viotti da Costa summarized the new trend when she wrote in 1992: “In the 1980s scholars were abandoning the assumption that different forms of racism, discrimination and segregation in modern society derived from different slave systems, or that the different contemporary patterns of race could be explained by reference to traditional differences in the perceptions of race in the Anglo-Saxon and Iberian world.”¹³

But did Tannenbaum get it so completely wrong? In fact, many of the critiques against his book are not entirely convincing. To begin with, Tan-

Editorial de Ciencias Sociales, 1978), first published in 1964; Hall, *Social Control*; Franklin Knight, *Slave Society in Cuba During the Nineteenth Century* (Madison: Wisconsin University Press, 1970); Warren Dean, *Rio Claro: A Brazilian Plantation System, 1820–1920* (Stanford: Stanford University Press, 1976). See also Eugene D. Genovese, “The Treatment of Slaves in Different Countries: Problems in the Application of the Comparative Method,” in *Slavery in the New World*, 202–10.

12. The best argument along these lines has been made by Degler, *Neither Black Nor White*, 67–75. Concerning legal definitions of slaves, see also Davis, *The Problem of Slavery*, 244–55.

13. Degler, *Neither Black Nor White*, 92; John W. Cell, *The Highest Stage of White Supremacy: The Origins of Segregation in South Africa and the American South* (Cambridge: Cambridge University Press, 1982), xii; Emilia Viotti da Costa, “Commentary,” *Luso-Brazilian Review* (Winter 1992): 147. The value of Tannenbaum's model was further undermined by scholars working on the persistence of racism and racial inequality in Latin America after the 1950s. This scholarship was particularly solid and sophisticated in the case of Brazil, once hailed as the paradigm of racial democracy in the Americas. The research of these scholars seemed to suggest that modern race relations in the United States and Latin America were not that different after all. For a discussion of this literature, see Thomas Skidmore, “Race and Class in Brazil: Historical Perspectives,” in *Race, Class and Power in Brazil*, ed. Pierre-Michel Fontaine (Los Angeles: CAAS, 1985), 11–24.

nenbaum's study was not based on a false premise. Although postemancipation Latin American societies were not, as once thought, racial utopias, it is nonetheless true that they were different from the United States in at least one fundamental way: the absence of institutional segregation. As George Reid Andrews has stated, this is not a trivial distinction. In nonsegregated societies there were opportunities for individual mobility and symbolic national integration that were absent in the Jim Crow American South.¹⁴

Furthermore, despite significant efforts to demonstrate that slave regimes were essentially similar and that whatever differences may have existed were due to "material conditions," a significant distinction remains: the proportion of freedmen and freedwomen in the total population was always much higher in Spanish and Portuguese America than in the United States. What Frederick Bowser wrote several decades ago about the Spanish colonies is still valid: "Even in areas where the institution of slavery was strongly entrenched, the free colored were a very important element in the population."¹⁵ This striking difference has been explained in turn as a function of demographic and economic conditions. The most frequent arguments include: that the boom and bust cycles of the colonial economy provided incentives for manumission; that masters in Spanish and Portuguese America freed the old, the ill, or slaves with low market value, such as women; that, given race and population ratios, in Latin America free blacks were needed to perform jobs that were not suitable for slaves; or that most slaves accessed manumission through self-purchase, a clear indication that profits, not moral or religious considerations, were the slave owners' leading concern.¹⁶

Whatever their merit, these arguments do not really undermine Tannenbaum's insight that "The frequency and ease of manumission, more than any other factor, influence the character and ultimate outcome of the two slave systems in this hemisphere." As Stuart Schwartz argues, the ease by which a person could move from legal slavery to legal freedom was indeed "an essential measure of a slave regime."¹⁷ This ease was undoubtedly much

14. George Reid Andrews, *Blacks and Whites in São Paulo, Brazil, 1888–1988* (Madison: Wisconsin University Press, 1991), 4.

15. Frederick Bowser, "Colonial Spanish America," in *Neither Slave Nor Free: The Freedmen of African Descent in the Slave Societies of the New World*, ed. David W. Cohen and Jack P. Greene (Baltimore: The Johns Hopkins University Press, 1974), 37.

16. Degler, *Neither Black Nor White*, 39–47; Ingersoll, *Mammon and Manon in Early New Orleans*, 221–34; Donald G. Eder, "Time under the Southern Cross: The Tannenbaum Thesis Reappraised," *Agricultural History* 50.4 (October 1976): 600–14; David C. Rankin, "The Tannenbaum Thesis Reconsidered: Slavery and Race Relations in Antebellum Louisiana," *Southern Studies* 18.1 (Spring 1979): 5–31.

17. Tannenbaum, *Slave and Citizen*, 69; Stuart Schwartz, *Sugar Plantations in the Formation of Brazilian Society: Bahia, 1550–1835* (New York: Cambridge University Press, 1985), 253.

greater in the Spanish colonies and Brazil than in the United States and some of the arguments used to undermine the significance of this crucial difference are hardly sustainable. There is little evidence, for instance, that old and unproductive slaves were systematically targeted for manumission. Rather, there is abundant evidence that in "gracious" manumissions, those which did not involve self-purchase, children and youths were the majority. The rates of self-purchase were higher for women than for men, but this was not a function of their lower value. It was a reflection of the economic and social opportunities that female slaves found in urban and domestic occupations. Besides, at least in some areas, young women had a market value higher than men.¹⁸

Harris's insightful demographic argument, which numerous authors have reproduced later, has great value at the macro-structural level, but it does not really disprove some of Tannenbaum's central claims. It is difficult to imagine how, when individual slave owners granted freedom to one or more of their slaves, they would have abstract demographic considerations and population ratios in mind. What concerned slave owners, in addition to profits, was God's service. These two categories were by no means contradictory, nor did economic motifs preclude religious concerns. As Schwartz rightly asserts, referring to Brazil, slave exploitation "was set in an ideological context in which the metaphors of family, obligation, fealty, and clientage predominated." In the act of manumission, the "unity between profit and paternalism was made clear. Although we may find this to be a contradiction, the slaveowners . . . did not."¹⁹

There is also some limited evidence that changes of metropolis had an effect on colonial slave regimes. Louisiana is, of course, a case in point, one that has been actually used to test Tannenbaum's main theses. By the time of the Spanish occupation after three decades of French rule, Louisiana's free coloreds represented only 3.5 percent of the total black population. Four decades later, when the colony shifted momentarily back to France, then was purchased by the U.S. and became a state of the Union, the proportion had increased to 12 percent. This growth, one historian notes, "occurred not because masters recognized the moral right of their slaves to freedom, as Tannenbaum suggested, but rather because they recognized

18. Frederick P. Bowser, "The Free Person of Color in Mexico City and Lima: Manumission and Opportunity, 1580-1650," in *Race and Slavery in the Western Hemisphere: Quantitative Studies*, ed. Stanley L. Engerman and Eugene D. Genovese (Princeton: Princeton University Press, 1975), 331-68; Lyman L. Johnson, "Manumission in Colonial Buenos Aires, 1776-1810," *Hispanic American Historical Review* 59.2 (1979): 258-79; Schwartz, "The Manumission of Slaves in Colonial Brazil: Bahia, 1684-1745," *Hispanic American Historical Review* 54.4 (1974): 603-35.

19. Schwartz, *Sugar Plantations*, 257.

the products of their secret (and sometimes not so secret) sex lives.”²⁰ Although this might have been the case, it does not necessarily follow that Tannenbaum’s arguments are left without defense. To begin with, why would the masters begin to recognize the fruits of their sexuality under Spanish rule and not before? Sexual liaisons with female slaves surely predated the Spanish presence. Furthermore, slave owners’ recognition of their offspring with slave women did not automatically confer freedom on their children, who of course followed the social condition of the mother. Masters had not only to recognize the products of their sex lives; they also had to either grant or purchase the freedom of their children.

