

## **Slaves and the Creation of Legal Rights in Cuba: Coartación and Papel**

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On August 16 1855 doña Carlota Dascar, a resident in Santiago de Cuba, initiated a legal suit against Miguel Rodriguez, síndico procurador of the city, to prevent the forcible sale of her slave María. Dascar had tried to sell her slave, whom she described as a healthy criolla without vices, for 700 pesos, but the slave had “presented” herself before the síndico to “request her coartación because she had cincuenta pesos.” As the municipal official charged with the representation of slave interests, the síndico then initiated the customary process of assessing the value of the slave to fix the price at which María would become coartada, that is, the price that she would have to pay to purchase her freedom. He invited Dascar to appoint an appraiser, whose assessment would be compared to that produced by the síndico’s own assessor.<sup>1</sup>

As was frequently the case, the valuations were widely apart and had to be settled in court. The representative of the owner appraised at María in 600 pesos; the síndico’s valued her at 450. The local justice then proceeded to appoint a legal assessor, who ratified 450 pesos as the right value of the slave, making this the price at which María would be coartada. Having accepted this defeat, Dascar went to the síndico’s house and asked him “to return her slave,” for María had not voiced “any complaints” against her. Instead of receiving her slave back, however, Dascar was presented with a new challenge, as the síndico “demanded” that she issue a sale license—“su papel de venta”—for María to seek a new owner, while threatening her to take the case to court again.

Now incensed, Dascar claimed that coartación “did not limit in any sense the dominium that masters have over their slaves and if the slave who is not coartado cannot be sold against the will of his master without just cause, the same must be the case with the coartado slaves, who are subject to the same servitude as the others; this is categorical

and is not open to doubt or interpretation.” Yet the dominium of the master in this area was anything but categorical, as Dascar would learn to her dismay. In court, the *síndico* invoked article 35 of the Cuban slave ordinance, the *Reglamento de Esclavos* of 1842, which in his view “clearly gives the *coartado* slave the power to sell himself whenever he wants against the will of his master... from which it follows that being the black María Irene *coartada*, she is in the situation of soliciting a new master any time she wishes.”

The judge who heard the case sided with the *síndico* and ordered Dascar “to give the corresponding paper to her slave so that she could seek a master at her leisure” [*papel a la dicha esclava para que buscase amo a su gusto*]. Although the owner persisted in her refusal to sell the slave, the justice ordered the sale to proceed. María had found someone ready to pay her price, including the taxes on the sale, which were the responsibility of any *coartado* who wanted to be sold against the wishes of his or her master. Frustrated, Dascar appealed to the Captain General noting that she “had complained and protested in vain against this process, mainly against the sale of the black María. I have refused to sign or authorize anything, but in vain; everything has move forward with a rigorous inflexibility.” She also used family connections to bring the case before Santiago’s town council, where the husband of her stepdaughter, Regidor don Ruperto Ulecia Ledesma, presented for discussion a lengthy memorandum depicting the actions of the *síndicos* and the slaves’ attempts to change owners as a “veritable forceful expropriation.” According to the town councilor, two issues merited the attention of the municipal body. The first concerned the process of legally appraising the prices of the slaves for the purposes of *coartación*, a process which limited unlawfully the owner’s freedom to ask whichever price he deemed proper for his property. The second referred to “the outrage of the

coartado slave changing owners as many times as he wishes without having just cause,” which was tantamount to an expropriation. In both instances, he noted, the “sacred... property rights” of the masters were being “curtailed.”<sup>2</sup>

Dascar’s judicial and extrajudicial efforts were not exceptional. Her complaints were part of a large chorus of grumbling slave owners who by the 1850s were trying to resist, through litigation and through appeals to authorities, what they perceived as a growing challenge to their dominium over their slaves. They resented both their inability to prevent the municipal officials’ interference in the management of their slaves and the slaves’ successful invocation of legal rights that could be exercised against their wishes. Not without reason, the owners asserted that these prerogatives represented a dangerous concession to the slaves. The enforcement of what lawyers, justices, and authorities described as derechos (“rights”) had “relaxed slavery completely” and “impaired the subordination” on which slavery was based.

The most important of these rights were coartación and “pedir papel” (request paper) to seek a new owner, two institutions with long roots in the island. Through coartación masters and slaves agreed on a manumission price that could not be subsequently altered.<sup>3</sup> The slave could then make partial payments towards his or her freedom. As the case of María illustrates, by the mid-nineteenth century these two legal practices had become linked, for some lawyers, justices, and slaves believed that coartados had the right to change masters at will. However, neither coartación nor the possibility of changing masters figured in the legal codes of Castile as slave rights. Rather, it seems that these prerogatives emerged out of constant litigation by the slaves themselves and as a pragmatic response to the slaves’ initiatives, which in this way were

channeled into the legal sphere. Until the promulgation of the Reglamento de Esclavos in 1842 these rights were based on little other than custom. They could be claimed as customary rights at best and were quite vulnerable to the whim of individual masters. But in 1842 these customary rights were written into law, codified, and henceforth treated by most justices and many jurists as true legal rights, to be observed even against the will of the owners. Furthermore, some jurists and justices claimed that these rights had wide ranging legal effects that gave slaves considerable control over their lives and labor. But how did these legal rights come to exist and how did they relate to the traditional codes of Castile or to colonial laws? And why were these customary rights codified, and codified precisely as slave rights, in Cuban nineteenth-century slave society, despite the opposition of the slave owners?

This paper attempts to answer these questions. It does so by focusing, first, on the evolution of the law in order to establish the possible bases for the practices of *coartación* and *papel*. I find that until the Reglamento de Esclavos of 1842, these laws provided only a very tenuous foundation to what María and other slaves attempted to claim as personal rights. The slave owners' systematic rejection of these claims resulted in litigation, forcing justices to define which practices conformed to the law and what entitlements, if any, the slaves had under Spanish law and legal customs. These conflicts are best studied through the legal processes themselves, which show that justices did not share a uniform view about these issues. The conflicts surrounding these legal practices peaked in the 1840s and 1850s, after the Reglamento of 1842 codified them unequivocally as slave rights, in terms that many masters deemed openly confiscatory. The very codification of these potentially favorable legal practices in a slave society such

as Cuba is something of a puzzle. Instead of treating *coartación* and the practice of *pedir papel* as static, abstract rights, this paper studies these practices as contested legal institutions in which different interests—those of slave owners, colonial authorities, legal experts, and slaves—clashed.<sup>4</sup>

It is not always possible to offer chronological precisions about the evolution of these institutions. The practices of *coartación* and *papel* evolved into customary rights—again, highly contested and with little foundation in written law—during Cuba’s long early colonial period, between the sixteenth and eighteenth centuries. Prior to the development of plantation slavery in the western section of the island after the late 1700s, Cuba was a society with slaves, not a slave society, to use a problematic but nonetheless graphic distinction.<sup>5</sup> Slavery was mainly urban in character and a large proportion of slaves were used in the service economy of Havana and other cities. Limited Spanish migration to the island required slaves to perform economic activities that might otherwise have been closed to them and that implied some degree of autonomy and their active participation in the mercantile life of the cities. In the sixteenth and seventeenth centuries, slaves and free blacks monopolized important sectors of Havana’s booming service economy. They were also conspicuous in the trades, not just as daily laborers, but as master artisans with their own shops. An indeterminate but significant number of slaves hired themselves out, lived in their own houses, and operated inns, taverns, and other commercial establishments.<sup>6</sup>

Through their participation in market transactions and other 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 masters

had obligations and slaves had the right to appeal to authorities—to an authority higher than their master—to denounce mistreatment or abuse. This may have been the slaves’ “only right,” as a Cuban justice stated in 1846, but it was a critical one.<sup>7</sup> The practice of *papel* seems to have evolved as a consequence of the slaves’ right of petition, as they requested authorities to be sold to a different master due to abuse. Something similar took place with *coartación*, a practice registered in the island since the 1590s. Slaves who had begun to make payments towards their freedom claimed that they had purchased a portion of their time and labor. They claimed further that any limitation on their ability to complete payments constituted abuse, which allegedly entitled them to request *papel* and change owners. Thus by the eighteenth century these two practices were frequently linked.

These practices did not vanish with the transformations experienced by Cuban society during the early nineteenth century, when the island became a leading producer of sugar. They were part of a “heritage” that, as Rebecca Scott states, “would influence society in the nineteenth century.” To be sure, recently imported Africans in the deep plantation zones would have limited access to authorities and the law, but as I have claimed elsewhere, the new economic and social order had to be imposed on and reconciled with previous customs and social mores.<sup>8</sup>

Paradoxically, slaves’ opportunities to press claims probably increased after the 1760s with the creation of the office of *síndico procurador*. A municipal institution transplanted to the colonies in 1766, the *síndicos* were to provide legal representation for the slaves and to mediate in their conflicts with masters. The Real Cédula of 1789 “on the education, treatment, and occupation of the slaves” referred to the *síndicos* as

“protector[s] of the slaves” and established that no slave could be criminally prosecuted without the intervention of the *síndico*, who was also responsible for charging slave owners and overseers in cases of excessive punishment. Since the *síndicos* were elected by the town council, their position considered an honorable public duty, one must assume that many were themselves slave owners and not particularly concerned with the wellbeing of the slaves.<sup>9</sup> At the same time, the very existence of the institution created clearly delimited institutional channels for enterprising slaves to claim rights and the possibility of expanded state intromission into the master-slave relationship. As will be shown below, with time the *síndicos* seem to have developed procedures and values that many owners deemed intolerable. In the midst of Cuba’s slave society, the *síndicos*’ actions contributed to reproduce customary legal figures such as *coartación* and *paper* while surrounding them with a mantra of legality.<sup>10</sup>

In trying to understand how slaves positioned themselves as legal subjects and tried to take advantage of the limited legal recourse available in colonial societies, this paper joins a fast-growing body of scholarship concerning slavery and the law in Latin America. In contrast to a previous generation of scholars who, in reaction to celebratory accounts of Iberian legal culture, were skeptical if not cynical about the importance of the law to the study of slavery, the most recent scholarship concentrates on the slaves themselves and on their attempts to find cracks within the Spanish normative system.<sup>11</sup> These scholars emphasize that under Spanish absolutism slaves were constituted as subjects who were “socially not so dead,” that civil and religious authorities encroached on the masters’ control over slaves, and that slaves learned how to navigate the contradictory Spanish legal maze and to use it to their advantage.<sup>12</sup> As historian Herman



Bennett puts it, “the enslaved gained an acute awareness of competing obligations and rights, a form of ambiguity they willingly exploited by deploying regulatory devices in a manner that the Spanish monarchs never intended.”<sup>13</sup>

This is precisely what happened with the poorly studied practices of *pedir papel* and *coartación*. Historians of slavery in Cuba have known of *coartación* for a long time, but debates have centered on its frequency and on the institution’s role in facilitating the integration of Africans into colonial society.<sup>14</sup> Determining the proportion of *coartado* slaves is nearly impossible, for it is likely that only a fraction of the slaves under *coartación* ever completed their payments and obtained their freedom. According to the census of 1871 only 2,137 slaves were *coartados* in a slave population of over 280,000. In their study of the Cuban slave market, however, Laird Bergad and his collaborators found that in a random sample of notarized sales between 1790 and 1880, *coartados* represented 13 percent of the total. “Significant numbers of slaves became *coartados*, and this was no doubt critical for the hopes and aspirations of slave communities.” Some contemporaries shared the view that many slaves were becoming *coartados*, although their perceptions were tinged by the fear of losing control over slaves in general. “It happens with frequency,” asserted a lawyer in 1830. “Slaves are becoming *coartados* in large numbers,” a town councilor from Santiago concurred in 1855.<sup>15</sup>

Whatever the proportion of slaves that became *coartados*, it is difficult to sustain the claim that this represented, in quantitative terms, a major avenue towards freedom in nineteenth-century Cuba. According to various sources, the number of slaves manumitted in the island each year during the 1850s and early 1860s was around two thousand, which would suggest annual manumission rates below one percent.<sup>16</sup> These figures of course

included all sorts of manumission, not just gradual self-purchases, so the annual number of slaves obtaining freedom through coartación was probably small.

