Epilogue: The Slaves Before the Law

The status of enslaved Africans and their offspring in the Spanish Indies remained a legal quandary across the three centuries preceding the Spanish American Revolutions. Present in the Bible, civil law, canon law, natural law theories, the law of nations, and royal jurisprudence, long-existing justifications of, and challenges to slavery were variegated. They were also practically irrelevant unless invoked by someone under specific circumstances. In short, there existed no consistent or single "theory of the source of the property right in persons." "The more closely we examine the problematics of law and slavery...the more clearly we see that law in slaveholding societies did not and could not cohere."[1]

The very word *esclavo* was only one of several Spanish words available to refer to people owned as property, further suggesting the legal ambiguity of enslavement. Men and women under this form of dominion were indistinctly referred to by different labels, archeo-legal terms from a vast history of human bondage rooted in antiquity and the Middle Ages. Someone in slavery could be called *siervo* and described as *sujeto a servidumbre* – subject to servitude. To evoke subjection implied that the slave's condition was not innate but acquired, the result of the absolute power imbalance between master and slave. The same understanding underpinned the expression *bajo la condición de esclavo*, under the condition of slave, also present in the inherited legal vocabulary of enslavement. Spanish-speakers also

https://doi.org/10.1017/9781108917513.008 Published online by Cambridge University Press

referred to slaves as captives (*cautivos*), and to their emancipation as rescue (*rescate*) or redemption (*redención*).[2]

This legal ambiguity also included the issue of slaves' political belonging. While slaves could theoretically benefit from the protection of royal magistrates, they were neither Indians nor Spaniards, and thus more denizens of the Spanish monarchy than vassals of the king of Spain. The early republics failed to fully solve this quandary. They postponed the abolition of slavery, declaring that slaves, as a general rule, were unprepared to become citizens of the new polities. The anti-Spanish, antislavery revolutionaries who achieved emancipation from Spain reserved "the sweets of freedom for those who never tasted the bitter cup of bondage."[3] Neither citizens nor foreigners, enslaved inhabitants of provincial states like Antioquia and Cartagena or the national state of the Republic of Colombia occupied a vague legal zone. The active exercise of power by a master, rather than any one cohesive legal doctrine or clearly defined status, effectively made each slave a person owned by another person.

To facilitate making slaves the subjects of antislavery legal reform, potential solutions to the legal riddle of slaves' status had to be considered. Juan del Corral and Félix José de Restrepo tackled crucial questions. Who or what, exactly, was a slave before the law? Were slaves "captives," as Antioquia's petitioners claimed in 1812? Were they "serfs," as medieval law and notarial formulae called them? How could legislators incorporate slaves in the legal regime of a republic of free citizens? The answers were clever and retained all the ambiguity of the issue. They exposed both the legal intricacies of slave emancipation as well as the limits of revolution. Even as they set out to undo their ancien régime society, pro-independence leaders facilitated the continuation of the most feverishly denounced of all pre-existing hierarchies.

Relying on the concept of "serf," Corral proposed a solution. Slavery, he suggested, could be replaced with a more flexible "servitude of the glebe." This expression, which he gleaned from Montesquieu and the French *Encyclopédie*, evoked Roman colonists and European serfs. Corral thus imagined that slaves could officially be granted the new status of serfs of the glebe, meaning serfs of the land. Workers straddling captivity and freedom, serfs would be attached to their former masters' estates but not to the masters

themselves. The masters' power over the serfs would be partially limited, as bonded labor would no longer rest on personal servitude. Serfs would not be bought and sold, and in this way they would cease to be persons traded as property.[4] Everything else would remain unchanged.