Critics are on much more solid ground when they question Tannenbaum’s reliance on legal precepts to characterize slavery without reference to their effective transfer—in the case of “precedents”—or applicability, and enforcement in the colonies. But even in this area his arguments cannot be easily dismissed. Legal statutes may have been customarily violated or ignored in practice, but they still offered, as David Rankin notes, “a convenient and precise definition of society’s values.”²¹ Colonial legislation, however, frequently reflected the “values” and ideological concerns of the central state rather than those of the dominant groups within the colonies, where such laws were supposed to be applied. In fact, local regulations were invariably harsher in defining the social activities of slaves and free persons of color. But this does not render colonial legislation meaningless to slave regimes in the colonies. If laws were to be ignored as a matter of fact, as some authors suggest, why did the planters bother to mobilize in order to prevent the publication of regulations that they deemed to be unreasonably favorable to the slaves? If no application or enforcement was expected, how could these laws disrupt production and the colonies’ social fabric?²²

Although the application of slave laws in Latin America has not been studied systematically, there is evidence that under certain circumstances slaves

20. Rankin, “The Tannenbaum Thesis,” 23. Other students of Louisiana acknowledge that under Spanish rule manumissions increased, but emphasize market considerations or other “material” factors in their explanation. See Ingersoll, *Mammon and Manon in Early New Orleans*, 211–39; Thomas M. Fiehrer, “The African Presence in Colonial Louisiana: An Essay on the Continuity of Caribbean Culture,” in *Louisiana’s Black Heritage*, ed. Robert R. MacDonald, John R. Kemp, Edward F. Haas (New Orleans: Louisiana State Museum, 1979), 3–31.

21. Rankin, “The Tannenbaum Thesis,” 6. For a similar claim, see Winthrop D. Jordan, *White over Black: American Attitudes Toward the Negro, 1550–1812* (New York: W. W. Norton, 1977), 588.

22. The most notorious case of resistance to the application of Spanish slave law in the colonies concerns the 1789 real cédula that enacted the Código Negro Carolino. See Manuel Lucena Salmoral, *Los códigos negros de la América española* (Madrid: Ediciones UNESCO, 1996), 108–23.

were able to seek legal redress from colonial courts and authorities. In a pioneering study concerning slave legislation in New Granada during the eighteenth century, Norman Meiklejohn demonstrated four crucial points. First, the traditional Iberian legislation governing slaves' lives, particularly the *Siete Partidas*, remained in full effect. Second, at least some slaves used the law to claim rights in court, such as in cases of manumission and the denunciation of cruel masters. Third, a local official, the *síndico procurador*, played an important role in the protection of slaves' rights. Last, but certainly not least, the courts frequently found in favor of the slaves.²³

Opportunities for slaves' claims-making may have been unusually broad in New Granada, but they were not unique. Even in areas where slavery was firmly entrenched, slaves situated closer to the centers of colonial administration and to the culture and ways of the dominant group used the Spanish judicial and legal system to claim similar rights. Recent studies conducted in such dissimilar colonies as Puerto Rico, Ecuador, Peru, Guatemala, and Cuba have confirmed not only that traditional Spanish legislation was applied in the colonies, but that under certain circumstances slaves were able to use it to their advantage.²⁴ This should not be surprising. Just as the Spanish legal system helped to tie indigenous peoples "to the system that also oppressed them" by occasionally protecting their rights, intervention in the case of slaves would have likewise encouraged reliance on colonial institutions while discouraging other forms of resistance, thus contributing to social stability and peace.²⁵ In both cases some degree of state intervention could serve well the larger concerns of the empire.

23. Norman A. Meiklejohn, "The Implementation of Slave Legislation in Eighteenth-Century New Granada," in *Slavery and Race Relations in Latin America*, ed. Robert Brent Toplin (Westport: Greenwood Press, 1974), 176–203.

24. Benjamín Nistal Moret, *Esclavos prófugos y cimarrones: Puerto Rico 1770–1870* (Río Piedras: Editorial de la Universidad de Puerto Rico, 1984); Manuel Lucena Salmoral, *Sangre sobre piel negra: la esclavitud quiteña en el contexto del reformismo borbónico* (Quito: Ediciones Abya-Yala, 1994); Carlos Aguirre, *Agentes de su propia libertad: los esclavos de Lima y la desintegración de la esclavitud, 1821–1854* (Lima: Pontificia Universidad Católica del Perú, 1993); Christine Hünefeldt, *Paying the Price of Freedom: Family and Labor among Lima's Slaves, 1800–1854* (Berkeley: University of California Press, 1994); Thomas Fiehrer, "Slaves and Freedmen in Colonial Central America: Rediscovering a Forgotten Black Past," *Journal of Negro History* 64.1 (1979): 39–57; María E. Díaz, *The Virgin, the King, and the Royal Slaves of El Cobre: Negotiating Freedom in Colonial Cuba, 1670–1780* (Stanford: Stanford University Press, 2000); Gloria García, *La esclavitud desde la esclavitud: la visión de los siervos* (Mexico City: Centro de Investigación 'Ing. Jorge Tamayo,' 1996); Digna Castañeda, "The Female Slave in Cuba during the First Half of the Nineteenth Century," in *Engendering History: Caribbean Women in Historical Perspective*, ed. Verene Shepherd, Bridget Brereton, and Barbara Bailey (New York: St. Martin's Press, 1995), 141–54.

25. Ward Stavig, *The World of Tupac Amaru: Conflict, Community, and Identity in Colonial Peru* (Lincoln: University of Nebraska Press, 1999), 85. On the complex interaction between the colonial state and the indigenous communities, see also Steve J. Stern, *Peru's*

The findings of this scholarship suggest that Tannenbaum's emphasis on legal precepts and institutions was not without value. Slaves may have been "effectively beyond the reach of the colonial state," as Robin Blackburn has claimed, but the colonial state was not necessarily beyond the reach of enterprising slaves.²⁶ Recent studies about the North American Spanish colonies confirm this assertion. In her investigation of slavery in Florida, for instance, Jane Landers demonstrates that slaves of African descent, particularly women, "learned to manipulate Spanish law, customs, and gender conventions to their advantage." Her findings confirm Tannenbaum's central claim, namely that "Spanish law and custom granted the slave a moral and juridical personality, as well as certain rights and protections not found in other slave systems."²⁷

Studies of slave law in Louisiana coincide with this assessment. Under Spanish rule, and despite the continuing applicability of French legislation, slaves' rights to self-purchase were at least occasionally enforced, resulting in a notable increase of the free population of color.²⁸ The acquisition of the colony by the American union, in turn, "initiated an era of diminished rights for slaves as Louisiana planters suddenly found themselves in a position to make their own laws." With the "Americanization" of the colony and its legal system, three of the most important slave rights were eliminated or greatly restricted. These included the right to self-purchase, the right to own property, and the right to recourse against cruel masters. Two years after the American acquisition, writes Judith Schafer, "many of the relatively benign traces of Spanish law had disappeared."²⁹

The opportunities for claims-making that slaves created under Spanish law were largely a function of the interplay among the different elements of the complex institutional hierarchy of the colonies. This hierarchy began in the local organs of power, as represented by the cabildos, and ended up in Madrid. The degree to which slave owners enjoyed the monopoly of power and authority was, to put it in a simplified way, inversely related to the opportunities slaves had to benefit from legislation. As a rule, in Spanish America masters never enjoyed a monopoly of power and had

Indian Peoples and the Challenge of Spanish Conquest (Madison: University of Wisconsin Press, 1982).

26. Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (London: Verso, 1997), 18.

27. Landers, *Black Society in Spanish Florida*, 2, 139.

28. Hans W. Baade, "The Law of Slavery in Spanish Louisiana, 1769–1803," in *Louisiana's Legal Heritage*, ed. Edward F. Haas (Pensacola: The Perdido Bay Press, 1983), 43–86; Judith K. Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994).

29. Schafer, *Slavery*, 6.

to deal with the intromission of colonial authorities and the Church. Yet within this generalization there were significant variations—so great in fact as to render the whole statement virtually useless. Just as any attempt to define “the nature” of slavery in a given colony is perilous, attributing a general character to the relations of power between the metropolis and its colonies must be of limited value. Constant shifts in these hierarchies of authority created changing opportunities, and limitations, for both slaves and slave owners.