But the significance of coartación went beyond ratios and the number of slaves who obtained freedom through it. As with marronage or revolts—which always involved a small proportion of total slaves—the impact of coartación cannot be reduced to a question of percentages.<sup>17</sup> Slave owners resented coartación and its concomitant practice of *papel* so much not because large numbers of slaves used it to obtain freedom, but because they could do it without the acquiescence of the masters. With coartación manumission ceased to be an expression of the generosity of the owner, no longer a pious act to serve God, as the letters of freedom frequently stated. With coartación manumission was imposed on masters by entrepreneurial slaves, not given to slaves by God-fearing and humane masters. To make matters worse, coartación produced, or in the eyes of some slaves and justices was understood to produce, a number of poorly defined and much contested rights that gave slaves significant control over their labor and personal lives, including the alleged right to change masters at will, the source of much litigation in nineteenth-century Cuba. For the slave owners, at least, the significance of coartación resided in its serious attack on the property rights of masters.

#### Slave Owners' Obligations

The masters' outrage was not without foundation, for as they repeatedly claimed the rights that slaves and some justices attempted to impose were not explicitly regulated in Spanish law. Although the possibility of manumission was long recognized in the Castilian codes and in tradition, it was always dependent on the goodwill and benevolence of the master. It was a master's prerogative, not a slave right. The traditional

codes of Castile granted slaves a few rights that were not conditional on their masters' wishes—such as the right to marry and to petition authorities in cases of abuse—but these were the exception rather than the rule.

What the codes did regulate in a fairly systematic manner were the obligations of the masters. In addition to religious instruction, the master's most important duty concerned the physical wellbeing of the slave. According to Law 6, title 21, of the Fourth Partida, a master had “complete authority” over his slave “to dispose of him as he pleases.” But there were limits to the master's power: he was not supposed to wound, kill or mutilate his slaves, at least not without proper judicial order, and he could not starve them to death. In cases of severe abuse, which the law defined as starvation and intolerable physical punishments, slaves could complain to a judge. The judge in turn was to inquire about the complaint and, if it was corroborated, order the forcible sale of the slave to another master.<sup>18</sup>

These three principles—that masters should not abuse their slaves; that slaves could complain to a judge, and that justices should hear these claims and proceed accordingly—were ratified by numerous subsequent regulations. The obligation to feed, house, and care for infirm slaves was confirmed in the ordinances issued by the Audiencia of Santo Domingo in 1528 and 1535, by the town council of the same city in 1768, and in the Código Negro of 1784. The ordinances issued by the Audiencia also charged municipal officials with visiting the farms and gathering information about excessive punishments, “ill treatments,” and failure to provide enough food to the slaves, in which case they should notify local authorities and justices to proceed “according to justice.” The 1784 Code referred to the usefulness of these visits and spoke of them as

something that was “frequently” done.<sup>19</sup> Whether justices actually ordered the sale of abused slaves is not known. The old principle contained in the Partidas was also reproduced in regulations issued by the crown for the colonial territories, the so-called Leyes de Indias.<sup>20</sup>

When the first comprehensive ordinances for Cuban villages were issued in 1574, they basically replicated the language that the Audiencia of Santo Domingo had used in its own regulations. This is not surprising, for the Cuban rules were drafted by a visiting judge from that court, the Oidor Alonso de Cáceres y Ovando. His “ordenanzas” made reference to two forms of “ill treatment.” The first concerned the lack of proper nourishment and clothing for the slaves; the second to cruel punishments, particularly to excessive flogging and to “burning with different types of resins.” To prevent these abuses Cáceres ordered municipal officials to visit the farms in their jurisdiction twice every year. As in La Española, the purpose of these visits was to gather information concerning “the treatment” of the slaves and whether the ordinances concerning food and clothing were being observed. In cases of cruelty and “excessive punishments,” the justices should forcibly sell the slave and proceed legally against the owner.<sup>21</sup>

It is difficult to establish whether these visits were performed in Cuba as regularly as mandated and whether the municipal officials inquired about the treatment of slaves, as they were supposed to do. But there is little doubt that the visits themselves continued to be seen as one of the responsibilities of town councilors well into the eighteenth century. The importance of these visits was noted by a colonial official in 1762, who elaborated that they allowed authorities to “watch over the good treatment of slaves, whether they are assisted in terms of food and clothing, matters that require the presence

and authority of the judge himself.” Ten years later the custom was still observed. In January of 1772 the Governor commissioned one of the councilors to visit the farms to “inspect the slaves... and see if they were well dressed and treated as stated in ordinance sixty” of the 1574 Cáceres ordinances. A case of egregious abuse was detected in one of these inspections in 1754, when the visiting justice initiated a case *ex-officio* against landowner Fernando Ramos for mistreating one of his slaves, a child five or six years old who he had “punished with fire and other cruelties.”<sup>22</sup>

Regardless of the frequency and concrete impact of these visits, it appears that the justices continued to uphold the centuries-old notion that masters were to treat their slaves properly. Local regulations reproduced the traditional parameters for acceptable treatment, which required adequate nourishment and clothing and forbid unusually cruel punishments. The 1789 Real Cédula on the treatment of slaves ratified the same principles. As usual, the physical wellbeing of the slaves was identified, among other things, with a given quantity and quality of food and clothing, as well as with their physical integrity. Following the letter of the *Partidas*, the excessive punishment of a slave would result not only in the forcible sale of the slave, but also the criminal prosecution of the master “as if the injured party was free.”<sup>23</sup>

Thus by the late eighteenth century, a well established legal doctrine regarding what constituted acceptable “treatment” for slaves existed in colonial law. Equally well established was the principle that the justices not only had the power to interfere in cases of excessive punishment or mistreatment, but that they indeed had an obligation to interfere and, if circumstances warranted, to impose on abusive masters the forcible sale of the slave. A subtle but telling distinction had taken place since the *Partidas*, however.

While maintaining the preoccupation with the physical wellbeing of the slave, the colonial ordinances and the Real Cédula of 1789 had shifted the initiative in mistreatment cases from the slaves themselves to justices and local officials. What the Partidas had envisioned as a limited slave prerogative later regulations treated as a duty of municipal officials.

### Slaves' Customary Rights

In Cuba and elsewhere in the Iberian colonial world, however, slaves did not wait for local officials to detect and prosecute instances of abuse and mistreatment. They seized the initiative and approached justices to complain about abusive masters and to seek redress from authorities. In some cases this redress consisted simply in the mediation of an outsider to improve conditions in the workplace or replace an abusive overseer, but in other cases slaves' demands went further. What all these cases had in common, however, was the slaves' attempt to transform what the law had envisioned as obligations of the masters into personal rights.

Particularly for rural slaves, presenting a complaint before local authorities was not an easy task. They had to abandon the farm where they worked, walk for hours or days, find a justice in a nearby town, and elicit his sympathy. Extant cases in Cuban nineteenth-century judicial records suggest, however, that at least occasionally rural slaves turned to authorities to complain of mistreatment, and that these complaints were worded in terms that echoed the dominant legal culture. The case of eight slaves who walked out of the San Miguel sugar mill and presented themselves before the local justice in the town of Corral Falso, Matanzas, in 1846, exemplifies this. The slaves had come "to complain against the administration" of the mill, arguing that they did not receive enough

food, that they were forced to perform “excessive work,” and that they did not get proper clothing or medical attention. Something similar happened in the sugar mill Buenavista, in the municipality of Trinidad in central Cuba. In 1879 nineteen slaves escaped from the mill and told authorities that the overseer abused them and gave them “bad food.” In yet another case, Pablo, a slave in the Caridad sugar mill, municipality of Colón, presented himself before a local official in 1865 to complain against his overseer, who he claimed had punished him excessively by giving him over one hundred lashes and abused the slaves in a variety of ways. Asked to elaborate on the conditions at the mill, Pablo declared that the overseer and the driver had mutilated two slaves in the past “without anybody notifying the authorities” and that slaves only got plantains and rotten jerked meat twice a day.<sup>24</sup>

In his deposition Pablo charged that the overseer also punished those slaves who sought the sponsorship and protection of local authorities (the verb he used was “apadrinarse”). He mentioned the case of Secundino Criollo, who had asked a local authority to intercede on his behalf to avoid a punishment. Even though the authority had called the overseer and reprimanded him, Pablo continued, Secundino had been shackled and punished “a lot” as a result.