In the end, Restrepo and Corral turned to the concept of "captive." They settled on regarding slaves of African descent in the Americas as Christian captives crying for physical deliverance and spiritual redemption rather than as individuals denied access to citizenship. To think through the tension of a slaveholding republic devoted to liberty, legislators reached for a seasoned European conceptual framework. This approach left slaves in legal limbo. Evoking Mediterranean captivity, Antioquia's manumission law called for the "redemption" of as many adult slaves as possible. Slaves would continue to live in slavery, but they were also categorized as unfortunate captives whose fate was now in the hands of pious Christians and "friends of humanity" willing to redeem them.[5] Colombia's manumission law called the emancipation of individual slaves a "pious goal."[6]

This language of spiritual captivity and redemption recalled the holy war experiences of Christians and Muslims. Between 1500 and 1800, millions of European Christians experienced slavery throughout the Mediterranean world, particularly on the northern African coast.[7] People in the Spanish Indies and the early Spanish American republics remained acutely aware of this. Captivity narratives figured prominently in oral and written traditions. Moreover, those who wrote last wills and testaments had to pay *mandas forzosas*, a tax to fund the redemption of captives back in Spain. The semantic stock of slavery and emancipation thus included physical but temporary forms of enslavement at the hands of Ottomans and their allies. However, this also implied the subsequent possibility of either slippage into spiritual captivity through apostasy, or redemption by ransom or escape and return to Christendom. The key concept was captive, and the rescuing of captives was an obligation of faith – a pious and redemptive act.

Corral and Restrepo thus agreed with those slaves who saw themselves as Christian captives. When Antioquia's slave petitioners suggested in 1812 that it would be logical to expand the constitutional definition of "liberty," they claimed to speak "on behalf of all the unhappy captives." The slave leaders called for the lifting of the

"insufferable yoke of slavery" throughout the State, making room for the liberated slaves to become members of the new republic. God, they insisted, was "on our side."[8] Monolingual in Spanish, up to date on the revolutionary developments, and indoctrinated in the rudiments of Christianity, the slave leaders understood the implications of their vocabulary. Continuing enslavement defied the logic of a Catholic polity built on the idea of liberty and devoted to individual rights. When it came to matters of freedom, the voices of the unfree were the most critical and universal.

Antislavery legislation relied on the idiom of captives' redemption because its mechanics facilitated the gradual approach to slave emancipation. Officials would continue to collect taxes originally established for the redemption of Mediterranean captives, but they would now use the funds to pay for the manumission of local slaves. In Antioquia, those whose liberty was paid for with this money would be publicly manumitted every year on Resurrection Passover (Easter Sunday) – the most solemn feast of the Lord, a mystical commemoration of redemption, of passage from death to life, from light to darkness, from captivity to freedom.[9] Following the dissolution of the bonds of political dependence with Spain, the convictions and obligations of captive redemption could be mobilized to liberate Christians from their domestic captivity. The redemption of captives, however, was a spiritual commitment with no single beginning or clearly identifiable end. It was an ongoing, gradual process rather than a sudden change.

By reading litigation as a sphere of politics, however, we have been able to see how some slaves struggled (conceptually and legally) to propose alternatives to continuing captivity. Typically hostile and riddled with silences, judicial records nonetheless contain important clues on slaves' antislavery propositions. Between the 1780s and the 1820s, enslaved legal activists made important efforts to articulate the idea that slavery could and should end by legal means. As the Spanish monarchy collapsed and independent, representative republics began to form, some slaves proposed that their own emancipation should take place without delay and without excuse. Some free people agreed. Demonstrating whether the new doctrine of liberty and equal rights was "true," and by extension defining the scope of revolutionary politics, rested on the fate of captives. Crucially, the implication was

that male slaves and former slaves, regardless of their alleged sinful African origin, criminal inclinations, and stained background as manual workers should be incorporated as equals into the new body politic.[10] Common litigants demonstrated a vanguard abolitionist political stand and supported equality before the law for ex-slaves. For many, ending slavery altogether was not simply a just concession to the slaves but a crucial step forward for the broader society.

Over the last five centuries, slaves and their descendants have had to meditate carefully on what it means to belong or to be excluded. When considering who they were before the law and how best to define their rights and shift their status, they reflected, by necessity, on transcendental issues of liberty and freedom, natural and civil law, kings, queens, and constitutions. In this process, often slaves and their free descendants stood at the forefront of legal change. Their vital and complicated engagements with magistrates and legislators have reframed, expanded, refined, and even defined citizenship for entire nations.[11] By engaging with those with the greatest legal authority, people with the least legal standing actively shaped the scope and meaning of freer, more open societies in the Americas.