Thus a discussion of the important questions raised by Tannenbaum, his followers, and his critics must be done in reference to a concrete slave society and linked to specific phases of its political and economic evolution. Even sympathetic scholars agree that one of the main flaws of *Slave and Citizen* was its chronological and geographical vagueness. It is with this in mind that I now turn to the study of slavery in Cuba. The island is an excellent case study for at least two reasons. First, slavery was the dominant form of labor in the colony for over three hundred years. Second, by the early nineteenth century the island had become a flourishing slave-based plantation society and a world leader of sugar production. Therefore, in the Cuban case it is possible to assess, within a single colony, whether Iberian slave laws were transferred at all during the early colonial period and, if so, to determine if they survived the dehumanizing impulse of commercial agriculture. Indeed, the Cuban experience has been used by both supporters and detractors of Tannenbaum. Some authors have employed it to demonstrate the role that the colonial state and the church played in tempering the exploitation of the slaves. Most authors, however, believe that Cuba exemplifies the inaccuracy of Tannenbaum’s ideas, on the ground that the rise of the plantation economy dehumanized the slaves, to put it in Mintz’s much repeated words, to a degree similar to that of Jamaica and North America.³⁰

Part of the problem has rested on a selective use of evidence from quite different periods in the island’s development, or from areas with dissimilar linkages to the export economy. As in Brazil, where studies of colonial society have centered on monoculture, slavery, and latifundia, in Cuba there has been a tendency to identify slavery with the plantation economy.³¹ Some historians have extrapolated the dehumanizing features of plantation agriculture to characterize “the” slave experience in the island, regardless of

30. Mintz, “Slavery and Emergent Capitalisms,” 31. Mintz’s statement has been frequently quoted. For examples, see Sio, “Interpretations of Slavery,” 307, and Eder, “Time under the Southern Cross,” 612. By far the best scholarship concerning Cuban slavery along Tannenbaum’s arguments is Klein’s *Slavery in the Americas*.

31. For a discussion of this problem in Brazil, see B. J. Barickman, *A Bahian Counterpoint: Sugar, Tobacco, Cassava, and Slavery in the Recôncavo, 1780–1860* (Stanford: Stanford University Press, 1998).

chronological or regional variations.³² Such an approach ignores the crucial fact that, in the island, the plantation economy did not develop until the last quarter of the eighteenth century. The late arrival of the plantation economy to Cuba implied that the new order had to be imposed on, and somehow reconciled with, previous cultural traditions and social mores.

Thus a better knowledge of slavery in the island during the long period prior to the late 1700s is crucial to assess the impact of plantation agriculture on traditional forms of slave use and on whatever opportunities for mobility had developed in preplantation Cuba. The rise and fall of plantation slavery must be analyzed in relation with, not in isolation from, the development of slavery during the early colonial period. Since this is by far the least studied period of Cuban history in general, and of Cuban slavery in particular, most of the remainder of this article is devoted to it.³³ The next section shows that during this period some opportunities for slaves' claims-making and social mobility existed in the colony. A final concluding section briefly explores some of the effects that the plantation system had on slavery in the island.

I should state at the outset that although my analysis of early colonial slavery is largely based on my own archival research, I draw primarily on the secondary literature for the 1790–1860 period. It should also be noted that the following discussion does not attempt to provide a comprehensive summary of the evolution of slavery in Cuba or of the abundant scholar-

32. This view is not uncommon in Cuban history manuals. For examples, see Julio Le Riverend, *Selección de lecturas de historia de Cuba* (Havana: Editora Política, 1984); Sergio Aguirre, *Historia de Cuba*, 3 vols. (Havana: Editorial Nacional, 1966); Jesús Guanche, *Procesos etnoculturales de Cuba* (Havana: Editorial Letras Cubanas, 1983); Calixto Masó Velázquez, *Historia de Cuba* (Miami: Ediciones Universal, 1976). Other historians speak of sugar plantations in early colonial Cuba. For examples, see Eduardo Torres-Cuevas and Eusebio Reyes, *Esclavitud y sociedad: notas y documentos para la historia de la esclavitud negra en Cuba* (Havana: Editorial de Ciencias Sociales, 1986); Francisco Castillo Meléndez, "Un año en la vida de un ingenio cubano (1655–1656)," *Anuario de Estudios Americanos* 39 (1982): 449–63.

33. Although there is not a comprehensive study of preplantation slavery in Cuba, the topic has been covered in several important works of scholarship. Particularly useful are, in addition to Klein's *Slavery in the Americas*, Leví Marrero, *Cuba: economía y sociedad* (Madrid: Editorial Playor, 1975–1992), especially 2:346–70, 5:25–42; Isabelo Macías, *Cuba en la primera mitad del siglo XVII* (Sevilla: Escuela de Estudios Hispanoamericanos, 1978); Castillo Meléndez, "Un año en la vida de un ingenio cubano," 449–63. Although dated, Hubert Aimes, *A History of Slavery in Cuba, 1511 to 1868* (New York: Putman's Sons, 1907) and Ortiz, *Los negros esclavos* are still valuable contributions. A slave community that has received significant attention is that of El Cobre, studied by José Luciano Franco, *Las minas de Santiago del Prado y la rebelión de los cobreros, 1530–1800* (Havana: Editorial de Ciencias Sociales, 1975); Leví Marrero, *Los esclavos y la virgen del Cobre* (Miami: Ediciones Universal, 1980); and Díaz, *The Virgin, the King, and the Royal Slaves of El Cobre*.

ship about the subject. What it does attempt is to identify some of the opportunities that various institutional and productive arrangements created for slaves' legal claims-making and for their access to colonial institutions, particularly during the long preplantation period.

Slavery in Preplantation Cuba (1550s-1770s)

African slaves constituted the main source of labor in the island from the mid-sixteenth century onward. A few hundred of them had been imported to begin to compensate for the loss of the indigenous population, which had been largely wiped out by 1550. After the collapse of the ephemeral mining cycle of the early 1500s, most of these slaves were used in urban activities or in rural occupations in which they could carve out a modicum of personal and even financial autonomy.

In the main urban centers, where a large proportion of the slaves lived, there were some opportunities for mobility. Slaves and the growing sector of free blacks and mulattos nearly monopolized Havana's crucial tertiary sector in the late 1500s and the 1600s. A major port city, Havana was visited annually by the fleets of Nueva España and Tierra Firme, which brought with them thousands of consumers who had to be fed, lodged, and entertained. These cyclical bursts of population and cash had a marked inflationary impact on the local market, where all services and goods were charged at a premium while the fleets were stationed in the port. Indeed, Havana's residents referred to the interfleet period as "the dead season" (*tiempo muerto*), the same expression that would later designate the period between the sugar harvests.³⁴

Since many of these services were provided by blacks, free and enslaved, they were able to benefit from these opportunities. Apparently, black women filled many of these economic spaces. Local authorities frequently complained that they owned or operated most taverns and lodging facilities in the city, which by 1673 numbered as many as eighty. Female slaves and free black women also served the needs of Havana's growing garrison, working as laundresses, cooks, and prostitutes.³⁵

34. For the development of Havana's service and maritime economy, see Alejandro de la Fuente, César García del Pino, and Bernardo Iglesias Delgado, "Havana and the Fleet System: Trade and Growth in the Periphery of the Spanish Empire, 1550-1610," *Colonial Latin American Review* 5.1 (1996): 95-115; Marrero, *Cuba*, 2:138-64.

35. Archivo del Museo de la Ciudad de la Habana (hereafter AMCH), *Actas Capitulares del Ayuntamiento de la Habana*, originales, 1672-1683, fol. 45. Local authorities constantly complained about the large number of female slaves who devoted themselves to service activities and tried repeatedly to curb their autonomy. Local regulations devoted specifically

Slaves also performed numerous skilled jobs and reached the highest levels within the trades as officers and master craftsmen, even opening—as Havana's *procurador* (petitioner) denounced in 1650—their own public shops. Roughly a century later, in 1761, Martín Félix de Arrate asserted in his notable chronicle of Havana that the “negros and pardos” were “very able and capable to perform mechanic trades, to which they frequently apply themselves, becoming distinguished masters, not only in the lowest ones such as shoemakers, tailors, masons, and carpenters, but also in those which require more ability and genius, such as silversmiths's craft, sculpture, painting, and carving, as denoted by their marvelous works.”³⁶

A large number of these slaves worked under the hiring-out system, which was common in Cuban cities through the nineteenth century, as well as in other colonies. Under this arrangement, slaves had to pay a daily amount to their masters, but were obliged to find their own occupations and employers, just as if they were free workers. In the process, slaves could maximize their personal and financial autonomy and acquire valuable contacts and knowledge about colonial institutions and their functioning.