Pablo’s testimony suggests that even though sympathetic authorities could not guarantee the protection of the slaves, the latter were very much aware of the existence of these authorities and of the possibility of seeking their sponsorship and mediation. It is possible that slaves reserved this recourse for extreme situations, perhaps for those conflicts that could result in life-threatening punishments or severe physical abuses. In any case, local justices seem to have treated these as routine cases. They opened dossiers,

took the slaves' depositions in the presence of witnesses, and called on medical experts to examine those slaves who claimed to have been abused. These were time-honored procedures: it is what local justices in Spain and the colonies had done for centuries. Nowhere in the proceedings do we get the sense that these cases were exceptional or that the local justices were outraged by the insolence of the slaves. As the instructing judge in one of these cases reported, appealing to authorities in cases of abuse was the slaves "only right"—their único derecho.<sup>25</sup>

Slaves not only tried to transform the masters' responsibilities into bases for legal claims, but took matters a step further. By the late eighteenth century slaves who complained about abuses of various kinds frequently requested authorities' assistance to change owners. This practice was sometimes referred to as "buscar papel" or "pedir papel," the "paper" in question a written document issued by the master or a justice authorizing the slave to find a party interested in purchasing him or her for a price previously agreed with the owner. As mentioned above, the Partidas and subsequent regulations allowed justices to forcibly sell slaves who had been subjected to severe abuses, but nowhere did they suggest that slaves themselves were entitled to pursue a change of owners even in cases of flagrant abuse. The initiative belonged to the justices. In the practice of seeking "papel," however, it was the slaves who took action, as if the masters' negligence of their legal duties entitled slaves to select a new owner.

The available evidence suggests that this practice was much more common in the cities than in rural areas, where opportunities for mobility and for the creation of the social networks needed to elicit the interest of a new (and potentially more favorable) buyer were more restricted. But rural workers also attempted to change owners when



abused or neglected by their masters. One such case concerns the slave Manuel de la Trinidad, who in 1795 escaped the sugar mill where he worked. He wanted his master to “give him paper to find another whom he would serve, for they do not attend to him as is required and they give him too much work.”<sup>26</sup> Trinidad’s reference to the “attention” that owners were “required” to give to their slaves follows closely the letter of the law. In addition to excessive work, he denounced the lack of “necessary food” plus “the cruelest treatment that can be imagined.” In 1850, the slave Andrés Criollo, who worked on a tobacco farm in western Cuba, presented himself before the *síndico procurador* of Havana “to complain against the treatment he receives from his master” and to “solicit paper” to seek a new owner. Ignacio, a slave employed on a cattle ranch in the jurisdiction of Havana, also presented himself before the *síndico* to seek paper, in his case for “excessive punishment.” Cristobal del Castillo, a slave in another cattle farm, offered a much laxer definition of abuse in 1836. He complained of mistreatment because his owner did not allow him to “earn a few reales with which to buy his freedom nor would he give him paper to search for a new master.”<sup>27</sup>

It was in the cities where slaves attempted more frequently to turn what the law had conceived as a limited judicial power in cases of extreme abuse into a potential right to be claimed before authorities. Foreigners who visited the island in the early 19<sup>th</sup> century reported to be surprised when slaves approached them with the question: “would you like to buy me?”<sup>28</sup> A *síndico* in Havana reported in 1861 that out of 307 complaints presented by slaves before him during the previous year, 66 had resulted in slaves “receiving paper” and another 28 in owners pledging to sell the slave to another person. In all these cases, the transfer of ownership was a direct consequence of the slaves’

initiatives.<sup>29</sup> An extreme case is that of Ciprián Castillo, who bluntly stated in 1852 that he was requesting paper because he was not pleased with his new master: no siendo de su gusto el nuevo amo. Equally extreme was the case of Luisa Vázquez del Castillo, who in 1858 solicited paper and a judicial assessment of her price because it “was not convenient for her to remain in the house” of her current owner. In some of these cases there was not even an attempt to demonstrate mistreatment, or the notion of abuse had been stretched by the slaves well beyond the tight limits regulated in the codes.<sup>30</sup>

To many masters these demands for “paper” must have seemed a display of the worst kind of insubordination and insolence, an assault on their property rights. Juan Francisco Manzano, the author of a famous slave autobiography published in 1840, recalled the negative reaction of his master when he raised the possibility of obtaining paper “in order to advertise for a new master.” His mistress was reportedly “quite astonished” by his “boldness” and denied the request. For some masters, however, giving paper may have represented the possibility of selling a slave under favorable conditions. It is possible that this custom developed in part as an extension of the widely practiced hiring out system, by which a slave sought work, and therefore a temporary “master,” with the authorization of his or her owner. The testimony of novelist Cirilo Villaverde suggests that the two practices could be easily mixed. “The first thing that doña Rosa did in the city was to give license or paper to María de Regla to seek employment (acomodo) or master (amo). The paper... stated, more or less, what follows: I give paper to my slave María de Regla so that in the next ten days she can look for employment or master in the city. She is criolla, rational, intelligent and agile, healthy, strong, has never suffered any contagious disease, does not have known defects (tachas), knows how to sew,

understands about washing, ironing, and taking care of children and infirm. She is being given paper because she has requested it. She has not known any master other than the one under whom she was born and who is now selling her.” Thus María de Regla could either try to find a convenient job, a new master, or both.<sup>31</sup>

Finally, there were also masters who, faced with the possibility of legal proceedings and outside interference, resigned themselves to selling an otherwise unmanageable slave. Joaquina Pimienta admitted as much when she finally agreed to her slave Micaela O’Farrill’s demand for paper: “I would rather miss her services than suffer her impertinence.” As a *síndico* reasoned in a one of these cases, allowing a slave to change masters was frequently in the best interest of the owners, whose “tranquility” and “security” might otherwise be at risk.<sup>32</sup>

As a customary right claimed by slaves who declared to be the victims of various forms of abuse, the practice of paper had some foundation in law, however flimsy. The slaves attempted to invoke rights born out of the masters’ unfulfilled duties, which were clearly established in legal doctrine. The legal bases of *coartación* were even flimsier. No written law referred to this institution, although a law in the *Partidas* mentioned the sale of slaves “under the condition that they be emancipated within a certain time” and established that such conditions could not be altered—one of the main elements of the institution as it evolved later. The contours of *coartación* seem to have become defined over time as masters and slaves negotiated the implications of the slave’s gradual purchase of his freedom. Indeed, the institution was known in Havana and in southern Spain since the late 16<sup>th</sup> century.<sup>33</sup> Changes in terminology reveal some of the changes undergone by *coartación*. A 1581 Málaga population count and seventeenth-century royal decrees refer

to slaves who were “cortados.” The 1729 edition of the Dictionary of the Spanish Royal Academy defined “cortarse” as the action by which a slave “adjusted” with his master the terms of his freedom. Cortarse referred to the action by which slaves cut or divided their price into pieces. By the late eighteenth century, however, the practice was known as “coartación,” which literally means “hindrance” or “restriction.” Whereas cortar evokes the action of the slave, coartar refers to limitations on the master’s power. Over time, the slaves’ actions had become a constraint on the master’s dominium.<sup>34</sup>

Because of its lack of precise definition, coartación should be seen as a legal institution in the making with poorly defined and contested legal effects. The one element of the institution that seems to have been accepted by all involved was the invariability of the price. In 1640, for instance, an owner acknowledged in his will that his slave Miguel Angola had “arranged his freedom” with him in 1636 for 400 ducados, of which he had already paid 228. He ordered the slave to be given his freedom letter as soon as he paid the difference. Another slave, Juana, a 20-year old resident of Guanabacoa, agreed with her master in 1690 on a freedom price of 300 pesos, of which she paid half. The owner issued a notarized receipt, declaring that he would grant her freedom whenever she paid the other half. It was understood that a slave who had paid a fraction of his redemption price could not be mortgaged or sold for a higher value. That is why when the slave Juan, a 17-year old criollo, was sold four times in 1690, it was 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. The typical sale contract established that the buyer of the coartado bought the slave “under the said condition” and that he could “possess and mortgage” the slave but not in an amount

higher than the remaining price. Royal regulations ratified the invariability of the price and reinforced the principle that coartado slaves could only be sold under this condition.<sup>35</sup>

Much less clear was the status of a slave while coartado and the legal implications of this status. One subject of litigation concerned the coartados' possible control over the portion of time and labor for which they had already paid. Some slave owners believed that since the coartado had purchased a portion of himself or herself, they owned only part of the slave. The sale of Juana, a coartado mulatto slave who had paid half of her price in 1690, exemplifies this custom: "concerning this sale it is only on half of the said mulatto woman. The buyer must use her in the same form and if he uses her whole service or rent, collecting it entirely, he must grant her half of the time that belongs to her and discount it from her price." In a 1590 sale of another coartado woman, the buyer agreed to discount four ducados monthly from her manumission price in order to enjoy her services full time.<sup>36</sup>

The special status that many individuals identified with coartación is perhaps best illustrated by the fact that since the late eighteenth century non-coartado slaves were referred to as enteros (complete, entire). This designation suggested that coartados were only partially enslaved or, as a local official reported in 1826, that coartados "not being free can barely be called slaves." As a *síndico* argued in 1861, having paid a portion of his price, the slave "became associated to the dominium of himself."<sup>37</sup>

Some owners, however, rejected the notion that coartados were entitled to a portion of their labor. In 1826 master don Francisco Prado went to court over the earnings generated by his slave José Genaro. The *síndico* representing the slave demanded a portion of the profit he had produced for the last two and a half years—the time during

which he had been coartado—to be credited towards his coartación. The owner refused. Some lawyers supported their position and decried the custom of linking the slaves’ obligations with the price differential for their freedom. As one of them stated in 1830, “some síndicos have attempted to alleviate slavery, so as to pretend to concede a half of their time to slaves who are bound in service of their masters (when they have paid half of their value to their owners); but this opinion is not in conformity with the law... The coartación... was not established to reduce slavery into halves, but only to prevent any alteration in the price of the slaves.”<sup>38</sup>

In practice, however, at least some of the coartados managed, if not to reduce slavery by half, to credit a portion of their time and labor towards the manumission price. Although this issue continued to be litigated well into the nineteenth century, the custom that slaves should retain a fraction of their earnings proportional to the payments they had already made persisted. By the 19<sup>th</sup> century in Cuba, as in Puerto Rico, the coartado slaves who were hired out paid a reduced rent to their masters. This rent was fixed at one real daily per one hundred pesos of the remaining price for their manumission.<sup>39</sup>

Another contentious point concerned the situation of pregnant coartado women and whether this condition was transferred to their unborn children. Some jurists in Havana understood that the value of the child should be reduced in a proportion similar to the payments already made by the mother. Governor José de Ezpeleta issued a decree in 1786 supporting this view and based it on the legal principle that children always followed the condition of the mother. But the Consejo de Indias, sensitive to allegations concerning the need for workers for colonial agriculture, reversed this ruling as “contrary to law, for coartación in mothers is something only for them, so personal that it cannot be

transmitted to their children,” a principle that was ratified by a royal cédula of 1789. Although a few slaves attempted to claim freedom based on the condition of their mothers as coartadas, these cases did not prosper.<sup>40</sup> Later litigation and conflicts concentrated rather on a different question: the mothers’ ability to coartar their recently born children.