Although opportunities were greatest for slaves employed in the urban areas, some rural slaves found ways to participate in the urban market as well. Until well into the seventeenth century, the line separating “rural” from “urban” areas was itself fairly porous. Most slaves not employed in the cities lived in the small *estancias* that, like an agricultural belt, surrounded the urban centers. Since the main economic purpose of these units was to supply foodstuffs to the local market, easy access to the city was crucial. The same was true of some sugar mills, which were close enough to the urban areas for Church authorities to decree as late as 1681 that, unless a church was available on the premises, the slaves employed in them should be brought to town to hear mass every Sunday.³⁷ In addition to their physical closeness to the cities and towns, local authorities complained that

to black women were approved in 1553, 1557, 1599, 1601, 1620, 1654, and 1698. *Actas Capitulares del Ayuntamiento de la Habana, 1550–1578* (Havana: Municipio de la Habana, 1937–1946), 1.2: 75, 150; AMCH, *Actas Capitulares del Ayuntamiento de la Habana, trasuntadas* (hereafter ACAHT), 1599–1604, fol. 474v, 521; 1616–1624, fol. 126; 1648–1654, fol. 874; 1691–1702, fol. 207. Women were also referred to in regulations dealing with slaves' urban activities in general. See Table 1 below.

36. AMCH, ACAHT, 1648–1654, fol. 618; José Martín Félix de Arrate, *Llave del Nuevo Mundo* (Mexico City: Fondo de Cultura Económica, 1949), 95. On the growing sector of artisans in Havana, see Leandro S. Romero, “Fichero ilustrado,” *Revolución y Cultura* (August 1975): 78–82; Romero, “Orfebrería habanera en las islas canarias,” *Universidad de la Habana* 222 (January–September 1984): 390–407.

37. See the Lib. 2, Tit. 1, Const. 4 of Diocesan Synod of 1680 in Juan García de Palacios, *Sínodo Diocesano* (Havana: Oficina de Arazoza y Soler, 1814), 46.

the slaves' own products were channeled to the local market by slaves and free blacks who made a living touring the *estancias* and buying goods that they resold in the cities.³⁸

The purpose and structure of these early colonial rural units were vastly different from those of nineteenth-century plantations. Devoted to growing food for local consumption, the *estancias* typically employed one or two slaves who lived in the unit with the owner and his family. In the 1578–1610 period, only 14.5 percent of all *estancias* in Havana used slaves at all. The average number of slaves employed by these units remained unchanged in the early eighteenth century.³⁹ More distant from the cities, cattle farms were manned by an equally small number of slaves who lived in a state of virtual autonomy. Their main occupation was the production of hides and the periodic transportation, particularly during the visit of the transatlantic fleets, of cattle to be butchered in the city. Inventories of these farms rarely mention white overseers or administrators.⁴⁰

Even in the sugar mills, which were of course the units requiring the largest concentrations of workers, the number of slaves per estate was very low compared to sugar plantations elsewhere, or later in Cuba itself. A study of forty mills in the Havana jurisdiction during the 1650–1699 period found that typically sugar mills used between fifteen and twenty slaves. It was not until the 1770s that these numbers began to change. According to another study of twenty-one mills, in the 1704–1766 period the average number of slaves remained the same and only one sugar mill employed more than thirty slaves. As in the previous century, the largest *ingenio* used thirty-eight slaves.⁴¹

Thus in the long period that preceded the emergence of the sugar plantation economy in western Cuba, slaves were not subject to the extreme circumstances of plantation agriculture. Limited Spanish migration to the island required slaves to perform economic activities that may have been otherwise closed to them and that implied some degree of autonomy for the workers. Through their participation in market transactions and other

38. AMCH, ACAHT, 1599–1604, fol. 474v.; 1648–1654, fol. 874; 1691–1702, fol. 207.

39. The 1578–1610 estimate is taken from a database of 271 contracts and inventories of rural properties based on data from Havana's notarial records. For the early eighteenth century, see Fe Iglesias García, "La estructura agraria de La Habana, 1700–1775," in *Las raíces históricas del pueblo cubano*, ed. Consuelo Naranjo Orovio and Miguel A. Puig-Samper (Madrid: Arbor, 1991), 91–112.

40. Archivo Nacional de Cuba (hereafter ANC). Protocolos Notariales de la Habana (hereafter PNH), Escribanía Fornaris, 1693, fol. 192; 1694, fol. 169, 508v.

41. Alejandro de la Fuente, "Los ingenios de azúcar en la Habana del siglo XVII: estructura y mano de obra," *Revista de Historia Económica* 9.1 (Winter 1991): 35–67; Mercedes García Rodríguez, "Ingenios habaneros del siglo XVIII," in *Las raíces históricas del pueblo cubano*, 113–38.

social relations, slaves gained critical knowledge about the market economy and the dominant culture. Included in this cultural background was the knowledge that under Spanish law slaves had not only some rights, but also that they were allowed to appeal to authorities—to an authority higher than their master—to enforce them.

As is well known, the main code regulating slavery in Castile was the thirteenth-century code *Las Siete Partidas* of Alphonse X the Wise. Inspired by Roman sources, this remarkable legal code contained not only specific regulations concerning various aspects of slaves' lives, but also general legal and moral principles about the institution. These principles could be summarized in three broad assumptions. First, slavery was against nature and freedom—the natural status of men and their most valuable attribute. From this it followed that justices and laws should favor freedom. Second, although masters had total control over their slaves, including whatever goods they received, masters' rights were limited in several ways, notably when it came to the personal integrity of the slaves. In the case of murder, for example, the law did not distinguish between free persons and slaves as victims. Third, some rights of slaves were recognized and protected. These included rights that were largely conditional on the master's will, such as the ownership of goods and the right to self-purchase, and rights that could be exercised even against the will of the master, such as that of marriage.⁴²

It is difficult to establish whether this code "was transplanted almost intact to the New World," as Klein asserts, but there is little question that this legislation was enforced to at least some degree in preplantation Cuba.⁴³

For instance, slaves' access to the Catholic sacraments of baptism and marriage was fairly common. In seventeenth-century Havana (1585–1644) slaves participated in one-fourth of all marriages, a percentage that seems roughly congruent with their proportion in the adult population of the city. In Sancti Spíritus, a town in central Cuba, slaves participated in one-fifth of all marriages between 1621 and 1670.⁴⁴ Slaves were also well represented in baptisms. The children of slave mothers comprised 16 percent of all the child baptisms registered in Havana between 1590 and 1610 and 12

42. For a discussion of the slave provisions of *Las Siete Partidas*, see Davis, *The Problem of Slavery*, 102–6; Watson, *Slave Law in the Americas*, 40–47; Ortiz, *Los negros esclavos*, 309–16. I have used here the version of the *Partidas* contained in *Los códigos españoles concordados y anotados*, 12 vols. (Madrid: La Publicidad, 1847–1851).

43. Klein, *Slavery in the Americas*, 59.

44. For a discussion of the Havana figures, see my "Los matrimonios de esclavos en la Habana, 1585–1645," *Ibero-Amerikanisches Archiv* 16.4 (1990): 507–28. The figures from Sancti Spíritus are based on *Libro Primero de Matrimonios de Blancos y de Color*. Parroquial del Espíritu Santo, Sancti Spíritus, 1623–1739. Archivo Nacional de Cuba, Fondo Valle Iznaga.

percent in Sancti Spíritus between 1597 and 1659. Church authorities also administered the sacrament to a large number of adult African slaves. In Havana, these slaves accounted for one quarter of all baptisms and in Sancti Spíritus for 13 percent.⁴⁵

These sacraments gave slaves some access to the "moral community" and allowed them to establish social and religious links with other slaves or with individuals above them in the socio-racial hierarchy. Blacks' recruitment of white godparents for their children and their marriages suggests not only the existence of cross-racial social networks, but also that such contacts were seen as potentially beneficial for themselves and their offspring.⁴⁶ These sponsors could be valuable, particularly when slaves came in contact with colonial institutions to press for rights under Spanish law.

Purchasing freedom was the most important of these rights, one firmly established and protected in Spanish legislation and claimed by slaves throughout Spanish America. In Cuba, as elsewhere in the region, access to freedom was a function of several factors. Rates of manumission, either through self-purchase or as a gracious concession by the master, were much higher for creole slaves (as opposed to Africans), for women, and for mulattos. Contrary to what some of the critics of Tannenbaum have suggested, half of the slaves obtaining freedom in Havana were younger than fifteen years old. Three quarters of these young slaves were described as "mulato," the offspring of interracial sexual relationships, and may have received the support of their parents or other white relatives to obtain freedom.⁴⁷

Indeed, in early seventeenth-century Havana whites paid or lent money to pay for the slave's freedom in 25 percent of all self-purchases. Familiar relations and social networks such as those mentioned above could have

45. These figures are based on Archivo de la Catedral de la Habana, Libro Barajas de Bautismos de Españoles, 1590–1610; Archivo de la Parroquial Mayor de la Villa de Sancti Spíritus, Libro Primero de Bautizos, in Archivo Nacional de Cuba, Fondo Valle Iznaga.