Two additional elements of coartación, also poorly defined, were litigated in the courts of Havana in the early nineteenth century. The first concerned the masters’ obligation to accept their slaves’ payment towards coartación. Although some owners clearly resented any attempt to treat manumission as a slave right, instead of a prerogative of the master, the *síndicos* were invariably successful on this point. They invoked the traditional principle of *favor libertatis*, contained in the *Partidas*, and forced reluctant masters to issue freedom letters and coartación papers to those slaves who could pay for them.<sup>41</sup> As a *síndico* put it in a demand against a master who claimed outstanding debts to refuse a payment from a coartado slave, “neither this motive nor any other of greater importance can have the effect of delaying or creating obstacles” for freedom. On this point legislation had been consistent: freedom was to be favored. The Consejo de Indias ratified the principle in a 1778 pronouncement concerning coartación: masters were “obligated, according to custom, to give [slaves] their freedom whenever they showed the corresponding price.”<sup>42</sup>

By far the most contentious issue was the coartado’s alleged right to seek *papel* and change masters at will. It is difficult to ascertain how these two legal practices became intertwined, but it is likely that as part of their drive for increased self-control, the coartados felt entitled to claim abuse or mistreatment whenever the owners attempted

to reassert control over them. The claim of abuse would then be used to request paper. Already in 1766 Governor Antonio María Bucarely made reference to the “disputes” generated by the “voluntary and involuntary sales” of the coartados. Although the Council of Indies stated unequivocally that coartación did not entitle slaves to change masters without the latter’s consent, the slaves and the síndicos who represented them continued to invoke this customary right. In some cases they did so by claiming abuse, which was construed broadly as any limitation on the coartado’s ability to work towards his freedom. In other cases they simply alleged that the right to change masters was inherent to the status of coartación.<sup>43</sup>

Of the first kind was the case of Micaela O’Farril, an urban slave who in 1835 presented herself in the palace of the Captain General to request assistance to obtain her paper to change owners. She claimed to have suffered “unbearable” but unspecified “ill treatments” at the hands of her owner and that “the laws allow the slave to change owners, particularly when... she is coartada.” Claiming distaste for judicial proceedings, the master agreed. The case of the coartado Pedro López the same year exemplifies the second kind, in which demands to change owners were not based on claims of mistreatment. Here the síndico argued that the slave should receive his paper because this was “in his unfortunate situation, the only relief that the law gives him.” Other síndicos put it in more forceful terms, as in this 1837 case: “his master must give her paper to search for a new master because this is a prerogative of the coartado slaves.” No abuse whatsoever was alleged.<sup>44</sup>

Masters resented this assault on their dominium and litigated against their slaves and the síndicos who, representing them, invoked rights without foundation in the codes.



They found a sympathetic ear in those lawyers, justices, and even *síndicos* who shared their view that *coartados* were not entitled to change owners against the master's consent without just cause. As lawyer and magistrate José Serapio Mojarrieta stated, "The question may also be asked if slaves (*coartados*) have the right to go out of the power of their masters whenever they desire, and the answer is not difficult, if we consider that the slaves (*enteros*) entirely so are obliged to allege some great reason to compel their masters to sell them. And what difference can there be between one and the other, when we see that the yoke of slavery on all is the same? If the slaves (*coartados*) do not enjoy the rights of freemen, on what principle can they claim the right of changing masters at their pleasure?" A *síndico* concurred with this assessment in 1836, arguing that *coartación*'s only legal effect was to limit the sale price. In his view the institution did not "give a slave the right to change owners, just for his pleasure" nor did it force masters to give slaves a portion of their earnings.<sup>45</sup>

According to Mojarrieta, who in the 1820s worked as a lawyer at the Audiencia of Puerto Príncipe, this appellate court always rejected the *coartados*' demands to change masters. Indeed there is evidence that in the early decades of the nineteenth century masters managed to litigate successfully against this practice. In 1820, for instance, don Leandro Garcia agreed to the petition of his slave Bernardo Lucumí to become *coartado*, but rejected his request of paper to change owners. Since the *síndico* failed to reach an agreement, the case went to a judge, who found the slave's petition without merit: "not being sufficient the causes alleged by Bernardo Lucumí to compel his master Leandro García y Sanabria to this alienation... it does not proceed, informing don Leandro that he has to accept the amounts that his slave may give him for his freedom." Equally

successful in rejecting his slave's petition for papel was the Marquis of Campo Florido in 1833. He alleged that "he could not be forced by the síndico" to the sale and that his petition did not conform to reason, the law, or the "delicate political order" in a country in which slaves outnumbered masters by the hundreds. The judge concurred, stating further that the síndico did not have jurisdiction in this case to begin with.<sup>46</sup>

As long as these practices remained anchored just in custom or in fragmentary royal regulations, masters could successfully curb their slaves' insolence through litigation, as the Marquis of Campo Florido and other owners did in the early decades of the 19<sup>th</sup> century. The Reglamento de Esclavos of 1842 modified the legal landscape, however, creating new bases for the slaves and the síndicos to claim rights. The masters responded with vigorous litigation and demanded the suspension and repeal of a law that they perceived as an assault on property rights.

#### Codification: the Reglamento de Esclavos of 1842

Approved by Governor Gerónimo Valdés in 1842, this slave ordinance was Spain's response to "a series of concurrent pressures" from within and without.<sup>47</sup> Internally, the colonial state sought to control more effectively a fast growing slave population that, particularly in the sugar districts, was exploited brutally. Several revolts, frequent rumors of conspiracy, and the specter of another Haiti underlined the precarious balance of colonial society.<sup>48</sup> To make matters worse, the international context was not favorable. Great Britain was determined to halt the slave trade and abolished slavery in its own colonies in the 1830s. The arrival in Havana of British Consul David Turnbull in 1841 was greeted with "alarm" by planters and authorities and the central government instructed the Captain General to counteract his efforts in favor of emancipation. As

historian Jean-Pierre Tardieu states, in order to prevent “the worst,” the colonial administration “had no choice but to propose a reform of the slave system that was favorable to both the slave and the master.”<sup>49</sup> A few months later Valdés promulgated the *Reglamento de Esclavos*.

The *Reglamento* was approved over the objections of the planters, who realized that the new regulations would control not just the slaves but the slave owners as well—“an attempt to rein them in,” as Robert Paquette puts it. The owners resented almost any form of state interference in their properties, including any attempt to regulate slavery legally, claiming that slaves would always understand such regulations as a “bill of rights and a tacit accusation against masters.”<sup>50</sup> On this point there was consensus among slave owners: discipline was a private matter, to be decided exclusively by the master as the supreme authority. As a slave owner explained in 1842, “It is well known that public authorities cannot interfere between masters and slaves without grave risks.” The mere act of regulating slavery was tantamount to the creation of “rights that slaves could claim” and therefore a direct attack on their authority. “Any direct intervention by the government, which in any way allows a slave to suspect that he has rights against the master” would automatically result in an increase of those demands, a slave owner warned. As soon as slaves knew that there existed an authority that protected them and watched over the masters, “all the links of subordination” would be lost and the very survival of the institution of slavery would be endangered.<sup>51</sup>

The very approval of the *Reglamento* illustrated the diminished political power of Cuban planters and the expansion and consolidation of the absolutist power of the Captain General in the island, particularly after the 1830s.<sup>52</sup> Valdés himself referred in

the introduction of his Bando to the governor as “the center of power and action” and as the interpreter of “the true interests of this rich and important part of the monarchy.”<sup>53</sup>

Many slave owners and planters in the island did not see those interests as their own. Once it was approved, they fought against the Reglamento and sought to have it repealed or suspended. In 1844, a commission of planters issued a report to the colonial governor in which they blamed the Reglamento for several slave insurrections and for the conspiracy of La Escalera, which resulted in the repression of hundreds of free blacks and mulattos.<sup>54</sup> The members of this commission claimed that, following the royal cédula of 1789, the Reglamento had transformed “the protective mission” and “the rights” of masters into obligations which could be claimed by the slaves. Indeed the Reglamento had followed the traditional principles of Castilian law, asserting that masters should feed, clothe and provide medical care for their slaves. As the Partidas and colonial regulations had repeatedly stated, in cases of excessive punishment or cruelty the justices were authorized to order the forcible sale of the slave. All this, the commission elaborated, eroded the authority of the owners to the point that slaves did not see masters as “the absolute and legitimate power” any longer. Their recommendation, however, was not to repeal the Reglamento. This would “alarm” the slaves and create international problems, a clear reference to British pressures. Better to put it on hold so that it would quietly fall into disuse.<sup>55</sup>

This did not happen, however. The Reglamento continued to be invoked as the law of the land by slaves, by the *síndicos*, by the justices, by authorities, and by masters well into the 1860s.<sup>56</sup> The articles that masters attacked the most were those dealing with *coartación*. Article 34 defined *coartación* as a true slave right, for it was stated that

owners “may not refuse” the coartación of any slave who offered at least fifty pesos towards his or her price. A practice that was initially known as “cortarse”—the action through which slaves cut or divided their price into pieces—had become coartar, which literally means “hindrance” or “restriction,” a limitation on the master’s dominium. The coartación price, the following article asserted, could not be altered although “if the slave wished to be sold against the will of his master and without just cause,” the master could add the sales tax to the price. Following the principle established by the Consejo de Indias and the King in 1789, coartación was to be understood as a personal benefit that was not to be inherited by the children of coartado mothers.<sup>57</sup>

The slave owners’ opposition to the Reglamento resulted in litigation and in efforts to have it modified or repealed. One of the principles over which some slave owners continued to litigate concerned their obligation to accept their slaves’ payments for coartación and freedom under all circumstances. Plantation owners, for instance, complained that by becoming coartados slaves acquired the right to seek a new master, leaving the units and disrupting production. Others used coartación to evade the mills altogether. Máximo Arozarena, owner of the sugar mill Mercedes, faced this situation. When in 1859 he tried to transfer nineteen slaves from a cattle farm to the mill, they abandoned the unit, presented themselves to the síndico Antonio Bachiller y Morales in Havana, and requested their coartación. The owner worried that, once coartados, they could invoke the right to seek a new master, a possibility which he characterized as “the most terrible and destructive weapon against territorial property.”<sup>58</sup>

Slave owners also resisted slaves’ attempts to coartar young children. They reasoned that children were assessed at very low prices which then could not be changed.