46. Forty-one percent of the godparents of slave children in Havana and 52 percent in Sancti Spíritus were white. Conversely, the overwhelming majority of godparents of adult slaves were also slaves (78 percent in Havana; 59 percent in Sancti Spíritus). Forty-one percent of the witnesses and godparents in slave marriages in Havana were also white. My findings concerning patterns of godparentage in early colonial Cuba coincide roughly with those of Schwartz, *Slaves, Peasants, and Rebels: Reconsidering Brazilian Slavery* (Urbana: University of Illinois Press, 1992), 137–60.

47. For a discussion of manumission in early colonial Havana, see de la Fuente, "A alforria de escravos em Havana, 1601–1610: primeiras conclusões," *Estudos Econômicos* 20.1 (Jan.–April 1990): 139–59. I have also used results from a sample of three hundred manumission letters taken from ANC, PNH, Escribanía Fornaris, 1690–1694. For the eighteenth and nineteenth centuries, see Manuel Moreno Friginals, "Peculiaridades de la esclavitud en Cuba," *Del Caribe* 4.8 (1987): 4–10. For the 1790–1880 period, see Laird W. Bergad, Fe Iglesias García, and María del Carmen Barcia, *The Cuban Slave Market, 1790–1880* (New York: Cambridge University Press, 1995), 131–41.

been crucial in cases like these. As a slave owner who purchased the freedom of a mulatto slave declared in 1604, he did so to serve God and because the father of the slave was "an honorable man and my friend."⁴⁸ In 1691 the freedom of Pablo, a seven-year-old slave, was purchased by his godparent Nicolas de Landueta, who was white.⁴⁹

Purchasing freedom was facilitated by a legal custom that had developed in the island, and perhaps in other Spanish colonies, since the sixteenth century: *coartación*. Through *coartación* slaves were allowed to agree with their masters on a fixed price for their freedom and to make payments toward it. In other words, they could buy freedom through installments. Such agreements were legally binding and restricted the master's capacity to dispose of the slave in several important ways. A slave who had paid a fraction of the price could not be mortgaged or sold for a higher value. In 1690, for instance, the slave Juan, a seventeen-year-old creole, was sold four times, always on condition that he was to be freed as soon as he was able to pay the 200 pesos remaining for his total value. In practice, only a portion of Juan was being sold. He owned a portion of himself.⁵⁰ This was not mere legalism. Buyers were instructed that they could only "use" the portion of the slave that they were paying for. If they were to use his labor full time, then they had to apply a proportional part of that labor toward his freedom. Thus when a mulatto female slave who had paid half of her price was sold in 1690, the contract stipulated that she was entitled to half of her labor and that the sale was "only on half of the said mulata."⁵¹

The origins and evolution of this remarkable legal figure remain elusive to researchers, but seem to go back to the traditional legal statutes of Castile. A law contained in *Las Partidas* regulated a form of conditional sale in which the slave was to be manumitted under certain circumstances. Such conditions could not be altered—one of the main elements of the institution as it evolved later.⁵² It has been frequently claimed that this was a purely Cuban practice that emerged in the eighteenth century.⁵³ In fact, it

48. ANC, PNH, Escribanía Fornaris, 1604, fol. 452.

49. ANC, PNH, Escribanía Fornaris, 1691, fol. 273. In other cases, it was the white father who himself purchased the freedom of his children. For an example, see the will of Isabel Valderas in ANC, PNH, Escribanía Regueira, 1606, fol. 207.

50. ANC, PNH, Escribanía Fornaris, 1690, fol. 140, 144, 262, 363.

51. *Ibid.*, fol. 44.

52. L. 45, Tit. 5, P. 5, in *Los Códigos*, 3: 614. But no specific law regulated *coartación*, which seems to have been a customary legal practice. See Watson, *Slave Law in the Americas*, 51; Manuel Lucena Salmoral, "El derecho de *coartación* del esclavo en la América Española," *Revista de Indias* 59: 216 (May–August 1999), 357–74.

53. Ortiz, *Los negros esclavos*, 285–90; Rolando Mellafe, *Breve historia de la esclavitud en América Latina* (Mexico City: Secretaría de Educación, 1973), 136; Carlos E. Deive, *La esclavitud del negro en Santo Domingo, 1492–1844* (Santo Domingo: Museo del Hombre

was widely used in the island from the 1590s onward—the first case I have seen is dated in 1597—and was acknowledged in seventeenth-century royal regulations. A real cédula of 1673 concerning the king's slaves in the community of El Cobre ordered royal officials to allow them to *cortarse*, even if they were to pay for their freedom in installments. More telling, perhaps, is the fact that the 1729 edition of the *Diccionario de la Lengua Castellana* defined “cortarse” as the action by which a slave “adjusted” with his master the terms of his freedom.⁵⁴

It seems that, to some degree, the traditional principles of Iberian legislation concerning freedom and marriage, two of the most important rights in slave law, were upheld and applied in the colonial world, as Tannenbaum suggested years ago. Furthermore, subsequent legislation confirmed that such rights were to be observed. The Crown insisted that slaves' rights to marry freely should be upheld even against the wish of their masters and confirmed, as the *Partidas* asserted, that marriage did not constitute a motive for freedom. This policy was not based on religious considerations alone. Numerous royal decrees clearly stated that marriages were to be encouraged so the slaves would be peaceful and “secure.” As Davidson has noted, “a protected marital life was not only a Christian obligation but also an essential mean of insuring slave tranquility and stability.”⁵⁵

Colonial legislation also ratified the principles that masters had the right to grant manumission to their slaves and that slaves should be allowed to purchase their freedom. A real cédula of 1529 asked the governor of Cuba whether it was expedient to give freedom to slaves after they had served some time and paid a given amount. When the king was informed that many soldiers in Havana had fathered children with slaves during the late 1500s, he quickly instructed that these soldiers be given preference in any sales “if” their intention was to liberate them. The Crown also reiterated the slaves' right to initiate a legal process for their freedom.⁵⁶

Dominicano, 1980), 2:409. For a recent example in which the alleged lateness of the *coartación* policy is central to a critique of Tannenbaum's approach, see Ingersoll, *Mammon and Manon in Early New Orleans*, 221–32.

54. ANC, PNH, Escribanía Regueira, 1597, fol. 134; Ortiz de Matienzo to the King, Havana, 23 November, 1673. ANC, Academia de la Historia, leg. 89, no. 548; Real Academia Española, *Diccionario de la Lengua Castellana* (Madrid: Imprenta de Francisco del Hierro, 1729), 626.

55. David M. Davidson, “Negro Slave Control and Resistance in Colonial Mexico, 1519–1650,” in *Maroon Societies*, ed. Richard Price (Baltimore: The Johns Hopkins University Press, 1979), 85. For a discussion of some of this legislation, see de la Fuente, “Los matrimonios de esclavos en la Habana,” 507–28.

56. R.C. 9-11-1526, *Colección de Documentos*, 1:355; R.C. 31-3-1583, Konetzke, *Colección*, 1: 547; R.C. 15-4-1540, later L. 8, Tit. 5, Libro 7 of the *Recopilación*.

This the slaves did. There is evidence that in some cases slaves were able to use the law to make claims and to create opportunities for advancement. And there is also evidence that, at least occasionally, colonial courts and royal officials had no choice but to enforce the law. On the other hand, the documents suggest that many masters did everything in their power to circumscribe slaves' autonomy and mobility. In twenty-four appeals concerning the freedom of slaves located in Havana between 1668 and 1698, fourteen were carried out by slave owners against sentences favorable to the slaves in the lower courts.⁵⁷ In eighteenth-century Havana, according to Moreno Friginals, 8 percent of all the manumissions included in his study resulted in legal disputes in which slaves received favorable verdicts.⁵⁸ When, during the litigations, one of the judges appointed was supposed to be partial to the master, slaves had the right to challenge him and to ask that a new judge be appointed to hear their case.⁵⁹ At least in principle, slaves had the right to take their cases to higher judicial authorities, although the costs involved would probably make such procedures infrequent, if not exceptional. Despite these difficulties, in 1693 Domingo Fernandez, an African slave described as *loango*, appealed the negative sentence of local authorities before the Audiencia de Santo Domingo.⁶⁰

Opportunities for claims-making should not be exaggerated, for only those cases in which slaves were at least initially successful remain visible to researchers and, as some of the examples mentioned above suggest, they frequently had to do legal battle with their masters.⁶¹ But even if instances of legal claims-making were a minority, they still represented avenues for advancement and goals for other slaves struggling for freedom. They also demonstrated that it was possible to challenge the master's authority in court. Some slaves used this legal framework to press claims even when their rights were unclear.⁶²

57. These appeals are registered in AMCH, ACAHT.

58. Moreno Friginals, "Peculiaridades," 7.

59. For examples, see the petitions of Luisa Murga, 11-23-1671 and Maria Guiomar, 11-27-1676 in their legal processes for freedom. Both in AMCH, ACAHT, 1667-1672, fol. 748 and 1672-1683, fol. 150.

60. ANC, PNH, Escribanía Fornaris, 1693, fol. 49.

61. For cases in which slaves had to surmount significant obstacles to obtain their freedom even with a freedom letter from their deceased masters, see ANC, PNH, Escribanía Junco, 1677-1678, s/f (declaration dated 1-1-1677); AMCH, ACAHT, 1672-1683, fol. 150; ANC, PNH, Escribanía Fornaris, 1691, fol. 343.

62. For instance, in 1681 the slave Felipa demanded freedom because she had "escaped from Jamaica in power of the British" and come to His Majesty's Catholic territories. The governor found in favor of the slave, a verdict that her alleged master appealed. Another slave requested freedom from Havana's town council in 1597 alleging that he had rendered a valuable service by discovering and denouncing those who had committed the "pecado

That Spanish traditional laws were invoked to regulate social relations is, however, out of the question. Indeed, in their application of Castilian laws to slaves judicial authorities faced situations in which they had to reconcile contradictory legal principles and customs. For instance, according to the 1505 *Leyes de Toro*, which regulated family relations, married women were to obtain a special “license” from their husbands to sign contracts and perform other legal transactions. But colonial authorities and residents encountered situations in which an enslaved husband was married to a free woman. Indeed, between 1585 and 1644, 6 percent of all marriages registered in Havana were of this type. In these cases, judicial authorities upheld the *Ley de Toro* dealing with the marital license, but since slaves did not enjoy full legal capacity, they were required in turn to obtain another “license” from their master.⁶³ That is, masters licensed their male slaves so they could authorize their free wives to engage in legal transactions.

These licenses allowed slaves to perform legal acts in ways similar to other dependents of the house head and some of these legal transactions seem incompatible with the slave’s social status. For instance, with the authorization of his master, in 1591 Gaspar *zape* hired a lawyer to recover “some houses and a parcel of land” that a deceased resident of Havana had purchased with Gaspar’s “own money and for him.” In 1595 Maria, a mulatto slave, declared that she “owned” a house in El Ejido, a residential area of Havana where many free blacks lived. A year later the slave Francisca Velázquez sold a lot with two wooden houses in the same area.⁶⁴ The master’s license allowed slaves to inherit goods, fight legally for their possession, and dispose of them.⁶⁵

Included among these goods were other slaves. When Francisca de Miranda, a thirty-five-year-old *criolla* from New Spain who worked as a cook for the soldiers, bought her freedom in 1585, she paid with one of the two slaves that she “owned”—a Catalina *angola*, twenty-five years old. In 1690 a female slave purchased the freedom of her daughter Inés, eighteen years old, by selling a slave that she had “owned” for some time. A

nefando” (sodomy). Although this was not included in *Las Partidas* as a cause for freedom, they did stipulate that when slaves rendered some valuable social services they should be set free. The final outcome of both processes is unknown. See AMCH, ACAHT, 1672–1683, fol. 329v; 1584–1599, fol. 405; L. 3, Tit. 22, Partida 4, in *Los Códigos*, 3: 522.

63. For concrete examples, see a 1641 case in ANC, Gobierno General, leg. 319, no. 15,420 and ANC, PNH, Escribanía Regueira, 1609, fol. 198.

64. ANC, PNH, Escribanía Regueira, 1591, fol. 191; 1595, fol. 424v.; 1596, fol. 331.

65. ANC, PNH, Escribanía Regueira, 1596, fol. 331; 1610, fol. 349; Escribanía Fornaris, 1694, fol. 201v; Escribanía Ortega, 1653, fol. 2.

royal slave named Felipe, employed in the construction of forts, bought María *angola* for 250 ducados from a free black woman in 1595.⁶⁶

These examples suggest that slaves—including notably African slaves—managed to participate actively in the urban market economy and in complex social networks that included individuals of different social and racial status.⁶⁷ Along with this, at least some slaves became familiar enough with the dominant culture as to carve out a modicum of personal and financial autonomy and to press for rights before colonial authorities and the courts.

It is precisely because slave owners despaired over their relative incapacity to control the social and productive activities of their labor force that local regulations concerning slavery were invariably harsher than metropolitan laws. Regulating slave urban labor was a major concern of Havana's secular and religious authorities, as Table 1 shows. After maroonage, which was of course an important issue in slave owners' efforts at social control, the largest proportion of regulations dealt with slaves' urban activities and attempted to curb their autonomy as much as possible. Many of these regulations referred to slaves' retail activities, particularly selling wine, to their having their own houses, separate from those

Table 1. Percentage distribution, regulations concerning slaves and blacks issued by the local authorities of Havana, 1550–1699 (N = 175)

Retail, bartenders, innkeepers	17.7
Hiring out	4.6
Separate housing	7.4
Other urban activities	10.9
Possession of weapons	5.1
Maroonage	33.7
Marriage and religion	9.7
Others	10.9

Sources: Archivo del Museo de la Ciudad de la Habana, Actas Capitulares del Ayuntamiento de la Habana, 1550–1699; Diocesan Synod of 1680 in Juan García de Palacios, *Sínodo Diocesano* (Havana: Oficina de Arazoza y Soler, 1814).

66. María T. de Rojas, *Índice y extractos del Archivo de Protocolos de la Habana, 1578–1585* (Havana: n. p., 1947), 1: nos. 652–54; ANC, PNH, Escribanía Fornaris, 1690, fol. 264; ANC, PNH, Escribanía Regueira, 1595, fol. 995.

67. For a good example, see the will of Ana *bioho*, who lists credits with various individuals, including whites, free blacks, and other slaves. Among the debtors was her own master, who had received money towards her manumission. See ANC, PNH, Escribanía Regueira, 1604, fol. 318.

of the masters, and to what slave owners perceived as social ills generated by the hiring-out system.⁶⁸

Yet the very frequency with which these regulations were passed is a good indicator that their success was, to say the least, modest. The key point is that, lacking a monopoly of power, slave owners were never able to enforce their own regulations, which had to be approved by higher authorities. Furthermore, slaves learned that they could appeal to colonial authorities and did so even in cases where no laws were being violated. For instance, in 1688, they asked the governor to decree a lowering of the daily rent that slaves working in the hiring-out system had to pay, arguing that the amount demanded by masters was abusive.⁶⁹ In these legal battles they could rely on the assistance of some of their peers, for under Spanish law slaves were entitled to appear in court as witnesses.⁷⁰

These traditions had become entrenched by the time the plantation economy began to take over western Cuba in the last quarter of the eighteenth century. The impact of these productive and social customs on social relations was further magnified by the presence of a sizeable community of free people of color. By 1792, around the dawn of the plantation economy, free blacks and mulattos represented 38 percent of the nonwhite population in the island and 20 percent of the population as a whole. Although the integration of this group into colonial society was mediated by hierarchical notions of ancestry, culture, and purity of blood, there is solid evidence that they were able to accumulate property and to participate in some of the civic rituals of the city. The visibility and relative mobility of this group was magnified as well by their prominent presence in the militias, where since the late sixteenth century *pardos* and *morenos* were grouped in separate companies and battalions with their own officers. These free colored soldiers represented 29 percent of the military forces in the colony in 1770.⁷¹ These were the founders of what by the nineteenth century had become a sizeable petit bourgeoisie of free blacks and mulattos.

68. I have grouped under "Others" regulations concerning various aspects of slaves' lives and of free blacks as well. Among these were ordinances dealing with nourishment, clothing, recreation, and so on.