As a result, once grown up these slaves could easily complete payments for their freedom. In the meantime, however, the owner was responsible for the sustenance and all the expenses associated with raising the slave. In 1861 Angela Vázquez Prieto, a resident of Bayamo, complained to the Governor that the *síndico* was forcing her “to the *coartación* of a two-months old” unnamed girl. Vázquez protested against the “mistaken” application of articles 34 and 35 of the *Reglamento* and explained how detrimental they were when applied to children. Furthermore, she claimed to be willing to grant manumission to the child for “her [market] value, because in this case she will leave my power in the day,” but not to *coartación*, a status that made her financially responsible for raising the girl.<sup>59</sup>

Vázquez Prieto’s concerns reflected not just the fact that slave prices increased with age, but also the suspicion that average slave prices would continue to rise. *Coartación* could work to the advantage of masters, as the price did not change despite the slave’s depreciation due to age, but only if the slave waited long enough to complete his payments after his prime age (when depreciation began) and in an environment of price stability. Slave prices remained stable between 1800 and 1850, but they increased significantly afterwards. Between 1850 and 1858 the average price of prime-age slave doubled.<sup>60</sup> In the early 1840s, when the *Reglamento* was approved, the average price of prime-age slaves was about 350 pesos. Thus the minimal amount a slave needed to offer in order to become *coartado* (50 pesos) represented about one-seventh of his or her price. In the late 1850s, however, when prices grew to over 800 pesos, the amount needed to become *coartado* had declined to just six or seven percent of the price. Alarmed, in the 1850s several owners and local officials proposed to the central government to raise the

coartación amount to at least ten percent of the market price or to a minimum of 200 pesos. Following the same logic, masters also argued that the customary amount that slaves had paid for the freedom of an unborn child, set at 25 pesos, should be raised. As a slave owner explained in 1857, “when the price of a slave used to be only 400 pesos what was carried in the belly was assessed in 25, but having tripled the value of the mother to 1,200 it is obvious that the daughter’s triples as well.”<sup>61</sup>

By far the most common point of litigation continued to be the coartados’ alleged right to change owners at will, a prerogative they used to gain some control over their labor, avoid unfavorable occupations, and escape abusive masters. In 1862 Paulino criollo presented himself before a *síndico* in Havana to complain that his master had taken him to a sugar mill to use “his services as if he was a complete slave” even though he had been coartado in 250 pesos. In a similar case, the mother of a coartada slave who had been taken to the interior demanded in 1869 that she be returned to Havana, where she could effectively earn her freedom. The slave Filomeno Lula, a cigar maker, requested *papel* in 1852 because, being coartado, his master was sending him to el campo--the countryside. In order to secure that his children and their mother, slave Clara Diago, were brought back to Havana from “el campo,” free black Felipe Herrera deposited 150 pesos with the *síndico* to proceed to their coartación and to demand that they be sold thereafter in the city.<sup>62</sup>

Slave owners resented these prerogatives and mobilized their considerable influence to try to modify articles 34 and 35 of the *Reglamento*. In the 1850s several individual owners, frustrated by unfavorable judicial outcomes, appealed to the Captain General to promote the modification of the law. Some of them took their cases to the

highest courts of the land, only to be rebuked.<sup>63</sup> The town councils of Puerto Príncipe and Santiago supported their views, which were shared by some councilors and other authorities in Havana as well. The prosecutor of the Real Audiencia (the court of appeals) of Havana asserted in 1853, for instance, that these articles had been detrimental to the interests of “all social classes” and recommended their repeal. Slaves should still access coartación, but only if they paid one-fourth of their market value. Moreover, masters could only be forced to sell the slaves if they hurt, mistreated, or inflicted on them punishments “contrary to humanity.” A legal advisor to the governor of the eastern department referred to coartación in 1855 as an evil suffered “by all owners of slaves” that the courts were unable to remedy due to the existing law. A councilor from Havana concurred: “our charitable laws, which have modified slavery allowing emancipation and coartación, are being used to demoralize the country and to sow confusion, intrigue, conflicts and revenge in the households.” This official suggested that in order to “conserve with all strength the links of respect and subordination to the masters, principle and foundation of the social order,” the síndicos should inquire whether the funds collected by the slaves had been honestly earned, that the minimum amount for coartación should be raised, and that the coartados should not enjoy any particular rights due to their status.<sup>64</sup>

The controversy over coartación spilled over to the press in the mid-1850s, when several jurists debated the nature of the institution and its legal effects. From the pages of the influential Diario de la Marina, Juan Olavarría from Santiago de Cuba and Antonio Bachiller y Morales from Havana criticized the way in which the síndicos and justices understood the institution. The crux of their argument remained the same used by lawyers



like Mojarrieta since the early 19<sup>th</sup> century: slavery was a total status. People were either free or slave, there was no “half-way slavery” and consequently the coartación’s only legal effect was to fix the manumission price of a slave. The coartado, Olavarría stated, was as enslaved as the entero. Recognizing that the Reglamento clearly rejected these principles, Bachiller claimed that this ordinance was not technically “a law” and that it did not supersede previous regulations on the matter.<sup>65</sup>

A group of legal experts disputed these arguments and, taking sides “with the Courts of the Island and with the Síndicos,” asserted that the Reglamento was in fact “the only current law on the matter.”<sup>66</sup> To the notion that slavery was a totalizing status, they responded that coartación represented one exception to this general principle.<sup>67</sup> Through coartación the slave acquired partial dominium over his body, labor, and time, constituting a form of concurrent ownership. “The coartado slave is not as slave as the entero,” explained lawyer José I. Rodríguez.<sup>68</sup> This condition had several legal effects, the most important of which was the possibility to change masters at will, a possibility that the various authors repeatedly described as a derecho.<sup>69</sup> Rodríguez referred to it as “a right of the coartado slave, established by the law and sanctioned by an old custom.” Nicolás Azcárate concurred: “Custom, more than the law, because the Reglamento has only confirmed customs, is the origin of the right that the coartado slave undoubtedly has among us to change masters.” In turn, Ramón de Armas, who had been síndico when Governor Valdés published the Reglamento in 1842, spoke of the “faculty” that coartado slaves had to change owners. Armas further mentioned that Valdés was familiar with the tract of Mojarrieta, disagreed with it, and that he understood coartación and the

possibility of changing masters as entitlements that were not contingent on the consent of the masters.<sup>70</sup>

Another jurist, José M. Céspedes, criticized the reasoning of these lawyers by recycling some of the arguments that Mojarrieta, Barchiller, and Olavarría had made before.<sup>71</sup> The efforts of those opposing the Reglamento were not without effect. The court of appeals of Havana—the Real Audiencia—issued a statement in 1853 endorsing the need to modify articles 34 and 35 of the Reglamento. In 1855 a commission appointed by the Governor to “revise” the Bando which included the Reglamento, accepted the notion that both articles should be repealed. Coartación, the commission argued, had not been created by royal regulations “to reduce slavery to half” nor did those regulations “concede slaves prerogatives as free... the right to change owners without just cause relaxes the subordination to which [slaves] should be subject.” Thus the commission proposed the following changes to the law. Article 34 would read: “no master may refuse to coartar his slaves whenever they pay him one fourth of their value, acquired by legal means...” As for the controversial article 35, the reversal was complete: “the masters of the coartado slaves cannot be forced to sell them unless there is just cause, as is regulated for those who are not coartados.”<sup>72</sup>

The need to modify the Reglamento was felt, of course, because these articles were being invoked by the slaves and by the *síndicos* who represented them. The latter insisted that it was their duty to enforce the law, even if that meant, as one of them put it, becoming “an accomplice” of the slave. A typical argument was offered, successfully, by a *síndico* on behalf of the slave José Casanova in 1846: “according to article 35... the coartados can change masters at will.” When the *síndicos* of Havana were asked to issue

a pronouncement about whether slaves could demand coartación “in any case,” their answer, which they qualified as “very easy,” was unequivocal: “the síndicos of this city have always made to be declared coartado any slave who gives his master the amount of fifty pesos according to the Reglamento.” When, years later, they were asked again to issue a statement concerning the application of this right to small children, their reply was again definite: the articles did not make an exception of small children, who could not be excluded from this benefit. Invoking the principle of favor libertatis, they also noted that it was a principle of law that all doubts should be resolved in favor of freedom.<sup>73</sup>

When attacked for contributing to the erosion of property rights and the social order in the island, the síndicos countered that they were simply performing their duties and enforcing the laws. As one of these officials put it in 1858, “because I see in the delicate question of coartación a principle of freedom for the slave and I find article 34 to be explicit I feel the imperious need to press a demand... for the coartación of Evaristo.” Or as another síndico stated in 1850, “the duty of my ministry, which I cannot ignore, compels me to initiate a claim on behalf of the said slaves...” When the síndico of Santiago de Cuba Miguel Rodriguez, who represented the slave María in her quest to change owners against Carlota Dascar, was accused of protecting the slaves who asked for papel, he replied to be “astonished.” He had simply “enforced what is regulated in the Reglamento and royal cédulas of slaves.”<sup>74</sup>

The síndicos’ argument that laws had to be upheld reinforced the perception that it was necessary to repeal or modify articles 34 and 35 of the Reglamento, as the Real Audiencia and the Comisión Revisora—the commission for the revision of the Bando—recommended in 1853. The Governor acknowledged receipt of the recommendations by

the Commission, but “reserve[d] approval” for a future moment, when revisions of the entire Bando were finished.

Yet this approval was never issued. In 1862, when the recently created Consejo de Administración issued a final report about coartación, it deemed it unadvisable to modify the Reglamento.<sup>75</sup> Addressed to the Governor, the report offered a careful assessment of the conflicts of interests that surrounded coartación. On one side there were “private interests” that, invoking property rights, discipline and order, aspired to “curtail concessions given to the slaves.” On the other side there was “a well understood public interest” supported by the laws, which the members of the Council depicted as monuments to humanity and Spanish civilization. Beyond these abstractions, however, the councilmen acknowledged the weight of practical reasons. They noted that the island was living through “difficult circumstances” and “an evidently transitional period” in which it was not prudent to attack “rights or concessions sanctioned by law,” particularly when they affected a numerous sector of society. Although they acknowledged that some owners may be irritated by the possibilities linked to coartación, particularly when it involved children, they deemed those interests “too secondary to influence a matter of such social importance.” The Council thus recommended that neither the articles concerning coartación, nor the custom of allowing the manumission of unborn children “in the terms established by custom”—that is, for a price of 25 pesos—should be altered. They further stated that even if the child of one of their slaves was born free, it was the master’s responsibility to keep them until they turned seven, at which point they could be transferred to a master artisan to learn a trade, or to a public institution.<sup>76</sup>

The Council's statement did not represent an end point, but a new stage in the longstanding conflict surrounding the implementation of coartación in 19<sup>th</sup> century Cuba and the legal effects of the institution. An ordinance issued in 1863 to regulate the activities of the *síndicos* codified the pronouncements of the Consejo and wrote into law some of the most restrictive interpretations concerning the effects of coartación on masters. For instance, unborn children could be liberated for the customary amount of 25 pesos. The owner remained responsible for the upbringing of the child and could not prevent enslaved mothers from breast feeding them. Those who employed coartado slaves had to pay them a salary proportional to the portion for which the slaves had already paid. This arrangement had been long observed in the island, but it had not been written into law before. Furthermore, appraisers were instructed that in cases of coartación or self-purchase the price of slaves should be based only on their age and physical condition, regardless of qualifications and abilities. Masters could be compensated for the expenses associated with training their slaves, but skilled slaves should not be penalized by assessing them with a higher manumission price. Finally, article 13 stipulated that if a slave—any slave, not just a coartado—was being sold without fault on his part, then he had “the right to be authorized to look for a new master for three days,” after which the owner could sell the slave to whomever he pleased.<sup>77</sup> It is unknown to what extent these regulations were enforced. What seems clear, however, is that this ordinance restricted further the dominium of slave owners and represented another expression of a thread of legal thinking that subordinated the rights of the property owners to the stability and “true interests” of the colony.