69. The slaves' complaints concerning the daily rent were elevated to the Consejo de Indias in Madrid. See Informe del licenciado Gerónimo de Córdova, 1690. Archivo General de Indias, Seville (hereafter AGI), Santo Domingo, leg. 65, no. 4; Diego Antonio de Viana Hinojosa to the King, Havana, 1688. ANC, Academia de la Historia, leg. 90, no. 641.

70. For an example in which an African slave testifies in a process involving whites, see Demanda de naturaleza de Enrique Méndez y Diego de Noroña, 1608. AGI, Escribanía de Cámara, leg. 74A.

71. Klein, *Slavery in the Americas*, 217–18; Pedro Deschamps Chapeaux, *Los batallones de pardos y morenos libres* (Havana: Editorial Arte y Literatura, 1976); Francisco Castillo Meléndez, *La defensa de la isla de Cuba en la segunda mitad del siglo XVII* (Sevilla:

Plantation Slavery

Neither these traditional legal and social customs, nor the presence of a sizeable community of free people of color, could deter the expansion of plantation slavery and its by-products of social and racial polarization. But they probably served, to a certain extent, to subvert the unobstructed formation of a plantation society like those in other Caribbean territories. In this sense, the Cuban experience was unusual in the colonial world. In colonies such as Jamaica and Barbados plantations came to define colonial societies soon after their occupation by the Europeans. By the time the plantation economy developed in Cuba, slavery had been part of the island's social and economic life for over two hundred years.

In Cuba, as elsewhere, the plantation economy had a devastating impact on social and racial relations. Between 1790 and 1860 more Africans were imported into the island than in the two and a half previous centuries combined.⁷² Those sent to the sugar plantations became factors of production, their humanity largely obliterated by the impersonal needs of commercial agriculture.⁷³ Furthermore, the emergent "sugarocracy," as Manuel Moreno Fraginals referred to the new planter class, had enough power to resist successfully the encroachment of colonial authorities in their attempts to regulate their immediate world. When the Crown attempted to publish its relatively benign 1789 black code in the island, for instance, the planters mobilized to impede the promulgation of the new law on the basis that it would undermine slave discipline and morale. Some traditional rights were restricted, such as the possibility of interracial marriages, which after 1805 required special permission by the authorities. The rights and relative privileges of the free black community were assaulted. Black participation in the militias was temporarily banned in 1844, "the year of the lash," when an alleged collaboration of free blacks with a slave conspiracy served as excuse for the repression of hundreds of free blacks and mulattos.⁷⁴

Disputación Provincial, 1986), 194–201; Marrero, *Cuba*, 5:28–30. Figures about the free population of color have been taken from Kenneth Kiple, *Blacks in Colonial Cuba 1774–1899* (Gainesville: The University Presses of Florida, 1976).

72. David Eltis et al., *The Trans-Atlantic Slave Trade: A Database on CD-Rom* (New York: Cambridge University Press, 1999); Juan Pérez de la Riva, *¿Cuántos africanos fueron traídos a Cuba?* (Havana: Editorial de Ciencias Sociales, 1977), estimates that up to 1790 around 100,000 slaves entered the island, compared to some 700,000 during the 1800s.

73. On this, see the interesting debate between Moreno Fraginals, *El ingenio*, 2:7–90, and Rebecca J. Scott, *Slave Emancipation in Cuba: The Transition to Free Labor, 1860–1899* (Princeton: Princeton University Press, 1985).

74. Moreno Fraginals, *El ingenio*, 1:126–33, 2:7–90; Knight, *Slave Society*, 59–126; Robert Paquette, *Sugar Is Made with Blood: The Conspiracy of La Escalera and the Conflict between*

The impact that plantation slavery had on colonial society can be hardly overemphasized. But it would be erroneous to assume that traditional legal and social customs vanished overnight. It is in this area that additional empirical research is badly needed. The available scholarship, however, has established three important points that bear on this analysis. First, the plantation system was never able to cover the island as a whole. In part due to the limitations imposed by the British on the slave trade from the early nineteenth century, slave imports into Cuba came to a halt in the 1860s.⁷⁵ From their original location in Havana's hinterland, sugar plantations spread toward Matanzas and southern Las Villas, in the center of the island, but were almost nonexistent in the eastern department. In the eastern provinces of Camagüey and Oriente sugar was not massively produced until the early twentieth century. By the 1850s, only 5 percent of Cuban sugar was produced in these provinces.⁷⁶

Not surprisingly, the demographic makeup of the eastern provinces was very different from that of western Cuba. Between 1792 and 1861 the proportion of freedmen and women in the western population declined significantly, from 19 percent to 13 percent. Conversely, in the east the relative importance of the free population of color increased during the nineteenth century, to 29 percent in 1861. In this area, conditions remained favorable for traditional forms of slave exploitation to subsist well into the nineteenth century. Indeed, Cuban scholar Jorge Ibarra refers to slavery in nonplantation Oriente as "patriarchal."⁷⁷

Second, free blacks and mulattos continued to represent a sizeable, although declining proportion of the total population of the colony. Between the 1820s and 1840s their percentage in the population as a whole declined to 15 percent—the lowest in nineteenth-century Cuba—but the community kept growing in absolute terms. This cannot be attributed to natural growth alone. Despite the expansion of plantation slavery and growing racial polarization, the right to self-purchase continued to be exercised in nineteenth-century Cuba. In their study of the slave market in Cuba (1790–1880), Bergad, Iglesias, and Barcia found that *coartado* slaves represented 13 percent of all sales. If this ratio was, as the authors suggest, "close"

Empires over Slavery in Cuba (Middletown: Wesleyan University Press, 1988); Verena Martínez-Allier, *Marriage, Class, and Colour in Nineteenth-Century Cuba: A Study of Racial Attitudes and Sexual Values in a Slave Society* (New York: Cambridge University Press, 1974); Klein, *Slavery in the Americas*, 220–22.

75. Bergad, Iglesias, and Barcia, *The Cuban Slave Market*, 47–52.

76. Moreno Friginals, *El ingenio*, 3:59.

77. Jorge Ibarra, "Regionalismo y esclavitud patriarcal en los departamentos oriental y central de Cuba," *Anales del Caribe* 6 (1986), 22–52.

to the percentage of *coartados* in the slave population at large, then traditional avenues for freedom remained entrenched in Cuban colonial society even at the height of the plantation period. Only a fraction of these slaves would be able to complete the payments required to purchase their total freedom, but this traditional legal custom remained in full effect and seems to have been widely used.⁷⁸

Third, it seems clear that most of these *coartados* were urban slaves. Plantation slavery magnified not only regional disparities within the island, but created basically a dual slave system even within western Cuba. Slaves on plantations generally had few opportunities to claim any rights, while those employed in the urban areas continued to access colonial institutions with some success. As Knight remarks, "legal regulations had some meaning and effect in the towns." Urban slaves were a significant minority in mid-nineteenth-century Cuba: about 20 percent, according to the various estimates compiled by Knight. The unequal geographic distribution of the group further enhanced its visibility and importance, for almost half of all urban slaves in the island lived in Havana.⁷⁹ Many of these slaves continued to make a living through the hiring-out system and some were able to save enough to purchase their freedom, as they had done in previous centuries. Their closeness to colonial institutions and authorities, their access to African cabildos and religious brotherhoods, and their participation in the monetary economy together facilitated their integration into colonial society, symbolized above all by the sizeable class of small entrepreneurs of color who lived in the main urban centers.⁸⁰

Outside sugar's immediate domain some opportunities for slave claim-making continued to exist. Fragmentary evidence indicates that, in the cities, some slaves continued to appeal to colonial authorities in pursuit of their freedom.⁸¹ When in 1855 a royal official complained to the town council of Santiago de Cuba that slaves obtained their *coartación* too easily, municipal authorities responded that they were only enforcing royal decrees

78. Bergad, Iglesias, and Barcia. *The Cuban Slave Market*, 122–31. Visitors to the island frequently referred to this institution. For some examples, see Louis A. Pérez, *Slaves, Sugar, and Colonial Society: Travel Accounts of Cuba, 1801–1899* (Wilmington: SR Books, 1992).

79. Knight, *Slave Society*, 62–63; Marrero, *Cuba*, 9:208.

80. Concerning the urban free population of color, see Pedro Deschamps Chapeaux, *El negro en la economía habanera del siglo XIX* (Havana: UNEAC, 1971) and Rafael Duarte, *El negro en la sociedad colonial* (Santiago de Cuba: Editorial Oriente, 1988).