The slave owners, of course, did not resign themselves to what they perceived as repeated assaults on their sacred rights and continued to challenge the slaves' right to change masters. At least in the case of rural slaves, they seem to have had some success. As late as 1867 a justice from the sugar zone of Colón, in Matanzas, inquired whether rural slaves who were coartados "could ask for papel to seek a new master and to abandon the farm as a result," warning that this created a disastrous example for the farm hands. The very existence of this consultation suggests that justices continued to be ambivalent about this right, its codification in law notwithstanding. Although the Consejo ratified, again, that articles 34 and 35 continued to be valid and that they applied to all slaves, including those in the countryside, the planters' pressures eventually bore fruit. A circular issued by the Governor in 1871 declared that rural slaves "did not have the right to change owners," even if they were coartados.<sup>78</sup> By then, however, the slave owners faced a threat that was far more serious than coartación. The anti-colonial revolt that erupted in eastern Cuba in 1868 threatened in fact the slave system as a whole.

Colonial authorities rationalized the practices of coartación, buscar papel, and others, as concessions grounded on the humanitarian spirit of the Spanish laws, a characterization that was at best partially correct. Although some of these practices, such as seeking paper and a new owner, were tenuously linked to Spanish legal codes and mores, they had developed in ways that were frequently quite different from those intended by the law. These customary rights, in turn, were widespread enough that by the mid-19<sup>th</sup> century, when colonial authorities felt the need to regulate slavery—that is, its survival—they codified some of those customs into law. Once included in the Reglamento there was no turning back. As the Consejo de Administración acknowledged

later, it was not “prudent” to revoke rights already legitimized by custom and law. A concession this was, but a concession to fear.

For the slaves, however, the codification of these rights represented a stronger ground on which to base claims. This is what slave owners resented the most. Slaves could now claim rights that could be exercised even against the will of the master, and rights that produced other rights in turn. Slavery was supposed to be a neatly defined social and legal status; *coartación* complicated this considerably. That is probably what *síndico* Antonio Bachiller y Morales had in mind when he asserted that slavery “was not compatible with the rights of the *coartado* slaves.”<sup>79</sup> Masters realized that any right that slaves could claim came at the expense of their dominium and therefore at the expense of their own rights.

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<sup>1</sup> Doña Carlota Dascar al Gobernador, 3 May 1856, in Expediente sobre la coartación, 1853-1862. Archivo Nacional de Cuba (hereafter ANC), Intendencia, leg. 960/3.

<sup>2</sup> Representación del Regidor de Santiago Ruperto Ulecia Ledesma, 23 August 1855, in *Ibid.*

<sup>3</sup> The invariability of the price was absolute. This could be beneficial to the master if the slave aged or became ill or incapacitated, conditions that lowered his market price. But it could be detrimental to the owner as well, due to changing market conditions or the slave's acquisition of new skills.

<sup>4</sup> For studies of slavery and the law in Cuba see Gloria García, La esclavitud desde la esclavitud. Havana: Editorial de Ciencias Sociales, 2003; Jean-Pierre Tardieu, "Morir o dominar": en torno al Reglamento de Esclavos de Cuba (1841-1866). Madrid: Iberoamericana, 2003; María del Carmen Barcia, La otra familia: parientes, redes y descendencia de los esclavos en Cuba. Havana: Casa de las Américas, 2003; Manuel Barcia Paz, Con el látigo de la ira: legislación, represión y control en las plantaciones cubanas, 1790-1870. Havana: Editorial de Ciencias Sociales, 2000; Rebecca J. Scott, Slave Emancipation in Cuba: the Transition to Free Labor, 1860-1899. Princeton: Princeton University Press, 1985; 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; Franklin W. Knight, Slave Society in Cuba during the Nineteenth Century. Madison: The University of Wisconsin Press, 1970, 121-36; Herbert Klein, Slavery in the Americas: a Comparative Study of Virginia and Cuba. Chicago: Elephant Paperbacks, 1989; Fernando Ortiz, Los negros esclavos. Havana: Editorial de Ciencias Sociales, 1975; Alejandro de la Fuente, "Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited," Law and History Review 22:2 (Summer 2004), 339-69.

<sup>5</sup> On the distinction between societies with slaves and slave societies, see Ira Berlin, Many Thousands Gone: The First Two Centuries of Slavery in North America. Cambridge, Mass.: Harvard University Press, 1998, 8. For some critiques, see Herman L. Bennett, Africans in Colonial Mexico: Absolutism, Christianity, and Afro-Creole Consciousness, 1570-1640. Bloomington: Indiana University Press, 2003, 14-15; Sherwin K. Bryant, "Enslaved Rebels, Fugitives, and Litigants: the Resistance Continuum in Colonial Quito," Colonial Latin American Review 13:1 (2004), 36-37 (note 11).

<sup>6</sup> The significance of these activities has been assessed through the regulations issued by the town council of Havana on slavery-related matters between 1550 and 1700. See de la Fuente, "Slave Law and Claims Making," 353-63.

<sup>7</sup> This case is discussed at length in Alejandro de la Fuente, "Su único derecho: los esclavos y la ley." Debate y Perspectivas 4 (December 2004), 7-22.

<sup>8</sup> Scott, Slave Emancipation, 13, note 20; de la Fuente, "Slave Law and Claims Making."

<sup>9</sup> José Serapio Mojarrieta, Exposición sobre el origen, utilidad prerrogativas, derechos y deberes de los síndicos procuradores generales de los pueblos. Puerto Príncipe: Imprenta del Gobierno, [1830]. For the síndicos' functions in the R.C. of 1789, see articles 9, 11, and 13; for the Reglamento of 1842, articles 37, 42, 43, and 46. Both in Ortiz, Los negros esclavos, 412-14, 447-48. See also Klein, Slavery in the Americas, 78-84; L.1, T. 18, L. 7 of the Novísima Recopilación.

<sup>10</sup> For a critique of the síndicos and an appeal for them to cooperate with the submission of the slaves, see Mojarrieta, Exposición, 16-17.

<sup>11</sup> Older studies concentrated for the most part on Spanish legislation and on the prescriptive aspects of the law. Important contributions include Frank Tannenbaum, Slave and Citizen: The Negro in the Americas. Boston: Beacon Press, 1992 (original edition New York, 1946); Ortiz, Los negros esclavos (original edition 1916); 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; Javier Malagón Barceló, Código Negro Carolino (1784). Santo Domingo: Editora Taller, 1974. Scholars of derecho indiano have continued this tradition. For a recent overview of colonial law see M. C. Mirow, Latin American Law: a History of Private Law and Institutions in Spanish America. Austin: University of Texas Press, 2004. Two useful compilations have been recently issued in CD by Fundación Histórica Tavera of Madrid: Ismael Sánchez Bella, Textos clásicos de literatura jurídica Indiana (1999) and José Andrés Gallego, ed. Nuevas aportaciones a la historia jurídica de Iberoamérica (2000).

<sup>12</sup> Bryant, "Enslaved Rebels," 7-46; Renée Soulodre-La France, "Socially not so Dead! Slave Identities in Bourbon Nueva Granada," Colonial Latin American Review 10:1 (2001), 87-103; Brian P. Owensby,



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“How Juan and Leonor Won Their Freedom: Litigation and Liberty in Seventeenth-Century Mexico,” Hispanic American Historical Review 85:1 (2005), 39-79; Bennett, Africans in Colonial Mexico; Kris Lane, “Captivity and Redemption: Aspects of Slave Life in Early Colonial Quito and Popayán,” The Americas 57:2 (2000), 225-46; 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; 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. See also the contributions to the special issue of the journal Debate y Perspectivas (vol. 4, 2004) titled “Su único derecho: los esclavos y la ley.” For Brazil see Brazil see Sidney Chalhoub, Visões da Liberdade: as últimas décadas da escravidão na Corte. São Paulo: Companhia das Letras, 1990; Hebe Mattos, Das Cores do Silêncio: os significados da liberdade no Sudeste escravista – Brasil século XIX. Rio de Janeiro: Nova Fronteira, 1998; Keila Grinberg, “La manumisión, el género y la ley en el Brasil del siglo XIX: el proceso legal de Liberata por su libertad,” Debate y Perspectivas 4 (2004), 89-103.

<sup>13</sup> Bennett, Africans in Colonial Mexico, 4.

<sup>14</sup> The best empirical research on coartación during the 19<sup>th</sup> century is Laird W. Bergad, Fe Iglesias García, and María del Carmen Barcia, The Cuban Slave Market, 1790-1880. New York: Cambridge University Press, 1995, 122-42. For other contributions see Klein, Slavery in the Americas, 196-200 and the critical reading of Scott, Slave Emancipation, 13-14; Ortiz, Los negros esclavos, 285-90; de la Fuente, “Slave Law and Claims-Making,” 358-59; Leví Marrero, Cuba: economía y sociedad. 15 vols. Madrid: Editorial Playor, 1975-1992, 13: 163-68. A study that emphasizes the economic advantages of coartación for the masters is Rafael Duharte, El negro en la sociedad colonial. Santiago de Cuba: Editorial Oriente, 1988, 53-61.

<sup>15</sup> The 1871 figure is quoted by Scott, Slave Emancipation, 14, note 26; Bergad et al., The Cuban Slave Market, 123. The other testimonies are from Mojarrieta, Esposición, 19, 23; Representación del Regidor de Santiago Ruperto Ulecia Ledesma.