81. Duarte, *El negro en la sociedad colonial*, 56–58. So far I have identified more than five hundred cases in which slaves petitioned authorities and the courts in the 1770–1870 period in just one section of the ANC, that of Gobierno Superior Civil. These petitions usually revolved around two issues: their freedom or *coartación* and changing owners due to abuses or other reasons.

and laws about the subject.⁸² These laws, the development of plantation slavery notwithstanding, continued to uphold the traditional legal principle that slaves were entitled to purchase their freedom and had the right to appeal to colonial authorities. Following the spirit of the suspended 1789 black code, a slave ordinance approved by the captain general of the colony in 1842 stipulated the appointment of an official protector of slaves, the *síndico procurador*, who was to represent them in litigations and other official acts. Although it is impossible at this point to evaluate how frequent or effective was the intervention of these *síndicos*, it is clear that some urban slaves managed to engage their support.⁸³ At least in theory, the *síndicos* were obliged to pursue any request for freedom. As a *síndico* in Santiago de Cuba asserted in 1829, once he had been informed about the possible right to freedom of a slave, he “could not overlook it.”⁸⁴

It is also worth noting that, although plantation slavery had transformed the island, slave laws continued to show a remarkable doctrinal continuity with the Iberian traditional statutes. The 1842 ordinance upheld the whole panoply of slaves’ limited traditional rights: self-purchase and *coartación*, marriage, baptism, and to change owners in case of physical abuse.⁸⁵ Furthermore, as late as the mid-nineteenth century Cuban courts invoked Las Partidas and other Spanish historic codes in their verdicts.⁸⁶ That sugar plantations were not able to obliterate traditional forms of slave claims-making is evidenced by the very process of abolition, masterfully studied by Rebecca Scott. A process that colonial authorities sought to enact gradually and under strict control from above was sped up by the slaves themselves, who used available legal and institutional resources in conjunction with extrale-

82. Emilio Bacardí y Moreau, *Crónicas de Santiago de Cuba* (Madrid: Breogán, 1973), 3: 159.

83. For a few examples, see Libertad que pretende la parda Francisca de Paula, 1830. ANC, Audiencia de la Habana, leg. 24, no. 312; Dimas Chavez por la libertad de su madre, 1866. ANC, Gobierno Superior Civil, leg. 968, no. 34211; Incidente al intestado de Dn. Luis Minet, 1833. Archivo Provincial de Santiago de Cuba (hereafter APSC), Juzgado de Primera Instancia, leg. 379, no. 9; Causa criminal por lesiones de la negra Agripina Criolla, 1879. ANC, Audiencia de la Habana, leg. 1, no. 65.

84. El Síndico Procurador General reclama la libertad del negro Nicolas. Santiago de Cuba, 1829. APSC, Juzgado de Primera Instancia, leg. 379, no. 3.

85. For a discussion of the “Reglamento de esclavos” of 1842 see Knight, *Slave Society*, 126–32; Ortiz, *Los negros esclavos*, 339–43, 439–52.

86. For a few examples concerning criminal cases, see “Expediente criminal contra Andrés y Justo Mena,” Havana 1864. ANC, Miscelánea de Expedientes, leg. 1391, A; Bienvenido Cano and Federico de Zalta, *Libro de los Síndicos de Ayuntamiento y Juntas Protectoras de Libertos* (Havana: Imprenta del Gobierno, 1875); Antonio Andrés Azoy, *Colección de causas criminales*, 2 vols. (Matanzas: Imprenta El Ferrocarril, 1868); Ortiz, *Los negros esclavos*, 349.

gal strategies. Clearly, some slaves had the knowledge and cultural skills needed to seek the enforcement of these potentially favorable laws.⁸⁷

One need not romanticize the experience of slavery in the Spanish colonies to realize that under Spanish law slaves, depending on their location in the productive structure and the specific phase of development of the slave system, were able to claim some rights and to create some avenues for advancement. Slave law was never able to effectively protect slaves from abuses, much less to guarantee their physical integrity or well being. But those slaves who became familiar with colonial institutions could, despite significant obstacles, appeal to an authority higher than their master to press for some of the rights contained in Spanish law. As an American visitor to the island exclaimed in 1855, in Cuba there was "a master . . . above the masters."⁸⁸

These laws, and the potential for slave claims-making that they generated, did not exist in British America or in the United States South, as Tannenbaum pointed out. In the Iberian colonies these opportunities were always limited, even for slaves not subject to the dehumanizing experience of plantation agriculture, but they existed. Under English law, conversely, slaves had "no legal identity, no right to family life, leisure time or religious instruction, and no access to legal institutions for purposes of protest or litigation against masters."⁸⁹ Unlike the United States where, according to Ira Berlin, masters' rights to free their slaves "shrank as slavery expanded," in Cuba this power was never restricted, not even at the height of the slave-based plantation system. Thus British America did not develop, as the Spanish colonies and Brazil did, a large free population of color.⁹⁰ In the Spanish colonies self-purchase and manumission were always

87. Scott, *Slave Emancipation*.

88. William H. Hurlbut, *Pictures of Cuba* (London: Longman, 1855), 102.

89. Hilary McD. Beckles, "Social and Political Control in the Slave Society," in *The Slave Societies of the Caribbean*, ed. Franklin Knight (London: UNESCO, 1997), 201. On slave law in the U.S. South, see Mark V. Tushnet, *The American Law of Slavery, 1810–1860* (Princeton: Princeton University Press, 1981); Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill: The University of North Carolina Press, 1996); Watson, *Slave Law in the Americas*, 63–90; Paul Finkelman, ed., *Slavery and the Law* (Madison: Madison House, 1977); Eugene D. Genovese, "Slavery in the Legal History of the South and the Nation," *The Journal of Southern History* 59 (1981): 969–98; Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000).

90. Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1974), 138. On restrictions on manumission, see also Arthur Howington, "'A Property of Special and Peculiar Value': The Tennessee Supreme Court and the Law of Manumission," in *Law, the Constitution, and Slavery*, ed. Paul Finkelman (New York: Garland, 1989), 210–23. For a comparative assessment of this question in Latin America, see

a possibility, protected by the laws and social customs. This implied that slavery was not an inexorable permanent status. Even in the nineteenth century it is difficult to imagine a court in Cuba declare, as a judge in Georgia did in 1839, that "neither humanity, nor religion, nor common justice, requires us to sanction or favor domestic emancipation, to give our slaves their liberty."⁹¹

Whether these conditions guaranteed that the transition from slavery to citizenship would inexorably take place, as Tannenbaum also claimed, is an altogether different question. Emancipation did not result in the extension of even the most basic rights of citizenship to the former slaves and their descendants in most of Latin America. In Cuba this transition did take place, but only after thirty years of anticolonial struggle in which whites and nonwhites participated. The wars created new grounds for claims-making and reinforced old ones. As the nationalist leadership and the colonial government competed for the support of blacks, the slaves and their descendants found ways to access new social spaces and to assert rights with renewed vigor.⁹²

David W. Cohen and Jack P. Greene, eds., *Neither Slave nor Free: The Freedmen of African Descent in the Slave Societies of the New World* (Baltimore: The Johns Hopkins University Press, 1972).

91. Quoted in Tushnet, *The American Law of Slavery*, 21.

92. For a discussion of the complex intersections between the wars of independence, the process of slave emancipation, and the creation of a cross-racial nationalist coalition, see Ada Ferrer, *Insurgent Cuba: Race, Nation, and Revolution, 1868–1898* (Chapel Hill: University of North Carolina Press, 1999); Scott, *Slave Emancipation*. For a discussion of blacks' activism and claims-making in the early years of the republic, see the recent volume edited by Fernando Martínez Heredia, Rebecca J. Scott, and Orlando F. García Martínez, *Espacios, silencios y los sentidos de la libertad: Cuba entre 1878 y 1912* (Havana: Unión, 2001). See also Rebecca J. Scott, "Reclaiming Gregoria's Mule: The Meanings of Freedom in the Arimao and Caunao Valleys, Cienfuegos, Cuba, 1880–1899," *Past and Present* 170 (February 2001): 181–217, and Rebecca J. Scott and Michael Zeuske, "Property in Writing, Property on the Ground: Pigs, Horses, Land, and Citizenship in the Aftermath of Slavery, Cuba, 1880–1909," *Comparative Studies in Society and History* 44 (2002): 669–99.