<sup>16</sup> According to an 1861 report, the number of slaves manumitted in the island between 1851 and 1858 was 16,243. The census of 1862 registered 9,462 manumissions between 1858 and 1861 and estimated a slave population of ca. 370,000. See Expediente promovido por Juan Manuel Rodríguez y Francisco Ravirosa para introducir ocho mil negros libres en la Isla. 1861. ANC, Miscelánea de Expedientes (hereafter ME), leg. 4412; Noticias estadísticas de la isla de Cuba en 1862. Havana: Imprenta del Gobierno, 1864.

<sup>17</sup> A point suggested to me by Stanley Engerman, for which I am grateful. A similar statement concerning runaway slaves is made by Eugene D. Genovese, Roll, Jordan, Roll: The World the Slaves Made. New York: Pantheon Books, 1974, 598.

<sup>18</sup> I have used here the English translation of the Partidas edited by Robert I. Burns, Las Siete Partidas. 5 vols. Philadelphia: University of Pennsylvania Press, 2001, 4: 979. For a useful analysis of this regulation, see Olga López Vera, “La esclavitud en la jurisprudencia civil del Tribunal Supremo” (PhD diss., University of Navarra, 2001), 99-101 and Ortiz, Los negros esclavos, 312-13. Here the law of Castile followed Roman precedents, where city prefects heard slaves’ allegations of starvation. See Keith Bradley, Slavery and Society at Rome. New York: Cambridge University Press, 1994, 100.

<sup>19</sup> These regulations are reproduced in Malagón Barceló, Código Negro, 134, 141, 225-29.

<sup>20</sup> See for instance a R.C. of 1710 in Malagón Barceló, Código Negro, 255; R.C. 15 April 1540, later L. 8, Tit. 5, Lib. 7 of the Recopilación de Leyes de los Reinos de las Indias.

<sup>21</sup> The Ordenanzas are reproduced in Marrero, Cuba: economía y sociedad, 2:429-44. Compare articles 22 and 23 of the Ordinances of Santo Domingo of 1528, and article 34 of the Ordinances of 1535 with articles 60 and 61 of the Cáceres ordinances of 1574. The language used by Cáceres in his text is almost identical to a report he had issued four years earlier about sugar slaves in Santo Domingo. See Cáceres to Juan de Ovando. Santo Domingo, 1570, in Colección de documentos inéditos, relativos al descubrimiento, conquista y organización de las antiguas posesiones españolas de América y Oceanía. 42 vols. Madrid, 1864-1884, 11:55.

<sup>22</sup> Cargos, descargos y sentencias de esta ciudad de la Habana, 1762. Archivo Histórico Nacional, Madrid (hereafter AHN), Consejos, leg. 21467, pieza 6, fol. 28v. The reference to the 1754 case is taken from “Pieza de diligencias preparatorias para la residencia de esta ciudad de la Habana,” 1762, Ibid.; Cargos y Exculpación del Sr. Marques de la Torre, 1777. AHN, Consejos, leg. 20892.

<sup>23</sup> This royal cédula is reproduced by Ortiz, Los negros esclavos, 408-15 and Barcia, Con el látigo, 85-94.

- <sup>24</sup> Expediente sobre haberse presentado al capitán de Macurijes ocho negros del ingenio San Miguel. 1846. ANC, Gobierno Superior Civil (hereafter GSC), leg. 944, no. 33,303; Barcia, Con el látigo, 57; Criminales por sevicia al negro Pablo del ingenio Caridad, 1865. ANC, M.E., leg. 2851, no. J.
- <sup>25</sup> Expediente... de Macurijes, 1846; de la Fuente, "Su único derecho."
- <sup>26</sup> "Para que le diese papel para solicitar otro a quien servir atento que no le asistían como era necesario y le daban mucho trabajo." Don Francisco de Ponce de León y Maroto con don Manuel Dueñas sobre pertenencia de dos esclavos. AHN, Consejos, leg. 20839.
- <sup>27</sup> Expediente sobre el negro Andres criollo, que se queja de maltrato, 1850. ANC, GSC, leg. 33373; Autos promovidos por el Síndico a nombre del negro Ignacio, 1848. ANC, Escribanías, leg. 581, no. 14; Expediente en que el moreno Cristóbal del Castillo solicita carta de libertad, 1836. ANC, GSC, leg. 937/33080.
- <sup>28</sup> See Alexander von Humboldt, Ensayo político sobre la isla de Cuba. Paris: J. Renouard, 1827, 279; Robert F. Jameson, Letters from the Havana during the Year 1820. London: J. Miller, 1821, 41.
- <sup>29</sup> We do not know how many of the 307 demands concerned change of ownership. The possible maximum would be 263, for we know that the remaining 44 cases dealt with other matters (usually freedom). This would indicate that at least one-third of the slaves requesting to change masters before this official succeeded in doing so. This data is taken from Expediente promovido por el Sr. don José Morales Lemus, síndico segundo, 1862. ANC, GSC, leg. 954, no. 33747.
- <sup>30</sup> Expediente en el que el negro Ciprian Castillo pretende variar de amo, 1852. ANC, GSC, leg. 947/33429; Expediente en que la negra Luisa Vázquez pretende variar de dueño, 1858. ANC, GSC, leg. 949/33545.
- <sup>31</sup> Edward Mullen, ed., The Life and Poems of a Cuban Slave: Juan Francisco Manzano, 1797-1854. Hamden: Archon Books, 1981, 98; Cirilo Villaverde, Cecilia Valdés, quoted by Ortiz, Los negros esclavos, 350.
- <sup>32</sup> Correspondencia sobre esclavitud, 1834-1842. ANC, GSC, leg. 937/33052; Expediente en el que el síndico procurador solicita que doña Felicia Jáuregui le de papel para buscar amo al moreno Pedro López, 1835. ANC, GSC, leg. 937/33057.
- <sup>33</sup> See L. 45, tit. 5, P. 5, in Burns, Siete Partidas, 5: 1045. The existence of "cortados" in Spain is reported by Bernard Vincent for Málaga in 1581, in his Minorías y marginados en la España del siglo XVI. Granada: Diputación Provincial, 1987, 253, although most scholars of slavery in Iberia do not make reference to the institution. For the evolution of this legal practice, see Manuel Lucena Salmoral, "El derecho de coartación del esclavo en la América Española," Revista de Indias 59: 216 (May-August 1999), 357-74; Watson, Slave Law in the Americas, 51; de la Fuente, "Slave Law and Claims-Making," 339-69; Marrero, Cuba: economía y sociedad, 13: 163-68. I thank Vincent for sharing his work on Málaga slaves with me.
- <sup>34</sup> I thank Joseph Miller for suggesting this line of reasoning. See Vincent, Minorías, 253. The first time I have seen the institution mentioned in a royal decree is in a real cédula of 18 April 1673 mentioned by Ortiz de Matienzo to the King, Havana, 23 November, 1673. ANC, AH, leg. 89/548; Real Academia Española, Diccionario de la Lengua Castellana. Madrid: Imprenta de Francisco del Hierro, 1729, 626.
- <sup>35</sup> ANC, Protocolos Notariales de la Habana (hereafter PNH), Escribanía Fornaris, 1640, fol. 721; 1690, fol. 45, 140, 144, 262, 363; 1693, fol. 114. See R.C. of 21 June 1768 and its analysis in Lucena Samoral, "El derecho de coartación," 366-66; and R.C. of 8 April 1778 reproduced by Mojarrieta, Esposición, 21.
- <sup>36</sup> ANC, PNH, Escribanía Fornaris, 1690, fol. 44; Escribanía Regueira, 1590, fol. 26v.
- <sup>37</sup> The term "enteros" is used by the Consejo de Indias in a 1778 consultation and was frequently used during the 19<sup>th</sup> century. See Marrero, Cuba: economía y sociedad, 13:164; Lucena Samoral, "El derecho de coartación," 358; García, La esclavitud, 42-43; Mojarrieta, Esposición, 19. The 1826 report is quoted by Marrero, Cuba: economía y sociedad, 13:166. The statement of síndico José Morales Lemus in ANC, Intendencia, leg. 760/3.
- <sup>38</sup> El síndico contra Francisco Prado sobre la coartación del pardo José Genaro, 1826. ANC, Escribanías (Galleta), leg. 814/7; Mojarrieta, Esposición, 19. I used here the translation of Richard Madden as it appears in Mullen, ed., The Life and Poems of a Cuban Slave, 201.
- <sup>39</sup> For examples, see Expediente en que la negra Tomasa Amaya se queja de su amo, 1854. ANC, GSC, leg. 948/33533; Expediente promovido por el Síndico de Sagua la Grande en consulta de introducir mejoras en la compra de esclavos coartados, 1877. ANC, ME, leg. 3946/Ar. See also José I. Rodríguez, "La coartación y sus efectos," Revista de Jurisprudencia, 1 (1856), 355. In Puerto Rico this custom was formalized in a circular issued by the Governor in 1849. See Lucena Samoral, "El derecho de coartación," 372.

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<sup>40</sup> Mojarrieta, Esposición, 23; Lucena Samoral, “El derecho de coartación,” 367-70; Marrero, Cuba: economía y sociedad, 13:165; El moreno Pedro Pascasio sobre su libertad, 1835. ANC, GSC, leg. 937/33074.

<sup>41</sup> The Partidas’s first “rule of law” was “that all judges should aid liberty, for the reason that it is a friend of nature.” The code also acknowledged the possibility that slaves may purchase their freedom. See Rule 1, tit. 34, P. 7 and L. 8, tit. 2, P. 3, Burns, Siete Partidas, 5:1478 and 3:548. See also Ortiz, Los negros esclavos, 315-16; López Vera, “La esclavitud en la jurisprudencia,” 107-08, 116-20.

<sup>42</sup> El síndico procurador general del común a nombre del moreno Santiago, 1826. ANC, Escribanías (Salinas), leg. 676/7858. For additional examples see Diligencias promovidas por el síndico procurador general a nombre de la negra María del Carmen, 1831. ANC, Escribanías (Bienes de Difuntos), leg. 196/3437; El moreno Cristóbal del Castillo sobre su libertad, 1836. ANC, GSC, leg. 937/33080; El síndico procurador general sobre la libertad del negro Carlos Ferregat, 1839. ANC, Escribanías (Junco), leg. 78/1248. For the pronouncement of the Consejo, see Marrero, Cuba: economía y sociedad, 13:164.

<sup>43</sup> Bucareli’s report is mentioned by Marrero, Cuba: economía y sociedad, 13:164; on the Consejo’s recommendation, see Lucena Samoral, “El derecho de coartación,” 365-66.

<sup>44</sup> Micaela O’Farril al Capitan General, 1835 in Correspondencia sobre esclavitud, 1834-1842. ANC, GSC, leg. 937/33052; El síndico procurador solicita que Da. Felicia Jauregui le de papel al moreno Pedro López, 1835. ANC, GSC, leg. 937/33057; Incidente a la testamentaría de Pedro Santo, 1837. ANC, Escribanías (Junco), leg. 309/4743.

<sup>45</sup> Mojarrieta, Esposición, 20-21, using here Maddan’s translation in Mullen, ed., The Life and Poems of a Cuban Slave, 202; Expediente en que el moreno Cristóbal del Castillo solicita carta de libertad.

<sup>46</sup> Bernardo Lucumí sobre su coartación y venta, 1820. ANC, Escribanías (Daumy), leg. 778/3; El síndico sobre que el Marqués de Campo Florido le otorgue escritura de venta a su esclavo Francisco, 1833. ANC, Escribanías (Salinas), leg. 672/7776. It is interesting to note that in this last case the judge nonetheless mediated to persuade the Marquis to sell the slave, an arrangement to which he agreed.

<sup>47</sup> Knight, Slave Society, 126. See also Tardieu, “Morir o dominar”; Robert Paquette’s, Sugar is Made with Blood: The Conspiracy of La Escalera and the Conflict Between Empires over Slavery in Cuba (Middletown: Wesleyan University Press, 1988), 77-80; Ortiz, Los negros esclavos, 339-40; Moreno Friginals, El ingenio, 2:83-90.

<sup>48</sup> Gloria García, Conspiraciones y revueltas: la actividad política de los negros en Cuba (1790-1845). Santiago de Cuba: Editorial Oriente, 2003; Gwendolyn Midlo Hall, Social Control in Slave Plantation Societies: a Comparison of St. Domingue and Cuba. Baton Rouge: Louisiana State University Press, 1971, 55-57; Gabino La Rosa Corzo, Runaway Slave Settlements in Cuba: Resistance and Repression. Chapel Hill: University of North Carolina Press, 2003. On the lasting impact of Haiti on Cuban slave society see María Dolores González-Ripoll, Consuelo Naranjo, Ada Ferrer, Gloria García, and Josef Opatrný, El rumor de Haití en Cuba: temor, raza y rebeldía, 1789-1844. Madrid: CSIC, 2004.

<sup>49</sup> El Ministerio de Marina al Capitán General, Madrid 28 July 1841. Archivo del Museo de la Ciudad de la Habana (hereafter AMCH), Colección Esclavitud, leg. 64, no. 7; Paquette, Sugar is Made with Blood, 131-57; Tardieu, “Morir o dominar”, 123.

<sup>50</sup> Paquette, Sugar is Made with Blood, 77; Parecer de la Real Junta de Fomento sobre el Reglamento de Esclavos, 1845. ANC, GSC, leg. 943/33271. Reproduced by Tardieu, “Morir o dominar”, 264-71, quote in p. 265.

<sup>51</sup> “Encuesta sobre... los siervos,” 1842. ANC, GSC, leg. 940/33158. This whole dossier, which includes reports by twelve plantation owners, is reproduced by Tardieu, “Morir o dominar”, 206-63.

<sup>52</sup> On the varying political fortunes of the planters and their relationships with the state, see Josep M. Fradera, Gobernar colonias. Barcelona: Ediciones Península, 1999, 95-120; Christopher Schmidt-Nowara, Empire and Antislavery: Spain, Cuba, and Puerto Rico, 1833-1874. Pittsburgh: Pittsburgh University Press, 1999, 16-17; Manuel Moreno Friginals, Cuba/España. España/Cuba: historia común. Barcelona: Editorial Crítica, 1995, 165-69, 190-98; Paquette, Sugar is Made with Blood, 47-49.

<sup>53</sup> Gerónimo de Valdés, Bando de gobernación y policía de la Isla de Cuba. Havana: Imprenta del Gobierno, 1842, 4. My emphasis. I have used the translation of Knight, Slave Society, 127 for the second quote.

<sup>54</sup> The best study of the conspiracy is Paquette’s, Sugar is Made with Blood. See also Daisy Cué Fernandez, “Plácido y la conspiración de la escalera,” Santiago 42 (1981), 145-206; José L. Franco, Plácido: una polémica que tiene cien años. Havana: Ediciones Unión, 1964.

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- <sup>55</sup> Parecer de la Real Junta de Fomento sobre el Reglamento de Esclavos, 1845.
- <sup>56</sup> Ortiz asserts mistakenly that the Reglamento was repealed and replaced by a new set of rules issued by Governor Leopoldo O'Donnell in 1844. See Ortiz, Los negros esclavos, 347-48. On the 1844 rules see also Tardieu, "Morir o dominar", 183-96, 272-78; Barcia Paz, Con el látigo de la ira.
- <sup>57</sup> Valdés, Bando de gobernación. The Reglamento is reproduced by Ortiz, Los negros esclavos, 442-52; by Barcia Paz, Con el látigo, 95-104; and by Marrero, Cuba: economía y sociedad, 13: 193-95. For a discussion of the Reglamento see Tardieu, "Morir o dominar", 178-200. Lucena Samoral and Knight note that the Reglamento owed much to an 1826 slave ordinance from Puerto Rico. See Knight, Slave Society, 136-32; Manuel Lucena Salmoral, Los códigos negros de la América española. Madrid: Ediciones UNESCO, 1996, 140-59.
- <sup>58</sup> Máximo Arozarena al Capitán General, 8 March 1859. ANC, Intendencia, leg. 960/3.
- <sup>59</sup> Instancia de Angela Vázquez Prieto, Holguín, 2 October 1861. ANC, Intendencia, leg. 960/3.
- <sup>60</sup> Bergad et al., The Cuban Slave Market, 47-56. See also Manuel Moreno Fragnals, Herbert S. Klein, and Stanley L. Engerman, "The Level and Structure of Slave Prices on Cuban Plantations in the Mid-Nineteenth Century: Some Comparative Perspectives," American Historical Review 88:5 (1983), 1,201-18.
- <sup>61</sup> El síndico procurador sobre la libertad de la criatura que lleva en su seno la morena Isabel, 1857. ANC, Escribanías (Luis Blanco), leg. 334/7. On proposals to alter the coartación minimum, see El Consejero ponente a la sección de gobierno, 30 August 1862 in Expediente de informe para revisar las leyes vigentes sobre coartación de esclavos, 1862. ANC, Consejo de Administración, leg. 3/108; Parecer de la Comisión Revisora del Bando de Gobernación, 22 October 1853 and the Memorial de Jose Matos, 5 April 1859, both in ANC, Intendencia, leg. 960/3.
- <sup>62</sup> García, La esclavitud, 147; Expediente promovido por la morena Isidra Lazo, 1869. ANC, ME, leg. 4004/I; Expediente en el que el negro Filomeno Lula pide licencia para buscar nuevo amo, 1852. ANC, GSC, leg. 947/33417; Expediente promovido por el moreno libre Felipe Herrera, 1864. ANC, ME, leg. 4105/Ñ.
- <sup>63</sup> All the cases mentioned in the previous note were favorable to the slaves. A notable case, involving a prominent member of the local elite, was that of the Marquis of la Real Proclamación against his slave Filomeno. The Marquis appealed the case unsuccessfully and Filomeno obtained his paper to change masters. See Marrero, Cuba: economía y sociedad, 13: 167. See also the cases included in Expediente sobre la coartación, 1853-1862. ANC, Intendencia, leg. 960/3.
- <sup>64</sup> These testimonies are included in Expediente sobre la coartación, 1853-1862.
- <sup>65</sup> Diario de la Marina, November 2 and 6, 1856; Barchiller y Morales, "De la coartación y sus efectos," Revista de Jurisprudencia 1 (1856), 426-30.
- <sup>66</sup> N. Azcárate, untitled entry, Revista de Jurisprudencia, 1 (1856), 363.
- <sup>67</sup> Azcárate, "Réplica al Señor don Antonio Bachiller y Morales," Revista de Jurisprudencia, 1 (1856), 477-81.
- <sup>68</sup> Rodríguez, "La coartación y sus efectos," 353-62, quote in 355.
- <sup>69</sup> Additional effects included, according to Rodríguez ("La coartación," 355), the existence of a fixed price, the inability of the owner to collect all the earnings of the coartado slaves, and the limitation on the master's dominium, for the slave owned a portion of himself.
- <sup>70</sup> Rodríguez, "La coartación," 356; Azcárate, untitled entry, 363; Ramón de Armas, "Sres. Directores de la Revista de Jurisprudencia," Revista de Jurisprudencia, 1 (1856), 431-34. See also, in the same issue of the journal, the contribution of José Cintra, "Coartación", 474-76.
- <sup>71</sup> Quoted in Bachiller y Morales, Los negros. Barcelona: Gorgas y Compañía editores [1887], 151-61.
- <sup>72</sup> Expediente sobre la coartación, 1853-1862.
- <sup>73</sup> Expediente sobre la queja del negro José Casanova, 1846. ANC, GSC, leg. 944/33306; Expediente sobre la coartación, 1853-1862. See also García, La esclavitud, 147.
- <sup>74</sup> El síndico procurador sobre la coartación del esclavo Evaristo, 1858. ANC, Escribanías (Luis Blanco), leg. 334/3; Incidente al intestado del presbítero don José Luis Abad, 1850. ANC, Escribanías (Gobierno), leg. 362/17; Doña Carlota Dascar al Gobernador.
- <sup>75</sup> The Consejo included the most important civil, military, and religious authorities in the colony. On its composition see Julio A. Carreras, Historia del estado y el derecho en Cuba. Havana: MES, 1981, 81-84.
- <sup>76</sup> El Consejo de Administración al Gobernador Superior Civil, 27 October 1862, in Expediente sobre la coartación, 1853-1862.

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<sup>77</sup> “Decreto del Gobernador Superior Civil que comprende el Reglamento para las Sindicaturas de la Habana a la presentación de esclavos en queja contra sus amos,” January 28, 1863, reproduced in Bienvenido Cano and Federico de Zalba, El libro de los síndicos de ayuntamiento y de las juntas protectoras de libertos, Havana: Imprenta del Gobierno y Capitanía General, 1875, 42-46.

<sup>78</sup> Consulta sobre la coartación del negro José Salas, 1867. ANC, Consejo de Administración, leg. 13/1493; “Circular del Gobierno Superior Civil declarando que los esclavos de campo no adquieren por la coartación el derecho de cambiar de dueño,” 1 May 1871, in Cano and Zalba, El libro de los síndicos, 59.

<sup>79</sup> This statement appears in a marginal note that Bachiller wrote on Maximo Arozarena’s letter of 8 March 1859 to the Captain General, in Expediente sobre la coartación, 1853-1862. The text was reproduced with some variation in Barchiller, Los negros, 156-57.